
(2004) 06 GAU CK 0045
In the Gauhati High Court
Case No : Writ Petition (C) No. 275 of 2004

Moloya Mushahary and Others	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 14-06-2004

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2004) GLT 779 Supp

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : A.M. Mazumdar, B. Ahmed, R. Islam and R.N. Kalita, for the Appellant; H.K. Mahanta, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sharma, J.—This writ application has been directed against an order dated 18.06.03 conveying the decision not to act upon the select list in question for the reasons mentioned in the order.

2. An advertisement was published on 24.07.98 inviting applications from eligible candidates for filling up 31 posts of Demonstrators in the department of Handloom and Textiles, Govt. of Assam. Subsequently, the vacancy position rose to 61. The Petitioners numbering 31 offered their candidatures in response to the advertisement and upon acceptance of their candidatures, they were invited for appearing in the selection which comprised of written test and oral test. Selection was conducted by a duly constituted Selection Committee and the Director of Handloom and Textiles by his letter dated 26.03.01 sought permission from the Govt. for appointment against 31 posts of Demonstrators.

3. Altogether 755 applications were received by the department against the aforesaid posts out of which, 728 candidates appeared in the written and oral test. The Selection Committee prepared a select list containing the names of 62 candidates who were declared successful in the selection. The select list was

treated to be valid for 12 months from the date of selection, i.e. from 27.03.2001. The names of the Petitioners appeared in the select list.

4. When the select list was not acted upon the Petitioners being apprehensive of foul play in the matter with the change of Government in the State, approached this Court by filing the writ petition praying for a direction to the appointing authority not to cancel the select list dated 27.03.01 and to make appointment on the basis of the same. The petition was registered and numbered as W.P.(c) No. 5845/2001. This Court while entertaining the writ petition passed an interim order directing the Respondents to keep 31 posts of Demonstrators vacant. The writ petition was finally decided by judgment and order dated 27.02.03 issuing a direction to the Respondents to examine as to whether the select list dated 27.03.01 was prepared in accordance with the provisions of law and whether any candidate has been excluded from the list without valid reasons and upon such examination to take a decision whether to act upon the list or not in consultation with a State Level empowered Committee. A further direction was issued that if the list was found to be valid but the State decides not act upon the list, it might do so by recording the reasons therefor. The entire exercise was directed to be carried out within a period of three months.

5. When nothing was done in terms of the directions of the Court as mentioned above, the Petitioners initiated a contempt proceeding by way of contempt case No. 449/03. In the meantime the Respondents issued the impugned order dated 18.6.03 conveying its decision not to act upon the select list. In that view of the matter the contempt petition was closed granting liberty to the Petitioners to ventilate their grievance against the said order dated 18.06.03.

6. It is in the aforesaid background the present writ proceeding has been initiated assailing the legality and validity of the impugned order dated 18.06.03. Apart from putting a challenge to the same on the ground of being illegal, the Petitioners have also urged the grounds of discrimination and double standard on the part of the Respondents on the ground that they have resorted to appointment on pick and choose basis. In this regard the Petitioners have indicated the appointment of one Shri Amar Ch. Sarma by an order dated 19.07.03 whose name had also figured in the select list at serial No. 30. The Petitioners have also taken a ground that the Respondents while taking a decision not to act upon the select list resorted to appointment without selection and issued appointment order dated 06.01.01 in favour of one Shri Pinaki Chokravorty. The Respondent No. 2 has filed an affidavit in opposition. The affidavit is not on behalf of all the Respondents. In the affidavit the justification for the decision not to act upon the select list has been sought to be made by making the following statements in paragraph 5:

5. That in regard to the statements made in paragraph 5 of the writ petition, the deponent respectfully states that the whole selection process in respect of the select list in question was irregular. The selection was made hastily and proper assessment was not done. And therefore, the State Government decided not to

act upon the said select list and to go for a fresh selection for recruitment to the posts of demonstrators (vide Annexure-10 to the writ petition).

7. As regards the allegation of appointment from the same very select list, the stand in the affidavit is that no appointment has been made from the select list in question. According to the Respondent No. 2, the appointment of Shri Amar Ch. Sarma by Annexure-II order dated 19.07.03 was made by a separate process initiated and completed for filling up the back log vacancies for physically handicapped persons and it was a mere co-incidence that the name of Shri Amar Ch. Sarma also appeared in the earlier select list. As regards the appointment of Shri Pinaki Chokravorty, the stand in the affidavit is that he was also selected in a separate selection process initiated and completed by the Karbi Anglong Autonomous Council.

8. Dr. B. Ahmed, learned Counsel for the Petitioners argued that a validly drawn select list could not have been discarded in the manner and method in which the same has been done by the impugned order dated 18.06.03. He submitted that the reasons assigned in the impugned order towards discarding the select list are vague and mere eye wash. On the other hand, Mr. H.K. Mahanta, learned State counsel appearing for the Respondents who was directed to produce the records, upon production of the same argued that the reasons for the decision not to act upon the select list are explicit in the impugned order dated 18.06.03 and are good and valid grounds. He further submitted that mere inclusion of the names of the Petitioners in the select list did not give them any indefeasible right for appointment. He further submitted that this Court having granted the liberty to the Respondents to take a decision either to act or not to act upon the select list, the Petitioners are not entitled to question the validity of the impugned order which is based on such a liberty granted by the Court.

9. The only question for determination is as to whether the reasons specified in the impugned order dated 18.06.03 could be said to be good and valid reasons towards taking the decisions not to act upon the select list, more particularly, having regard to the earlier order of this Court dated 27.02.03 passed in W.P. (C) No. 5845/01. By the said order the Respondents were directed to act in a particular manner. The Respondents were directed to examine as to (1) whether the select list dated 27.03.01 was prepared in accordance with the provisions of law; (2) whether any candidate has been excluded from the select list without valid reasons and if so; (3) to take a decision whether to act upon the list in consultation with the State Level Empowered Committee. In the event of taking a decision for appointment, same was to be made strictly in order of merit in terms of the advertisement and in the event of a decision not to act upon the select list even after the same was found to be valid, they were to record the reasons therefor.

10. The Respondents did not find the select list to be valid and thus there is no question of recording any reasons not to act upon the same as was required, if the same was found to be valid. Yet a decision was taken not to act upon the same.

11. The other option to make appointment on the basis of the select list strictly in order of merit in the event of finding the select list to be valid and the decision to act upon the same also do not arise. This necessarily leads to the aforesaid 3 requirements which the Respondents were directed to be carried out namely, (1) whether the select list dated 27.03.01 was prepared in accordance with the provisions of law; (2) whether any candidate has been excluded from the select list without valid reasons and if so; (3) to take a decision whether to act upon the list in consultation with the State level empowered committee.

12. The decision of the State Respondents towards issuance of the impugned order dated 18.6.03 is based on the first category i.e., (1) whether the select list dated 27.03.01 was prepared in accordance with the provisions of law. In both the cases falling under the category (1) and (2), the State Respondents were to take a decision whether to act upon the list or not in consultation with the State Level Empowered Committee (emphasis added).

13. The only reason assigned not to act upon the select list by the impugned order dated 18.06.03 is that "the procedure followed seemed to be irregular. The selection was made hastily and proper assessment could not be done." The alleged irregularities in the procedure of selection has been attributed to the delay in drawing the select list but at the same time the selection has been held to be made hastily. Another reason assigned is that proper assessment could not be done without specifying anything as to what was that. The reasons assigned in the impugned order are seemingly vague and indefinite. In one hand, the delay has been attributed towards making the selection so as to term the procedure to be irregular without highlighting anything as to what was the procedure to be followed or required to be followed and yet the same has been branded as irregular. If the delay of about two years in making the selection final is said to be a procedural irregularity and not the procedure as such in conducting the selection, can it be said that such delay attributes to procedural irregularity in conducting the selection, more particularly, in view of the stand of the Respondents in the same breath that the selection was made hastily. The ground assigned towards not acting on the selection is that proper assessment could not be done. Thus, both the grounds assigned in the impugned order run counter to each other. It was for the verification of the vague and indefinite reasons assigned in the impugned order, the learned State counsel was directed to produce the records. The records were also felt necessary for verification of the claim of the Petitioners that at least two persons were appointed, one from the select list in question and the other without even holding any selection.

14. I have gone through the records. It appears that pursuant to the directions of this Court as contained in the order dated 27.02.03 in W.P. (C) No. 5845/01, the file was processed both in the Directorate and Secretariat level. At one stage, the matter was left to the discretion of the Director. However, subsequently, the matter was placed before the Commissioner and Secretary of the department. The decision to reject the select list was taken by the Commissioner and

Secretary on 21.04.03 solely on the basis of the views given by the Director of Handloom and Textiles. The said director expressed her views by addressing the letter dated 09.04.03 to the Commissioner and Secretary. The contents of the letter are produced below:

With reference to the subject cited above and this office letter under reference, I have the honour to inform you flowing important points as the Hon''ble High Court's order dated 27.02.03 in W.P. (C) No. 5845/2001, directed the State to examine as to whether the select list dated 27.03.2001 was prepared in accordance with the provisions of law or not and will have to take a decision in consultation with SLEC and inform the Hon''ble High Court within 3 months as to the decision arrived at and reasons thereof The brief of the case is as follows:

1. Advertisement was published for filling up of 31 nos. of post of Demonstrators vide No. DHTE. 118/97/41 dated 18.07.98 in local Newspaper on 24.07.98 (also through Doordarshan and AIR).

2. Govt. has constituted Selection Committee vide No. HTS.62/94/pt-75 dated 30.11.98.

3. Altogether 867 applications were received and 780 applications were found valid and have been called for interview and written test vide No. DHTE. 188/97/55 dated 07.01.99 which was conducted w.e.f. 27.01.99 to 08.02.99 (total 11 days) district wise.

4. The written test and interview was held on the same day. First written test was held and there after interview was held.

5. SLEC was created vide Govt. memo No. B.W.21/99/1 dated 06.12.99.

6. Examiners received the Answer scripts vide No. DHTE.240/99/1 dated 17.12.99.

7. A proposal for abolition of post was communicated to Govt. vide this office letter No. DHTE.3/ 2000/72 dated 31.03.2000 as vacancy raised to 61 Nos. against the post of Demonstrators. Vacancy raised from 31 Nos. of post of 61 Nos. of post due to promotion of 30 numbers of Demonstrators to Instructors.

8. Government communicated following letters requesting the Director, Handloom and Textiles, Assam, to furnish a copy of select list prepared for appointment for obtaining approval from SLEC.

i) Letter No. HTS.16/2000/16, dated 02.08.2000

ii) Letter No. HTS.16/2000/19, dated 28.09.2000

iii) Letter No. HTS.16/2000/20, dated 14.12.2000

9. Selection committee signed the minutes for selection of candidates for the post Demonstrators and also approved the select List on 27.03.2001. The said Select List submitted to the Government for approval of SLEC vide this office

letter No. DHTE.118/97/120, dtd. 29.03.2001. But no approval from SLEC was received as the Code of conduct for General Assembly Election had been imposed.

10. The candidates from the list prepared by the Selection Committee have filed a Writ Petition [W.P. (C) No. 5845/2001] in the Hon'ble High Court for appointment from the said Select List and the Hon'ble Court has issued Notice of motion with an interim order dated 21.08.2001 to keep 31 posts vacant until further order.

In this connection, it is to be mentioned here that it is not understood how the candidates get access to the list prepared by Selection Committee and on this ground other applications Misc. Case No. 1521/02 and 1342/2001 in W.P. (C) No. 5845/2001 have been filed by the candidates whose names had not appeared in the said list, that the list was manipulated. Our para-wise comments in the said Writ petition is also enclosed herewith for ready reference.

In view of the above, Govt. is requested kindly to give instructions to the undersigned, the steps to be taken now as per Hon'ble High Court's directives.

Director, Handloom and Textiles, Assam Guwahati.

15. It is on the basis of the aforesaid letter the Commissioner and Secretary gave a note to the concerned Minister. The note was given on 21.04.03 and the Minister approved the same on 29.04.03. It is on that basis the impugned order dated 18.06.03 was issued. The note of the Commissioner and Secretary, H.T.S. dated 21.04.03 reads as follows:

1. This is about the judgment of Hon'ble Gauhati High Court about the appointment of Demonstrator in the Department. The order of the Court may kindly be perused at SI. 80-83/C the case in brief is that in the year, 1998 applications were invited for appointment as Demonstrator by the Director, H and T it appears that the written test and interviews were held on the same date in 1999.

2. The Court has directed to examine as to whether the select list dated 27.03.2001 was prepared in accordance with law and whether any candidate has been excluded from the list without valid reasons. It has been left to the Government either to accept or to reject the list. If we reject we are to give reasons for such rejection.

3. The Director, H and T has given view on the matter (SI. 91-92/C). She feels that the list was manipulated. ("X" marked portion at SI. 92/C).

4. As above, we may reject the list and go for fresh selection by observing formalities. Fresh approval of SLEC will be required for approval.

16. The letter dated 09.04.03 given by the Director addressed to the Commissioner and Secretary does not contain any ground pointing out any irregularity in conducting the selection. She only indicated the sequence of events involving the selection and as to how the approval of the State Level

Empowered Committee was sought for and could not be granted as the code of conduct for General Assembly Election had been imposed which debarred making any appointment. However, reservation was made in the said communication dated 09.04.03 as to how the candidates could get access to the list prepared by the selection committee and she referred to the para wise comments earlier prepared and furnished in respect of the earlier writ petition i.e., W.P. (C) No. 5845/2001.

17. I have gone through the para-wise comments prepared by the Director and furnished to the Commissioner and Secretary by letter dated 06.09.01. In the said para wise comments also apart from taking exception to the access to the select list by the candidates, no irregularity in preparation of the select list or the procedure adopted for the same was indicated. In paragraph 12 of the para wise comments the following statements were made taking a particular stand "it is not a fact that the Respondents are intentionally delaying in the process of appointment. Approval of SLEC has not been received so far and hence the question of appointment at this stage does not arise. It is also not a fact that at our own capacity we are purporting to appoint persons outside the select list as decision of giving appointment lies with the SLEC in view of the restriction imposed on appointment, promotion etc. by Govt."

18. Thus, at no point of time it was the stand of the Respondents that there was any irregularity in the procedure adopted for conducting the selection and preparing the select list, rather it was the stand of the Respondents that the matter was pending with the SLEC for its approval. Only exception made was as to how the candidates could get hold of the select list. It is also not the case of the Respondents that the select list in question as was produced by the Petitioner and other candidates was not the one prepared by the selection committee. Even in the present proceeding, the Petitioners have annexed the copy of the select list which has not been disputed by the Respondents. The records produced by the Respondents also contain the original select list supporting the claim of the Petitioners. The select list was duly forwarded by the Director to the Commissioner and Secretary by his letter No. DHTE.118/97/120 dated 29.03.01 for obtaining approval of State Level Empowered Committee.

19. The selection committee was constituted by as many as 6(six) persons. They are-

- (a) Director of Handloom and Textiles (Chairman)
- (b) Deputy Secretary, Handloom and Textiles and Sericulture Department (member)
- (c) Additional Director, Handloom and Textiles (Member Secretary)
- (d) Joint Director, Handloom and Textiles (co-opted Member)
- (e) Joint Director, Handloom and Textiles, Hills (Member)

(f) Deputy Director, Handloom and Textiles (Member)

20. Thus, the question for determination is as to whether the reasons assigned in the impugned order dated 18.6.03 could be said to be valid reasons to discard the select list. As observed above, the reasons assigned are vague and indefinite and also run counter to each other. In the earlier proceeding no such reasons were urged. In the communication dated 09.04.03 also no such reasons have been assigned and there is also no suggestion even remotely to cancel the select list. Yet the Commissioner and Secretary on the basis of the said letter cancelled the select list. In the note dated 21.04.03 the Commissioner and Secretary has recorded purported feeling of the Director that the list was manipulated. Same has been stated to be available in the "X" portion of her letter dated 09.04.03, the "X" mark portion contains the words "... when the list was manipulated" appear in the penultimate paragraph of the Director's letter dated 09.04.03. A bare perusal of the said paragraph will go to show that the Director never contended that the select list was manipulated. Her contention was relating to the reservation as to how the candidates could get access to the select list giving rise to the contentions made by the applicants in Misc. case Nos. 152/02 and 1342/01 in W.P. (C) No. 4845/01 whose names did not appear in the list that the list was manipulated. The Director never said that the list was manipulated. However, the Commissioner and Secretary recorded the purported feeling of the Director that the the list was manipulated in his note dated 21.04.03. It was on that basis he ordered for cancellation of the select list seeking approval of the same from the concerned Minister who in turn simply proved the proposal. It is on that basis the impugned order dated 18.06.03 was issued. The reasons specified in the impugned order dated 18.06.03 are not discernible either in the communication dated 09.04.03 or in the note dated 21.04.03.

21. On the basis of the aforesaid note dated 21.04.03 a draft for issuance of the impugned order was prepared and placed before the Commissioner and Secretary who in turn approved the same with the advice of Legal Remembrancer, Assam. Surprisingly enough the entire action of the Respondent was proceeded by a note dated 11.04.03 that the select list was prepared during the period of the AGP Government. It is not understood as to what was the necessity to identify the party who was running the Government at the time of preparation of the select list. Thus, the contention of the Petitioners as was raised in the earlier writ proceeding that the inaction on the part of the Respondents for making appointment from the select list was the result of the change of Government cannot be ruled out altogether. However, no opinion is expressed on this ground.

22. As regards the contention of the Petitioner that Shri Amar Ch. Sarma was appointed on the basis of inclusion of his name in the select list, I have verified the same on the basis of the records. The records reveal that requisitions were placed before the Employment Exchanges in the early part of 2003 for filling up two posts of Demonstrators to clear the backlogs under physically disabled

quota. The name of Shri Amar Sarma alongwith others was sponsored by the Employment Exchanges and it was on that basis the appointment was made.

23. The records do not indicate anything relating to any kind of selection held for such appointment although the Govt. of Assam in the Department of labour and Employment, Directorate of Employment and Craftsmen Training by their letter dated 03.02.03 requested the Joint Director, Handloom and Textiles while forwarding the particulars of the candidates to call them directly for interview/test. Request was made in the letter to intimate the results to the Director in due course. However, nothing is indicated in the records as to whether any selection was conducted or not. The documents contain in the records come to an end with the issuance of the said letter dated 03.02.03 with further communication dated 03.03.03 and there is no indication regarding holding of any selection for appointment. Had there been any selection, I see so reason as to why the same should be withheld from the Court, rather production of the same was necessary to quell the apprehension and assertion made by the Petitioners that Shri Amar Ch. Sarma was appointed from the same very select list which has been stated to be rejected depriving only the Petitioners.

24. Two possibilities emerge from the records. Either there was no selection for appointment of Shri Amar Ch. Sarma or he was appointed against the physically handicapped quota pursuant to inclusion of his name in the select list in question. Thus the possibility of the course of action adopted by the Respondents towards his appointment as contended by the Petitioners cannot be ruled out. However, no opinion is expressed relating to the appointment of Shri Amar Ch. Sarma who is not a party to the present proceeding lest the same may adversely affect his interest entailing adverse consequences.

25. As regard the appointment of Shri Pinaki Chakravorty, the Respondents have not chosen to produce any records apart from making the statements in the affidavit that he was so appointed pursuant to the selection conducted by Karbi Anglong Autonomous Council. No opinion is also expressed regarding his appointment in absence of any materials and in view of the fact neither the Karbi Anglong Autonomous Council nor said Shri Pinaki Chakravorty is a party to the present proceeding. However, at the same time the contention of the Petitioners regarding the appointment of said Chakravorty without any selection cannot be ruled out altogether.

26. As noticed above, the select list in question was decided to be not acted upon on vague and indefinite grounds. As per the earlier decision of the Court, the Respondents were to take a decision in consultation with the State Level Empowered Committee. Such consultation was admittedly not carried out by the Respondents before passing the impugned order dated 18.06.03. The Commissioner and Secretary construed the words "the select list was manipulated" appearing in the letter dated 09.04.03 addressed to him by the Director without applying his mind as to in what context the same were motioned. The Commissioner and Secretary was required to take a decision in

consultation with the State Level Empowered Committee which is admittedly missing. Even otherwise also the select list could not have been cancelled without assigning any reasons. The reasons assigned in the impugned order are not to be found in the note of the Commissioner and Secretary. Such reasons as assigned in the impugned also do not make any sense except giving colour to irregularity in the procedure of selection without, however, indicating anything as to what was the procedure required to be followed and how the same stood violated. There is nothing on records even to remotely suggest that the assessments were not properly done. Such a reason assigned in the impugned order is just in the air without there being any material and finding to that effect.

27. It is true that the Government is not bound to act upon the select list and the same can be cancelled on bonafide grounds. It is also true that mere inclusion of a name in the select list does not give a candidate any indefeasible right to the candidate for appointment. At the same time the Respondents cannot act in an arbitrary manner towards cancellation of the select list. The appointing authority cannot ignore the select list or decline to make appointment on its whims. When a person has been selected by the Selection Board and there is available vacancy, then ordinarily there is no justification to ignore him for appointment. There must be justifiable reason not to appoint a person whose name is in the select panel. In the case of *R.S. Mittal Vs. Union of India (UOI)*, the Supreme Court while dealing with the reasoning of the Tribunal that the penal in question had already expired and that the recommendations of the Selection Board were only directory and thus were not enforceable by issue of a writ of Mandamus observed that the appointing authority cannot act on whims and caprices.

28. As has been observed by the Apex Court in the case of *A.P. Aggarwal Vs. Govt. of N.C.T. of Delhi and Another*, every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basis to the rule of law, the system which governs us.

29. As has been observed by the Apex Court in the case of *Shankarsan Dash Vs. Union of India*, that the State in such a matter does not have a license to act in arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reasons. The Respondents cannot on the ground of "no indefeasible" right can act either arbitrarily or without bonafide reasons.

30. As observed by the Apex Court in the case of *Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others*, it is misleading to assert that in the matter of selection and appointment the Govt. has an absolute power. Such an argument does violence to the constitutional scheme. Where, however, the Government is satisfied, after due enquiry that the selection has been vitiated either on account of violation of a fundamental procedural requirement or is vitiated by consideration of corruption, favouritism or nepotism, it can refuse to approve the select list. In such a case the Government is bound to record the reasons for its action and produce the same before the Court, if and when summoned to do so. In the instant case as noticed above, the records produced

by the Respondents do not inspire the confidence of the Court that the impugned decision to cancel the select list is founded on any bonafide exercise of power, rather the same is found to be arbitrary on the face of it.

31. In paragraph 8 of the aforesaid decision of Asha kaul (supra) the Apex Court observed as follows:

It is true that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to appointment (State of Haryana v. Subhash Chander Marwaha; Mani Subrat Jain v. State of Haryana; State of Kerala v. A. Lakshimikutty) but that is only one aspect of the matter. The other aspect is the obligation of the Government to act fairly. The whole exercise cannot be reduced to a farce. Having sent a requisition/request to the Commission to select a particular number of candidates for a particular category, - in pursuance of which the Commission issues a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the Government - the Government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. Who do not think that any Government can adopt such a stand with any justification today. This aspect has been dealt with by a Constitution Bench of this Court in Sankarsan Dash v. Union of India where the earlier decisions of this Court are also noted.

32. The Division Bench of this Court in the case of Ibrahim Ali (MD) and Ors. v. Jubre Rahim (MD) and Ors. reported in 2000 (1) GLT 183, under somewhat similar circumstances repelling the contentions of the State Respondents, observed that in order to defeat the claim of the selected candidates, the Government must come out with adequate reasons. The Division Bench further observed in that case that failure to take action by the concerned authorities and the Government after preparation of the select list was totally arbitrary and devoid of any sustainable reasons. The reasons assigned in the said case not to act upon the earlier select list were held to be of no consequence. The observations of the Division Bench made in the paragraphs 10 and 11 are quoted below:

10. The last point argued by the learned State counsel that empanelment of names do not confer any right on the select 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.

11.... The right of the selected candidates stands on a different footing. It cannot be taken away without adequate reasons. There being no disharmony between Fundamental Rights and Directive Principles and right to adequate means of livelihood being one of the principles in the governance of the State, it would be appropriate on our part to restrain the Government from proceeding with fresh selection process in total disregard to the earlier valid selection made three years back.

33. In the instant case it is not a case where the Government has found any prima facie case of irregularity in conducting the selection. No malafide and/or corruption on the part of the members of the selection committee has also been attributed. There was no infirmity in holding written and viva voce test on the same day. The select list was prepared by a duly constituted selection committee comprising of 6 (six) highly placed officials. Thereafter the same was forwarded to the Government for necessary approval of the SLEC. The records produced on behalf of the Respondents do not even whisper any irregularity in conducting the selection.

34. On the face of the impugned order the grounds assigned towards cancellation of the select list are whimsical and arbitrary. It is not the case to accept the extreme submission that the Government being the appointing authority it wields absolute power to approve or not to approve the list at its sweet will. It is only when the Government is satisfied after due enquiry that the selection has been vitiated on account of violation of rules or of reasons that it smacks of corruption, favouritism, nepotism or the like, it may refuse to approve the list in which case also it must record reasons for its action and produce the same before the Court if and when it is called upon. Same is not the case in hand. Not to speak of assigning any good and sufficient reasons, no reason has been assigned either in the note of the Commissioner and Secretary or in the letter of the Director as noted above. Similarly the reasons assigned in the impugned order also do not support the extreme steps towards cancellation of the select list. The reasons assigned are vague and indefinite to the core of it and is not based on any materials whatsoever. The manner and method in which the select list has been cancelled assigning the so-called reasons are on the face of it opposed to the principles of fairness in the matter of public employment and do not fit in to the test evolved and laid down in the aforesaid cases.

35. For the foregoing reasons and discussions, the impugned order dated 18.06.03 is not sustainable and accordingly stands set aside and quashed. The Respondents shall now proceed in the matter in accordance with law towards appointment of the candidates from the select list in question strictly in accordance with merit and quota of reservation.

36. Writ petition stands allowed. There shall be no order as to cost.