

Both the aforesaid Misc. Cass have been filed by the Director of Health Services (Malaria), Assam, seeking leave of the Court to proceed with the recruitment for appointment in the vacant posts of Surveillance Workers in Morigaon and Nagaon Districts of the State of Assam.

The facts which had necessitated the present Miscellaneous applications may briefly be enumerated herein under.

The petitioners were appointed as Surveillance Workers in Morigaon and Nagaon Districts which appointments came to be cancelled subsequently. Aggrieved, the petitioners had instituted two writ proceedings before this Court which were registered and numbered as WP(C) Nos.1353/2001 and 318/2001. Both the aforesaid writ petitions were dismissed by orders dated 14.3.2002 against which Writ Appeal Nos. 158/2002 and 159/2002 were instituted. The aforesaid writ appeals were closed by this Court on 27.8.2003 by directing the respondents to consider the cases of the writ petitioners/appellants for appointment against the present and future vacancies which were stated to be available. According to the petitioners, acting in compliance with the aforesaid orders of this Court two separate select lists dated 20.1.2006 was prepared by the Joint Director of Health Services (Malaria), Assam for the two districts in question. According to the petitioners, in the aforesaid select lists, which are available on record, their names were included.

However, as appointments were not forthcoming and instead an advertisement dated 3.2.2007 was issued for filling up of a large number of posts of Surveillance Workers, the present writ petitions i.e. WP(C) 677/2007 (Nagaon) and WP(C) No.678/2007 (Morigaon) were instituted. Interim orders were passed in both the cases by which appointments in the two districts were not to be made without leave of the Court. At the same time, by another order dated 15.5.2008, filling up of the vacant posts of Surveillance Workers in the two districts by transfer from other districts was also restrained by this Court.

According to the applicants, the select lists in which the names of the petitioners appear are unauthorized documents prepared without any real selection. That apart, according to the applicants, 464 posts advertised on 3.2.2007 were filled up in the other districts of the State without touching the posts of Nagaon and Morigaon districts. However, as a large number of vacancies have continued to exist in the two districts (85 in number) anti-malarial works in the two districts have been seriously affected endangering public health. The details in this regard are available in paragraphs 3 and 4 of the miscellaneous applications filed.

While the legal right of the petitioners to appointment on the basis of their inclusion in the select lists dated 20.1.2006 will, naturally, be considered by the Court at the time of hearing of the writ petitions and such consideration will be on the basis of the counter-case projected by the State respondents, there can be no manner of doubt that keeping 85 posts of Surveillance Workers vacant in the two districts is not in public interest. The details of the work undertaken by the Surveillance Workers and how public health and hygiene has been affected by the vacancies in question have been stated in details in paragraphs 3 and 4 of the miscellaneous applications. On due consideration of the said statements and having regard to the adverse effect on public interest the Court is of the view that the aforesaid 85 vacant posts of Surveillance Workers in Nagaon and Morigaon districts should not be allowed to remain vacant any further.

Consequently, the leave prayed for by the applicant is allowed. The posts may be filled up by regular selection after due advertisement. The petitioners may participate in the said selection without prejudice to their rights as advanced in the writ petitions i.e. WP(C) 677/2007 (Nagaon) and WP(C) No.678/2007 (Morigaon). Furthermore, it is made clear that if the writ petitions continue to remain pending beyond the completion of the regular process of selection, the appointment

orders that may be issued will clearly mention that all such appointments will be subject to the result of WP(C) 677/2007 (Nagaon) and WP(C) No.678/2007 (Morigaon).

Both the Misc. Cases shall stand disposed of in the above terms.