

For the Appellant(s) : Mr. U.K. Nair, Sr. Advocate
Assisted by Mr. S.N. Tamuli, Advocate

For the respondent(s) : Mr. B. Gogoi, SC, Health & Family
Welfare Department.

**- BEFORE -
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE KARDAK ETE**

Date of Hearing : 17.10.2023

Date of order : 18.10.2023.

JUDGMENT & ORDER

(Sandeep Mehta, CJ)

Heard Mr. U. K. Nair, learned senior counsel assisted by Mr. S.N. Tamuli, Advocate, appearing for the appellants/writ petitioners. Also heard Mr. B. Gogoi, learned Standing Counsel, Health & Family Welfare Department, Assam, appearing for the official respondents.

2. The instant intra-court writ appeal is directed against the judgment and final order dated 09.11.2022, passed by the learned Single Judge in WP(C) 5667/2022.

3. The brief facts relevant and essential for disposal of the writ appeal are noted herein-below:

During the Covid-19 pandemic, the Government of Assam, Health and Family Welfare Department, created 800 posts of "Health Workers" including 128 posts of Laboratory Technicians (ICU Technical) to operate 32 newly created ICU units. An advertisement dated 10.07.2020 was issued by the Director of Health Services, Assam, for filling up 640 posts of Staff Nurse and 128 posts of Laboratory Technicians (ICU Technical). Subsequently,

the said advertisement was cancelled vide communication dated 25.07.2020 and a fresh advertisement/ Walk-in-interview notice dated 02.09.2020 was published inviting applications from eligible candidates to fill up 128 posts of ICU Technicians. Later on, the numbers of posts were reduced from 128 to 108 by issuing a corrigendum. Altogether 99 candidates were selected in this selection process against the 108 posts advertised and a Select List dated 12.09.2020 was published. Out of the 99 selected candidates, only 40 candidates joined their respective posts and, as a result, 68 posts of ICU Technicians remained vacant.

These 68 vacant posts of ICU Technicians were re-advertised vide Advertisement No. HSE/APPTT/Grade-III/67/2020/5820. This advertisement was purportedly issued in continuation of the earlier advertisement dated 02.09.2020. Thereafter, a screening-cum-skill test *qua* 68 posts of ICU Technician was conducted through Zoom Interview by a duly constituted Selection Board. The result of this selection process was published vide notice dated 03.11.2020 declaring 22 candidates to be selected. The selected candidates were asked to collect their appointment letters from the venue to be notified. Out of the 22 selected candidates, 21 appeared for document verification, which included the appellants herein and other writ petitioners in WP(C) 5667/2021.

Since appointment letters were not being issued despite publication of the Select List, the appellants herein along with other selected candidates submitted representations dated 06.08.2021 and 09.08.2021 to the respondent Nos. 2 and 3 herein, but to no avail, whereupon the captioned writ petition [WP(C) 5667/2021] bearing a title "*Nayanmoni Deka & 18 Others vs. State of Assam &*

Others' came to be filed. The said writ petition was presented on 21.10.2021, i.e. within one year of publication of the Select List dated 03.11.2020 and thus it was stated that the select list had not spent its force. Prayer was made by the writ petitioners, including the appellants herein, for a direction to appoint them against the vacant sanctioned permanent posts of ICU Technicians.

The official respondents contested the case of the appellants/writ petitioners by filing a preliminary affidavit-in-opposition in the writ petition, wherein it was pleaded that the appellants herein and other writ petitioners were selected hastily through Zoom Interview during the emergent situation arising out of the Covid-19 pandemic. No written test/skill test could be conducted because of the prevailing conditions. However, after improvement of Covid-19 situation, the department contemplated to draw up a comprehensive recruitment process with due attention to skill component, because the ICU management is a critical process. It was also pleaded that the Select List dated 03.11.2020 had lost its validity.

However, it was projected by the appellants/writ petitioners that contrary to the stand taken in the preliminary affidavit-in-opposition, the respondent No. 3 published another advertisement dated 07.12.2021 for filling up the remaining 47 posts of ICU Technicians along with other categories of posts. The writ petition came to be disposed of by the judgment dated 09.11.2022 with the following conclusions:

“8. In the circumstance, as the purpose for which the petitioners were selected i.e. for ICU Technicians in Covid-19 dedicated hospitals are no longer in existence as of now, we are unable to issue a mandamus in favour of the petitioners for a direction for their appointment. But at the same time, we take

note of the approach, attitude and conduct of the petitioners that they came forward to serve the State at the time when the Covid-19 pandemic was in place, meaning thereby they did not fear to be Covid warriors at the relevant point of time.

9. *In the petitioners are not to be appointed as because the dedicated Covid-19 hospitals are no longer in existence and the petitioners are required to apply afresh against the advertisement that may be issued against the same posts in regular hospitals, we further provide that a due weightage be given to the petitioners in case they participate in such selection by taking note of their earlier attitude and approach to also be Covid warriors. We are clarifying that the expression “weightage” to the petitioners should be given its due meaning and should not be equated with “preference” which means that if everything is equal only then a preference is to be given.*

Writ petition stands disposed of in the above terms.”

The said judgment stands assailed by 14 of the 19 original writ petitioners by way of the instant writ appeal.

4. Learned senior counsel Mr. U. K. Nair, appearing for the appellants vehemently and fervently urged that the posts, against which the appellants were selected, were permanent in nature and thus the appellants were lawfully selected against permanent sanctioned posts. Other candidates akin to the writ petitioners, who were selected through the very similar process of Zoom Interview against the very same posts, have been appointed and are discharging their duties efficiently. Thus, there cannot be any objection on the part of the respondents in appointing the appellants based on the select list dated 03.11.2020. There is no allegation of any irregularities/illegality in the selection process. The posts against which the appellants were selected are still lying vacant as the same have neither been re-advertised nor have been filled up by way of any subsequent advertisement. Since the writ petition was filed before expiry of validity of the Select List, the

appellants herein have a right to seek a direction for appointment against the available vacant posts. It was further contended that the Select List dated 03.11.2020, through which the appellants herein were selected, has never been cancelled by the Government and, hence, the same continues to remain valid and the appellants are eligible to be appointed against the available vacant posts. Mr. Nair further submitted that though out of the 120 permanent posts of ICU Technicians a few have been filled up, but till date neither any Rules have been framed for governing the services of ICU Technicians nor any formal procedure has been laid down to fill up such posts. He thus implored the Court to accept the writ appeal and direct the department to issue the appointment letters to the appellants.

5. Per contra, Mr. B. Gogoi, learned Standing Counsel, Health & Family Welfare Department, representing the respondents vehemently and fervently opposed the submissions advanced by the learned counsel for the appellants. He urged that the selection of the appellants herein was made in an extra-ordinary emergent situation brought around by the Covid-19 pandemic. The selection process was undertaken only by a walk-in-interview, which too was held through virtual Zoom Interview. The selection so made in the year 2020 was contingent in nature based on an emergent situation, which no longer exists and, hence, the State Government cannot be compelled to offer appointment to the appellants herein on the basis of a stale Select List.

However, on a pertinent query being made, Mr. Gogoi was not in a position to dispute the fact that as many as 48 posts of ICU Technicians were re-advertised vide advertisement dated

07.12.2021, which does not include the 22 posts against which the appellants/writ petitioners were selected vide Select List dated 03.11.2020. This fact affirms the position that the select list dated 03.11.2020 has never lost its force. It cannot be denied that the State Government is still in need of qualified ICU Technicians. Needless to say that as the Government of Assam proposes extensive expansion plans for the existing medical facilities and new medical facilities are being created across the State of Assam, there would always exist imminent need for ICU Technicians. Mr. Gogoi also could not dispute the fact that the Select List dated 03.11.2020 was never cancelled, which fact has been recorded at paragraph 3 of the affidavit-in-opposition filed by the respondent Nos. 1 and 2 on 16.10.2023.

6. We have given our thoughtful consideration on the submissions advanced by the learned counsel for the parties and have also gone through the impugned judgment.

7. There is no quarrel on the proposition that the Select List in question was never cancelled. It is also not in dispute that the posts, against which the appellants herein and other writ petitioners were selected, still remain vacant and were also not included in fresh advertisement dated 07.12.2021. It is also an admitted position that many other similarly placed candidates, who were selected through the very same process, i.e. walk-in-interview pursuant to the initial advertisement dated 10.07.2020 were appointed, are serving on their respective posts. It is not in dispute that till date, the State Government has neither framed any Rules nor any formal process has been evolved governing the selection and appointment of ICU Technicians in the State. The requirement

of ICU Technicians across the Government medical facilities would never be reduced and, rather, the need for such technicians is ever persisting and increasing.

8. In the wake of the discussion made hereinabove, we are of the firm opinion that the appellants herein deserve the relief sought for by them in the writ petition, i.e. to be appointed against the permanent posts of ICU Technicians as a consequence of the Select List dated 03.11.2020. Accordingly, the official respondents are hereby directed to act upon the Select List dated 03.11.2020 so far as the appellants herein are concerned. However, the appellants would have to undergo the skill test as may be prescribed by the competent authority before they can be appointed as ICU Technicians.

The process, as directed above, shall be completed within a period of three months from today.

9. The impugned judgment dated 09.11.2022 passed by the learned Single Judge in WP(C) 5667/2022 is interfered with and set aside accordingly. The writ appeal stands allowed.

No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant