

Heard Ms B Bhuyan, learned counsel for the petitioners and Mr UK Nair, learned counsel for the respondent No.4. Also heard Mr BJ Ghosh, learned Govt. Advocate, Assa,.

As agreed to and in view of the subject matter involved and, furthermore, as the affidavit of the respondent No.4 has been filed, this writ petition is being disposed of at the motion stage.

The three petitioners were appointed in different Grade III and Grade IV posts under the respondent No.4 in the years 1998 and 1999. As appointments of the petitioners were not in accordance with the recruitment Rules, an order dated 17.12.299 was passed canceling the said appointments and terminating their services. Aggrieved, the petitioners instituted a writ proceeding before this Court i.e. WP(C) No. 6516/99 wherein an interim order was passed by the Court on 22.12.99. By virtue of the aforesaid interim order, the petitioners continued in service. WP(C) No. 6516/99 was disposed of by an order dated 13.6.2008 whereby a learned Single Judge of this Court refused to interfere with the impugned termination of the services of the petitioners. Aggrieved, the petitioners went in appeal by filing W.A. No. 166/2008. The said Writ Appeal was disposed of by an order dated 20.6.2008 permitting continuance of the petitioners in service until completion of the selection process initiated by the advertisement dated 16.4.2008 in response to which the petitioner Nos. 1 and 3 had submitted their applications and had received call letters. In so far as the petitioner No.2 is concerned, in the course of the hearing of the Writ Appeal the respondents had agreed to allow the said petitioner to take part in the selection. On the basis of the fact that the selection process has in the meantime been completed, separate orders dated 10.12.2008 have been issued by the respondent No.4 terminating the services of the petitioners. The petitioners have assailed the validity of the aforesaid orders of termination dated 10.12.2008.

A contention has been advanced by Ms Bhuyan, learned counsel for the petitioners that the posts held by the petitioners were not covered by the advertisement dated 16.4.2008 and the participation of the petitioners in the selection process referred to in the Division Bench order was in respect of certain other posts. The learned counsel has argued that even though the petitioners may not have been selected for the posts covered by the advertisement dated 16.4.2008 in respect of which they had offered their candidatures, yet, the posts which the petitioners are holding continue to be available and, therefore, having regard to the long period of service rendered by the petitioners from 1998/1999, they should be allowed to continue in the posts presently held by them until the same are advertised and filled up in accordance with the recruitment Rules in force.

Mr Nair, learned counsel for the respondent No.4 does not dispute the fact that the posts held by the petitioners were not covered by the advertisement dated 16.4.2008. In fact, Mr Nair has pointed out that the said posts could not have been advertised, inasmuch as, on the date of the advertisement in question, the interim order dated 22.12.99 passed in WP(C) No. 6516/99 continued to remain in force. Mr Nair has also pointed out that a proposal to fill up the posts held by the petitioners is being processed for submission to the Finance (SIU) Department and once the said department accords its approval to fill up the said posts, the same will be filled up as per the recruitment Rules in force.

The facts stated above amply demonstrate that the posts held by the petitioners are not covered by the advertisement dated 16.4.2008. However, in view of disposal of WP(C) No. 6516/99 and the appellate order dated 20.6.2008 passed in W.A. No. 166/2008, the said posts are proposed to be filled up on a regular basis. If the termination of the petitioners are permitted to take place the posts in question will have to remain vacant till completion of the selection process and cannot be filled up by another set of ad-hoc employees or employees engaged on other fortuitous basis. The petitioners have been working in the said posts for over ten years now. The department's action in processing the proposal for

filling up the posts on a regular basis for submission to the Finance (SIU) Department would indicate that, according to the department itself, the posts need to be filled up.

In the above circumstances, the Court is of the view that the principle underlying the Division Bench order dated 20.6.2008 passed in W.A. No. 166/2008 should be continued and the petitioners should be allowed to continue until the posts held by them are duly advertised and filled up in accordance with the recruitment Rules in force once the requisite approval of the Finance (SIU) Department is obtained. The respondents shall act accordingly.

Naturally, the orders of termination dated 10.12.2008 passed in case of each of the petitioners shall be understood to have been interfered with by the Court.

The writ petition, consequently, is disposed of in the above terms.