
(2003) 08 GAU CK 0019
In the Gauhati High Court
Case No : W.A. No. 3 of 2002

Md. Maidul Islam and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 07-08-2003

Acts Referred:

Citation : (2003) 3 GLR 691

Hon'ble Judges : P.P. Naolekar, C.J.;A.H. Saikia, J

Bench : Division Bench

Advocate : B.K. Sharma and U.K. Nair, for the Appellant; A. Hazarika, Adl. G.A., for the Respondent

Judgement

P. P. Naolekar, C.J.—In pursuance of a selection process, the petitioner/appellant applied for the posts of Lat Mandal for the amalgamated establishment of Deputy Commissioner, Kokrajhar. After following the procedure for selection of candidates a select list was published by the authority on 28.10.1998 containing names of 22 candidates in order of merits. Although the select list was published no appointment was made operating the select list and therefore before expiry of the life of the select list the petitioners approached this Court for seeking relief that they should be provided with the appointment in accordance with the select list prepared. The writ petition (WP(C) No. 4802/99) was dismissed by the learned Single Judge on the ground that during the pendency of the writ petition the validity of the select list has expired and thus no directions can be given by the writ Court. Aggrieved by the order dated 20.11.2001 the present appeal is filed.

2. There cannot be any manner of doubt that mere empanelment or inclusion of one's name in the select list does give to any individual included in the select list to be appointed if the Government decided not to appoint any person from the list for valid reason. It is for the Government to decide for valid reason to fill up the post or not and no direction can be issued for operation of the select list and consequent thereof to give appointment. Non-operation of the select list, would

be only on the ground, which can be attributed to, any non-arbitrary act on the part of the Government. In the present case, although the Government was noticed no reply has been filed by the Government indicating any reason for not operating the select list.

3. In *State of U.P. Vs. Ram Sawrup Saroj*, while considering the aspect of life of a select list the Apex Court said that merely because a period of one year has elapsed during the pendency of litigation, it cannot be said that the Court could not exercise the powers and issue directions in regard to the select list which has expired its life during pendency of the court proceedings.

4. The decision cited by the learned Single Judge for the purpose of saying once the validity of select list has expired it cannot be given operation, on its reading does not apply in the facts of the present case as in those cases the Government has taken a policy decision not to act on the select list and accordingly the select list was not operated and consequent thereof the Court has declined to give any relief. Non-giving the relief is not the basis of the select list being expired during the pendency of the proceeding.

5. In the present case, the admitted fact emerged clearly indicates that although the petitioners' names were included in the select list they have not been given appointment and the life of the select list expired during pendency of the proceedings before this Court. No cogent reason for not operating, the select list has been given the Government. Under these circumstance, we set aside the order passed by the learned Single Judge and direct the State Government to take up the exercise for giving appointment to the petitioners/appellants herein in accordance with the select list prepared on 28.10.1998, if no policy decision, contrary to operate the select list has been taken by the Government. In fact, Ms A. Hazarika, Addl. Government Advocate appearing for the State has informed this Court that the Government shall be taking steps for giving appointment in accordance with the select list, subject to availability of vacancy. With the above directions, the appeal stand disposed of.