
(2011) 04 GAU CK 0003
In the Gauhati High Court
Case No : Writ Petition (C) No. 112 of 2008

Heisnam Gokulchandra Singh

APPELLANT

Vs

State of Manipur and Another

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10(1)
Constitution of India, 1950 — Article 226, 227, 309

Citation : (2011) 3 GLT 605

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : H. Iswarlal, for the Appellant; R.S. Reisang, GA, for the Respondent

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.—Heard Mr. H. Iswarlal, learned counsel for the petitioner and Mr. R.S. Reisang, learned GA appearing on behalf of the respondents.

2. The prayer sought for in the present writ petition is for a direction to the respondents to consider the petitioner for appointment to Grade-IV in the Directorate of SCERT, Government of Manipur as per recommendation of the DPC held on 10.11.2006.

3. **FACTUAL BACKGROUND:**

The petitioner's educational qualification is HSLC and is eligible for appointment to Grade-IV under the Directorate of SCERT, Government of Manipur. Initially the petitioner was engaged as Peon at the DIET, Churachandpur on contract basis on payment of consolidated pay of Rs. 1200/- p.m. against the post sanctioned by the Government for a period up to 30.04.1999 from the date of joining service till the post is filled up on regular basis vide order No. 1/84/97-SCERT (Pt) of the Director of SCERT, Government of Manipur dated 4.5.1998. The term of the petitioner's engagement as Grade-IV had been extended from time to time. On

04.10.2007 the Project Officer (NFE)/HOO/ SCERT, Government of Manipur issued order being No. I/147/2006-SCERT (A) dated 4.10.2007 stating that as an interim arrangement the service of the petitioner, Grade-IV/ SCERT shall be utilised as runner of Directorate until farther orders.

4. While the petitioner was working as Grade-IV in the Directorate of SCERT, Government of Manipur, the Director, SCERT, Government of Manipur issued notification No. I/13/97-SCERT (A)(Pt-VII) B, Imphal, 28th October, 2006 notifying that the DPC for appointment to the post of Grade-IV under the Directorate of SCERT, Government of Manipur will be held with effect from 10.11.2006. For easy reference, the said notification dated 28.10.2006 is quoted hereunder :

Government of Manipur Directorate of State Council of Educational Research and Training

NOTIFICATION

Imphal, the 28th October, 2006

No. 1/3/97-SCERT (A)(Pt-VII) B: In pursuance of Govt. letter No. 33/3/2005 - SCERT dated, the 2nd September, 2006 it is hereby notified for information that DPC for appointment for the posts of Grade-IV under the Directorate of SCERT Govt. of Manipur will be held w.e.f. 10.11.2006.

All the candidates who have been sponsored by the respective employment exchange officers are informed to collect necessary documents from the office of the undersigned as details given below:

1. Last date of form issue - 03.11.2006
2. Last date of submission of form - 04.11.2006
3. Last date of issue of Interview Card - 06.11.2006
4. Date of DPC -10.11.2006.

Sd/-N. Debala Devi Director SCERT, Government of Manipur.

5. Pursuant to the said notification dated 28.10.2006, the DPC was held on 10.11.2006 for direct recruitment to Grade-IV post under the Directorate of SCERT, Government of Manipur, in which 38 (thirty eight) candidates including the petitioner appeared. Out of 38 candidates appeared in the said DPC, four candidates were Scheduled Tribes and three candidates were Scheduled Castes and remaining 31 (thirty one) candidates are general. The DPC recommended five candidates for appointment to the post of Grade-IV in the Directorate of SCERT, Government of Manipur. The names of five recommended candidates are (1) Ngamkhosei Kipgen (ST), (2) Ksh Tomchou Singh (SC), (3) Th. Dinesh Singh (General), (4) Ch. Momocha Singh (General) and (5) W. Amutombi Singh (General).

6. Further, the DPC also recommended five waitlisted candidates including the petitioner in order of merit. In the said waiting list consisting of five candidates including the petitioner, name of the petitioner appeared at Sl. No. 1 of the General Candidates. The said candidates in the waiting list are for appointment in the vacancy as and when arises during operation of the waiting list.

The proceedings of the DPC had been approved by the competent authority, and on the recommendation of the said DPC held on 10.11.2006 and with the approval of the Government of Manipur, the said five candidates were appointed by the Director, SCERT, Government of Manipur vide order No. 1/13/97-SCERT (A) (Pt-VII)-B dated 13.11.2006. During the recruitment year of the said waiting list, in which name of the petitioner appeared at Sl. No. 1 of the General candidates, one Shri K. Nobin Singh, Grade-IV expired on 19.01.2006 (AN); and the Director, SCERT issued order being No. 1/ 35/97-SCERT (A) (Pt) dated 20.01.2006 for terminating service of late Shri K. Nobin Singh, Grade-IV w.e.f. 19.01.2006 on his death on 19.01.2006 (AN). This fact is not denied by the State respondents in their counter affidavit.

7. As there was one vacancy in the post of Grade-IV, the Director, SCERT, Government of Manipur under her letter being No. 1/13/97-SCERT (A) (Pt-VII)-B dated 24.09.2007 requested the Commissioner, SCERT, Government of Manipur to convey the approval of the Government to appoint seniormost candidate of the panel list i.e. said panel of five candidates in which name of the petitioner appeared at Sl. No. 1 of the General Candidates.

The said letter of the Director, SCERT, Government of Manipur dated 24.09.2007 read as follows:

GOVERNMENT OF MANIPUR DIRECTORATE OF SCERT

No. 1/1397-SCERT (A)(Pt-VIII)- B

Imphal, the 24.09.2007.

To,

The Commissioner (SCERT), Government of Manipur.

Subject: Request for appointment of Grade-IV post in the office of the Directorate of SCERT.

Madam,

In inviting a reference to an application submitted by Shri H. Gokulchandra Singh (copy enclosed) I am to say that a DPC for appointment of Grade-IV was held on 10.11.2006 and five (five) Nos. of persons have been appointed as Grade-IV employees of the Directorate. The said DPC kept a list of panel for future requirement/appointment so that as and when vacancy of the post of Grade-IV arises within the validity period of the DPC the Department with the approval of the Government may appoint the seniormost candidate in the panel list.

Now, one post of Grade-IV is lying vacant due to the untimely death of (late) Shri K. Nobin Singh, Grade-IV of the Directorate. As you are aware of the shortage of staff and Grade-IV of the Department, the appointment of Grade-IV may kindly be considered and convey approval of the Government to appoint the senior most candidate of the panel list.

Yours faithfully, Sd/- (N. Debala Devi) Director, SCERT Government of Manipur.

Here again, it is not disputed that the vacancy arose on the death of late K. Nobin Singh, is for the General Candidates inasmuch as the said vacancy is neither in the point reserved for SC candidates nor the point reserved for ST candidates in the 100 point roster, maintained by the Department for reservation of SC and ST candidates.

8. As the petitioner was not considered for appointment to the said vacancy even if the name of the petitioner appeared at sl.no. 1 of the waiting list of the candidates prepared by the said duly constituted DPC in its meeting held on 10.11.2006 without any justification and ostensible reasons, the petitioner approached this Court by filing the present writ petition.

9. The respondents filed their joint affidavit in opposition wherein the respondents did not deny that there was a meeting of the duly constituted DPC on 10.11.2006 for direct recruitment to the post of Grade-IV in the Directorate of SCERT and name of the petitioner appeared at Sl. No. 1 of the waiting list and also that a vacancy had been arisen on 19.01.2006 on the untimely death of Shri K. Nibon Singh, Grade-IV of the Directorate of SCERT.

10. The only case of the respondents for not appointing the petitioner in the said vacancy was that the petitioner cannot be appointed in the said vacancy i.e., vacancy arisen on expiry of a regular Grade-IV and also that the said DPC held on 10.11.2006 was in pursuance of the Office Memorandum dated 19.04.2005. As the case of the respondents placed heavy reliance on the said O.M. dated 24.09.2005, quick curiosity of the said Office Memorandum is required for deciding the present case. Accordingly, for convenience, OM. dated 24.09.2005 is quoted hereunder:

Government of Manipur Department of Personnel and Administrative Reforms
(Personnel Division) OFFICE MEMORANDUM

Imphal, the 24th September, 2005

Subject: Ad-hoc appointments involved in court cases - Filling up posts on regular basis. No. 12/13/92-AQ/DP (Pt): The undersigned is directed to say that the State Government has decided to fill up the posts held by direct recruit and ad-hoc employees involved in court cases in the different departments on regular basis through DPC subject to the following conditions:

(1) The Department shall verify whether the post held by the direct recruit ad-hoc employee is clearly vacant and not included in the downsizing;

(2) If the post held by the ad-hoc direct recruit employee is clearly vacant, not included in downsizing and falls under direct recruitment quota, the post shall be filled up by direct recruitment through regular DPC within 6(six) months by following the rules/instructions laid down by the Government. Proper reservations for SC, ST as per roster points should be kept in view of while filling up the post;

(3) In case, the ad-hoc direct recruit employee was appointed against a clear vacancy meant for promotion, such vacancy shall be filled up by promotion through DPC within 6(six) months.

(4) The terms of the ad-hoc direct recruit employees shall be extended by the Administrative Department for a period of 6(six) months with effect from the date of issue of the O.M. or till the posts/vacancies are filled up on regular basis as stated in para (2) and (3) whichever is earlier. The Administrative Department shall ensure that the posts held by the adhoc direct recruit incumbents are filled up on regular basis within the time frame of six months from the date of issue of this P.M. Under no circumstances, the term of adhoc direct recruit incumbents shall be allowed to continue beyond the said period of six months.

(5) The ban on direct recruitment is relaxed insofar as the filling up of the above mentioned posts/vacancies are concerned.

(6) The period of service rendered by the incumbent ad hoc direct recruit incumbents shall be relaxed for reckoning of his/her upper age limit for the purpose of regular filling up the post held by him/her on ad hoc basis through regular DPC. The age relaxation in respect of the ad hoc direct recruit incumbents shall not be made applicable for the direct recruitment to other posts/ service.

(7) Extension of service of the direct recruit ad hoc incumbents for the period proceeding the date of issue of this O.M. would require the concurrence of DP and the payment of the arrears of pay/salaries shall be decided separately after the financial implications are worked out and duly certificates are furnished to the Department of Personnel by the Department concerned. While sending proposals in this regard the concerned Administrative Department shall clearly indicate the availability of fund in their budget for payment of the arrears of pay/ salaries to the adhoc direct recruit incumbents.

(8) This O.M. shall not be made applicable to those cases where appropriate orders had been passed by the Courts for discontinuance of the services of the concerned direct recruit adhoc employees. This shall also not debar the Departments to file appeals/applications or pursue appeal/applications already filed in the Court for setting aside orders passed by the Single Bench of the Hon'ble Gauhati High Court restraining the State Government from terminating the services of direct recruit adhoc employees.

All the Administrative Departments and Heads of Departments are requested to

take necessary action on the lines indicated above.

Sd- (Seikholet Lhangum) Under Secretary (DP), Government of Manipur.

11. On bare perusal of the said O.M. dated 24.09.2005 it is clear that the DPC mentioned therein for filling up the post held by the direct recruit adhoc employee involved in the Court cases shall be held and completed within six months from 24.09.2005. As stated above, the DPC for direct recruitment to the post of LDC pursuant to the said advertisement/notification dated 28.10.2006 was held on 10.11.2006 i.e. after the expiry of the period of six months mentioned in the said O.M. dated 24.09.2005. The respondents in their affidavit had not mentioned any material facts/ pleadings as to how the Government of Manipur had allowed to hold the said DPC long after the expiry of the period of six months mentioned in the said office memorandum dated 24.09.2005. If the said DPC Held on 10.11.2006, which prepared the panel list or/ waiting list in which name of the petitioner appeared at Sl. No. 1 of the General Candidates was in pursuance of the said O.M. dated 24.09.2005, also the respondents should have mentioned in their joint affidavit in op-position that the said DPC held on 10.11.2006 was in respect of the posts held by the direct recruit adhoc Grade-IV employees involved in the Court case. If case of the respondents that the said DPC held on 10.11.2006 was in pursuance of the O.M. dated 24.09.2005 is correct, the respondents would have mentioned the particulars of the Court cases involved in the appointment of the direct recruit ad hoc Grade-IV against the posts for which the said DPC was held in their joint affidavit in opposition.

12. Respondents in thier affidavit in opposition never took the plea that the case of the writ petitioner cannot be considered for appointment to the said vacancy in the post of Grade-IV arose on the death of K. Nobin Singh on 19.01.2006 even if the name of the petitioner appeared in Sl. No. 1 of the waiting list prepared by the DPC heft on 10.11.2006 as the validity of the waiting list is expired. This Court is to decide the case of the respondents on the basis of their case pleaded in the joint affidavit in opposition. As stated above, the only case of the respondents is that the DPC held on 10.11.2006 was in pursuance of OM dated 24.09.2005. For the sake of repetitions, it is reiterated that the respondents did not produce any documents to show that the DPC held on 10.11.2006 was in pursuance of the said Office Memorandum dated 24.09.2005.

13. The Apex Court (Constitution Bench) in *Katra Educational Society Vs. State of Uttar Pradesh and Others*, held that even in writ proceedings, in the absence full averment of the ground on which the party relied on in the petition, i.e. the writ petition, that particular ground cannot be decided.

14. The Apex Court had considered the importance of pleadings in the writ petition in *Bharat Singh and Others Vs. State of Haryana and Others*, and held (para 13 of the AIR) that:

13....In our opinion, when a point is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner,

must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter affidavit, as the case may be. the Court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the CPC and a writ petition or a counter affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable.....

(Emphasis supplied)

15. The Apex Court (seven Judges) in the celebrated case of S.P. Gupta Vs. President of India and Others, held that affidavit, counter affidavit, rejoinder affidavit filed by the parties constitute not only their pleadings but also partake of the character of evidence in the case.

16. In clear absence of pleadings in the joint affidavit in opposition that the case of the petitioner for appointment to the post of Grade-IV cannot be considered as the validity period of the waiting list is expired; Mr. Reisang learned GA appearing for the State respondents tried to impress this point of expiry of validity period of waiting list by referring to the decision of the Apex Court in (1) State of Bihar and others Vs. Md. Kalimuddin and others, and (2) State of U.P. Vs. Ram Sawrup Saroj,

17. In Md. Kalimuddin's case (supra) there is a rule framed under Article 309 of the Constitution of India which provides that the list of candidates appeared for direct recruitment will be valid for one year from the date of approval of the project by the Selection Committee. In the instant case Mr. Reisang, learned GA could not mention any rule framed under Article 309 of the Constitution of India by the Governor of Manipur that the list of candidates prepared for direct recruitment will be valid only for one year from the date of approval.

18. The Apex Court in Naseem Ahmad and Others Vs. State of U.P. and Another, had discussed the meaning of wait list and held that the wait list should be moderate containing the number of candidates sufficient to meet the vacancies arisen in the year of recruitment and succeeding years and it should be in reasonable proportion to the notified vacancies. Para 23 of the SCC in Naseem Ahmad's case (supra) read as follows:

23. The expression "reasonable dimension" used in Rule 12 of the aforesaid Rules signifies that the wait list should be a moderate one containing that number of candidates which is adequate to meet the vacancies which might be available within a reasonable period in the year of recruitment or the year succeeding thereto and this list should be in reasonable proportion to the notified vacancies. To be more precise, this waiting list should broadly be correlated to

the number of vacancies either available in the year of recruitment or likely to become available in the succeeding year and the proportion qua the existing and anticipated vacancies. It is only in order to obviate the possibility of the waiting list becoming vitiated on account possibility of the waiting list becoming vitiated on account of the vice of arbitrariness or illegal discrimination that the provision contains the Rule which specifically provides for maintaining a waiting list of a reasonable dimension.

(Emphasis supplied)

19. Mr. Reisang, learned GA further contended that there is only an executive instruction issued by the Government for fixing the validity period of the waiting/ select list vide Office Memorandum dated 29.04.1999. The respondents did not mention this memorandum in their affiavit in opposition and as stated above, nor took the plea that the case of the petitioner cannot be considered as the validity period of the waiting list is expired.

20. The Director, SCERT had requested, by writing a letter being No. 20/313/2008-SCERT (Case), Imphal 3.2.2009, the Commissioner, SCERT for filling up the vacancy in the post of Grade-IV arose on the expiry of Shri K. Nobin Singh, which actually fall to the general quota/unreserved quota as per 100 point roster and also the said post is not included in the down sizing policy of the Government of Manipur. The said letter of the Director, SCERT dated 3.2.2009 read as follows:

GOVERNMENT OF MANIPUR

Directorate of State Council of Educational Research and Training

No. 20/313/2008-SCERT (Case)

Imphal, the 3.2.2009

To

The Commissioner, SCERT

Government of Manipur.

Subject: Request for appointment of Grade-IV in the Deptt., of SCERT in respect of H. Gokulchandra Singh.

Reference: Hon"ble Gauhati High Courts order dated 11.02.2008 passed in W.P. (C) No. 112 of 2008.

Madam,

In inviting a reference to the Government letter No. 12 (HC)/2/2008-SE/SCERT dated 11.11.2008 on the above subject I am to furnish herewith the information/ points for kind perusal and necessary action thereof.

(i) The DPC, held on 10th Nov. 2006 for the post of Grade-IV of the SCERT

department, recommended the panel list in the proceedings and Government has given approval.

(ii) The Department has been maintained the 100 Point Roaster since the establishment of SCERT and the Department has not appointed any Grade-I V employee on regular basis except the DPC held on 10th Nov., 2006. So the vacancy caused by expiry of Shri K. Nobin Singh actually falls to General quota/ Unreserved as per 100 Point Roaster (copy enclosed).

(iii) The present vacant post is not included in the Downsizing policy of the Government (copy enclosed).

Yours faithfully,

Sd/-

(N. Debala Devi)

Director, SCERT,

Government of Manipur.

21. It is clear from the letter that the case of the present writ petition had been referred to the Government of Manipur i.e., the Commissioner, SCERT for appointment to the said vacancy in the post of Grade-IV. This shows very clearly that the authority concerned has not yet treated the waiting list prepared by the said DPC held on 10.11.2006, in which the name of the petitioner appeared at Sl. No. 1 invalid and also it is clear that any duly constituted DPC has not yet prepared fresh list of candidates for appointment to the Grade-IV post in the Directorate of SCERT.

22. The Apex Court in a catena of cases decided if an order/statute is mandatory or directory depends on the purpose for which the order/statute intend to achieve as disclosed by the object, design, purpose and scope of the statute/order. The Apex Court in *Dr. Ram Deen Maurya Vs. State of U.P. and Others*, held that for deciding an order or statute is mandatory or not, it is required to construe strictly the effect of non compliance. When the consequence effect is not provided it could be treated as directory. Admittedly, in the present case, in the said Office Memorandum of the Government of Manipur dated 24.03.2005, the consequence or effect of non compliance is not provided and it was issued only a measure for filling up the post held by ad hoc employees involved in Court cases. Para 43 of the SCC in *Ram Deen Maurya's case* (supra) read as follows:

43. To answer this issue, it is necessary to find out, whether the Rule is directory or mandatory. If it is mandatory, then it is settled rule of interpretation, it must be strictly construed and followed and an act done in breach thereof will be invalid. But if it is directory, the act will be valid although the non-compliance may give rise to some other penalty if provided by the statute. It is often said that a mandatory enactment must be obeyed Or fulfilled exactly, but a directory provision non compliance with it has been held in many cases as not affecting

the validity of the act done in breach thereof (see Principles of Statutory Interpretation. 11th Edn. 2008 by Justice G.P. Singh).

23. For deciding as to whether the said order of the Government of Manipur dated 24.03.2005 is mandatory or directory, as stated above, depend upon the purpose which the Government intend to achieve as disclosed by the object, design, purpose and scope of the order. We may also refer to the decision of the Apex Court in (1) Rubber House Vs. Excelsior Needle Industries Pvt. Ltd., and (2) P.T. Rajan Vs. T.P.M. Sahir and Others, Para 31 of the SCC in M/s Rubber House's case (supra) read as follows:

31. The word "shall" in its ordinary import is obligatory. Nevertheless, the word "shall" need not be given at connotation in each and every case and the provisions can be interpreted as directory instead of mandatory depending upon the purpose which the legislature intended to achieve as disclosed by the object, design, purpose and scope of the statute. While interpreting the concerned provisions, regard must be had to the context, subject matter and object of the statute in question.

Para 50 of the SCC in P.T. Ranjan's case (supra) read as follows:

50. The Court cannot, it is trite, supply casus omissus. Reference in this regard may be made to Dr Baliram Waman Hiray Vs. Justice B. Lentin and Others, wherein it was observed : (SCC p. 443, para 27).

27. Law must be definite, and certain. If any of the features of the law can usefully be regarded as normative, it is such basic postulates as the requirement of consistency in judicial decision-making. It is this requirement of consistency that gives to the law much of its rigour. At the same time, there is need for flexibility. Professor H.L.A. Hart regarded as one of the leading thinkers of our time observes in his influential book "The Concept of Law", depicting the difficult task of a judge to strike a balance between certainty and flexibility:

Where there is obscurity in the language of a statute, it results in confusion and disorder. No doubt the courts so frame their judgments as to give the impression that their decisions are the necessary consequence of predetermined rules. In very simple cases it may be so; but in the vast majority of cases that trouble the courts, neither statute nor precedents in which the rules are legitimately contained allow of only one result. In most important cases there is always a choice. The judge has to choose between alternative meanings to be given to the words of a statute or between rival interpretations of what a precedent amounts to. It is only the tradition that judges "find" and do not "make" law that conceals this, and presents their decisions as if they were deductions smoothly made from clear pre-existing rules without intrusion of the judges' choice.

(See also Smt. Kanta Devi Vs. Union of India (UOI) and Another, As stated above, in the given case no consequence is provided in the said executive instruction for fixing the validity period of the select list for one year and six

months at the maximum or till a fresh DPC is prepared whichever is earlier, therefore, the said instruction, at the most is only a directory.

24. The Apex Court (Constitution Bench) in *Shankarsan Dash Vs. Union of India*, held that ordinarily notification for appointment to the vacancy in the post or/in the service of the government merely amount to an informative to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the posts. Unless the relevant recruitment rules so indicate, the State is not under legal duty to fill up any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancy has to be taken bonafide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test and no discrimination can be permitted. The ratio laid down by the (C/B) of the Apex Court in *Shankarsan Dash Vs Union of India* (supra) are that the selected candidates do not acquire any right to the post; but the decision of the State Government not to fill up the vacancy has to be taken bona fide for appropriate reasons and State cannot act in an arbitrary manner in taking decision not to fill up the vacancies.

25. The Apex Court again in *Govt. of Orissa v. Haraprasad Das and Ors.*: AIR 1998 SC 375 is of the similar view that mere empanelment or inclusion one's name in the select list does not give him a right to be appointed. So also if the government decided not to make further appointment for a valid reason, it cannot be said that it has been acted arbitrary by not appointing those whose names are included in the select list, whether to fill up a post or not is a policy decision unless it is shown to be arbitrary does not open to the tribunal to interfere with such decision of the Government and direct it to make further appointment.

26. The Division Bench of this Court in *Ibrahimali and Others Vs. State of Assam and Others*, had discussed the right of the selected candidates and also the selection of the candidates by the Selection Committee for appointment to the posts of Field Assistant in the Animal Husbandry and Veterinary Department, Govt. of Assam during the ban period. In that case the case of the State respondents for not appointing the selected candidates for appointment to the post of Field Assistant in the Animal Husbandry and Veterinary Department, Govt. of Assam was that the list of the selected candidates, i.e. list of 1996 was prepared during the subsistence of an embargo on appointment imposed by the State Government and list was not approved by the competent authority and in addition to that fresh advertisement had been issued as the trained candidates of subsequent bases should also be given a chance to complete for the available posts. The Division Bench of this Court in that case, i.e. *Ibrahim Ali's case* (supra) held that the reasons given for not appointing the selected candidates by the State Government i.e. the State of Assam, do not inspire this Court to conclude that the State Government is justified in taking a decision to go for

fresh selection. And failure to take action by the concerned authority and government after preparation of the select list in the selection held in 1996 is totally arbitrary and devoid of any substantial reasons. Paras 3 and 10 of the GLT in Ibrahim Ali's case (supra) are quoted below:

3. The respondent State in their affidavit in opposition advanced reasons to justify the above deprivation. According to the State, the list of 1996 was prepared during the subsistence of an embargo on appointment imposed by the State Government and the said list was not approved by the competent authority; in addition, the State also pleaded that the fresh advertisement was issued as the trained candidates of subsequent batches should also be given a chance to compete for the available posts.

10. The last point argued by the learned State counsel that empanelment of names do not confer any right on the selected candidates to get appointment. Our attention has also been drawn to the decision of the Supreme Court in Shankarsan Dash Vs. Union of India, in order to show that the selected candidates do not acquire any indefeasible right to be appointed against the existing vacancies. The same ratio is also available in Government of Orissa through Secretary, Commerce and Transport Department, Bhubaneswar Vs. Haraprasad Das and Others, . There cannot be any dispute as to the position of law in this behalf. But in order to defeat the claim of the selected candidates, the Government must come out with adequate reasons. The reasons available in this case, as discussed above, do not inspire this Court to conclude that the State Government is justified in taking a decision to go for fresh selection. It is pertinent to mention here that failure to take action by the concerned authorities and the Government after preparation of the select list in the selection held in 1996 is totally arbitrary and devoid of any sustainable reason.

27. The very purpose of constitutional powers under Article 226 being conferred on the High Courts is that no one should be subjected to injustice by violation of law. The Constitution of India is the supreme law of the land under which the sovereign power is distributed amongst legislature, executive and judiciary with checks and balances but not in water tight rigid mode.

28. The Apex Court (Constitution Bench) in S. Pratap Singh Vs. The State of Punjab, held that:

The Constitution enshrines and guarantees the rule of law and Art. 226 is designed to ensure that each and every authority in the State, including the Government acts bona fide and within the limits of its power and we consider that when a Court is satisfied that there is an abuse or misuse of power and its jurisdiction is invoked, it is incumbent on the Court to afford justice to the individual. It is with these considerations in mind that we approach the facts of this case.

29. The Apex Court in Roshan Deen Vs. Preeti Lal, held that:

....Time and again this Court has reminded that the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not to thwart it (vide State of U.P. Vs. District Judge, Unnao and Others, The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The lookout of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law.

(emphasis supplied)

30. The Apex Court in *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], held that:

The Founding Fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court as sentinel on the qui vive is to mete out justice in given facts. On finding that either the workmen were engaged in violation of the provisions of the Act or were continued as contract labour, despite prohibition of the contract labour u/s 10(1), the High Court has, by judicial review as the basic structure, a constitutional duty to enforce the law by appropriate directions. The right to judicial review is now a basic structure of the Constitution by a catena of decisions of this Court starting from *Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another*, to *S.R. Bommai and others Vs. Union of India and others* etc. etc., It would, therefore, be necessary that instead of leaving the workmen in the lurch, the Court properly moulds the relief and grants the same in accordance with law.

(Emphasis supplied)

31. For the foregoing reasons, this Court is of considered view that there is no valid and justifiable reason for not considering the case of the petitioner whose name appeared at Sl. No. 1 of the waiting list prepared by the said duly constituted DPC held on 10.11.2006 for the post of Grade-IV specially when there is one vacancy in the post of Grade-IV arises in the year of recruitment for which the said D.P.C. was held.

32. Accordingly, the respondents are directed to appoint the petitioner, in the given case, to the said vacancy in the post of Grade-IV within a period of four months from the date of receipt of certified copy of this judgment and order.

The writ petition is allowed.