

GAHC010189542022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6138/2022

CHAYANIKA PHUKAN AND 6 ORS.



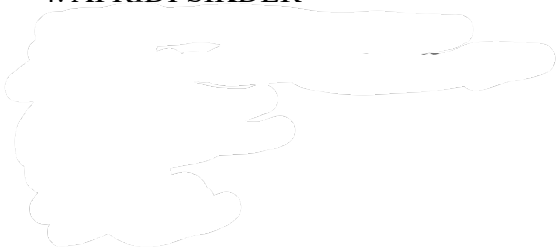
2: HEMANTA KALITA



3: SUBHANKA SAIKIA



4: AFRIDI SIKDER

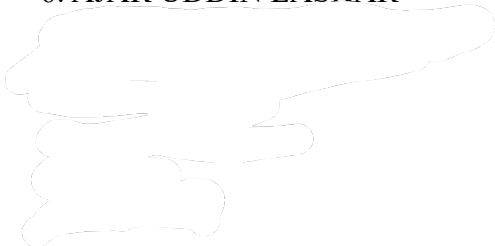


5: UDIPTA BHARALI

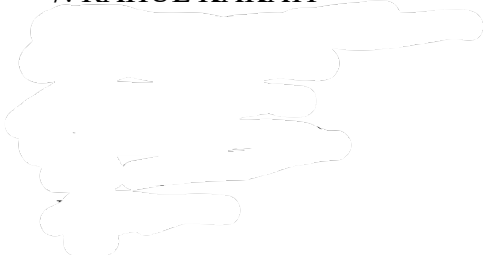





6: AJAR UDDIN LASKAR



7: RAHUL KAKATI



VERSUS

THE STATE OF ASSAM AND 27 ORS.
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPTT., 

2:THE COMMISSIONER AND SECY.

TO THE GOVT. OF ASSAM
PANCHAYAT AND RURAL DEVLOPMENT DEPTT.



3:THE ASSAM PUBLIC SERVICE COMMISSION

REP. BY ITS CHAIRMAN



4:THE UNDER SECRETARY

ASSAM PUBLIC SERVICE COMMISSION




5:THE PRINCIPAL CONTROLLER OF EXAMINATIONS
ASSAM PUBLIC SERVICE COMMISSION


6:THE COMMISSIONER AND SECY.

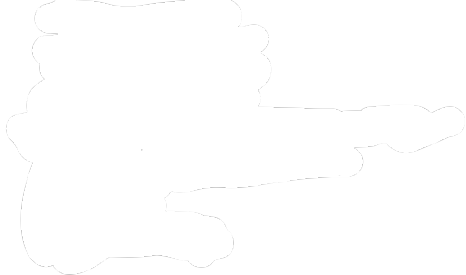
TO THE GOVT. OF ASSAM
DEPTT. OF PERSONAL (B)


7:RAJDEEP SENGUPTA (ROLL NO. 62281)


8:SUKHEN DAS (ROLL NO. 62800)


9:MD. DILOWAR HUSSAIN (ROLL NO. 61615)

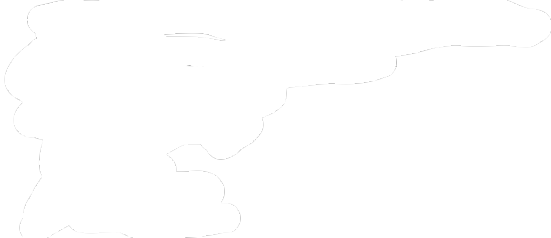

10:DIPANKAR DAS (ROLL NO. 50196)



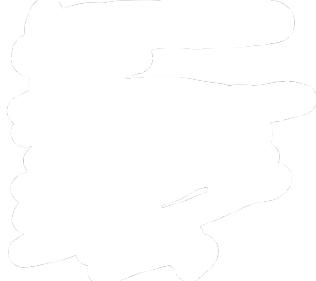
11:JAHID HUSSAIN (ROLL NO. 10240)



12:MEHEBUB RAHMAN (ROLL NO. 50369)



13:IMDADUR RAHMAN LASKAR (ROLL NO. 10222)



14:MASUM AHMED (ROLL NO. 10317)



15:SARKAR WAKIL SHARIF (ROLL NO. 50586)



16:BISHALDEEP CHANDA (ROLL NO. 60550)







17:RAJ JYOTI BHARALI (ROLL NO. 30482)




18:ASHIF AHMED (ROLL NO. 50084)



19:NAZRUL ISLAM (ROLL NO. 61915)



20:EZAZ AHMED (ROLL NO. 50202)

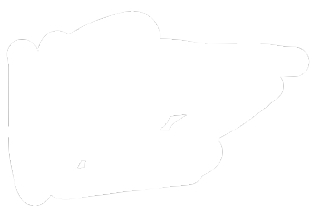


21:AKHTAR HUSSAIN CHOUDHURY (ROLL NO. 10052)



22:KAUSHIK BHATTACHARYA (ROLL NO. 61354)





23:TAIOBUR RAHMAN MAZUMDER (ROLL NO. 10643)



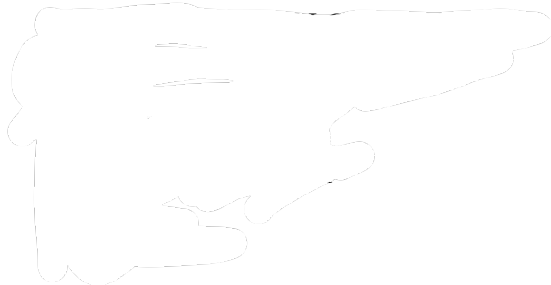
24:BHASKAR SAHA (ROLL NO. 60457)



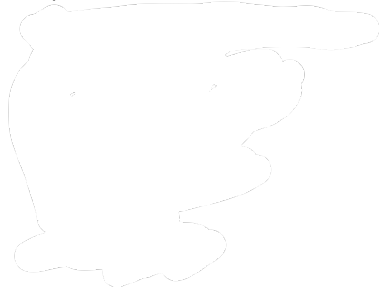
25:MEHBOOB ALAM CHOUDHURY (ROLL NO. 10034)



26:MEHERJAN BEGUM BORBHUIYA (ROLL NO. 10337)



27:SUMAIYA MORIWOM MAZUMDER (ROLL NO. 10616)



28:NURJAHAN BEGUM BORBHUIYA (ROLL NO. 10403)





Advocate for the Petitioner : MR K K MAHANTA (Sr. Advocate), MR. K SINGHA, MR S GAUTAM

Advocate for the Respondent : SC, APSC, N GAUTAM (r7,8,10,17,22),MR. A S TAPADER (r-9,11-14,16,19-21,23-28,16),MR. R M DEKA (r7-14,16,17,19-28),MR. D J DAS (r-9,11-14,16,19-21,23-28,16),MS N MAHANTA (r-9,11-14,16,19-21,23-28,16),MR. K N CHOUDHURY (r7-14,16,17,19-28),GA, ASSAM,SC, P AND R.D.

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioners : Shri KM Mahanta

Advocate for the respondents : Shri P. Nayak, SC-P&RD
Shri T.C. Chutia, Addl. Sr. GA
Shri PP Dutta, SC-APSC
Shri RM Deka, Pvt. Respondents.

Date of hearing : **07.08.2024**

Date of Judgment : **28.08.2024**

JUDGMENT & ORDER

The instant petition filed under Article 226 of the Constitution of India pertains to a recruitment process for the post of Junior Engineer (Civil) under the Panchayat and Rural Development Department (hereinafter P & RD Department). The issue is with regard to the claim of the petitioners under the Economically Weaker Section (EWS) category.

2. As per the facts projected, the petitioners are all qualified to be appointed in the aforesaid post of Junior Engineer (Civil). An advertisement was published on 24.06.2020 for filling up 344 posts of Junior Engineer (Civil) in the P & RD Department. The said recruitment was to be done through the Assam Public Service Commission (APSC). Out of the 344 total nos. of posts, 33 posts were reserved for EWS category. The petitioners claim to belong to the EWS category and had accordingly applied for the said posts. In the selection held, the petitioners claimed to have been selected. The grievance of the petitioners is that in spite of such selection, the petitioners have not been afforded the appointment and on the other hand, candidates who have secured less marks than the petitioners in the Final Select List dated 31.05.2022 have been given the appointment. The said candidates who have secured less mark than the petitioners are also made party respondents.

3. I have heard Shri KM Mahanta, learned counsel for the petitioners. I have also heard Shri P. Nayak, learned Standing Counsel, P & RD Department; Shri TC Chutia, learned Additional Senior Government Advocate, Assam; Shri PP Dutta, learned Standing Counsel, APSC and Shri RM Deka, learned counsel for the private respondent nos. 7 to 28.

4. Shri Mahanta, learned counsel for the petitioners, at the outset, has submitted that though the writ petition was instituted by 7 nos. of petitioners, the petitioner no.1 has been appointed elsewhere and is therefore not pressing her case. The learned counsel however clarifies that so far as petitioner nos. 2 to 7 are concerned, the cause of action is still surviving and they are pressing. It is submitted that the Constitution of India had undergone an Amendment being the 103rd Amendment whereby the concept of EWS was inserted. In this connection, reference has been made to Articles 15 (6) and 16 (6) of the

Constitution. It is submitted that pursuant to the advertisement dated 24.06.2020, the petitioners had submitted their candidatures and there were two rounds of verification. The petitioners in support of their claim for EWS had submitted necessary certificates and accordingly list of candidates for verification of documents was prepared and the results were published by a select list.

5. The petitioners had earlier approached this Court by filing WP(C)/4441/2022 and this Court, vide order dated 29.06.2022 had directed that aggregate marks are to be indicated. Accordingly, on 29.07.2022, the aggregate marks were published. The petitioners had also obtained information under the Right to Information Act wherein the cut-off marks was revealed as 113.25 whereas all the petitioners claimed to have secured more than the cut-off marks. It is submitted that the certificates of the petitioners regarding EWS being properly verified, there was no scope on the part of the authorities to deny the appointment. By drawing the attention of this Court to one of the certificates pertaining to EWS, the learned counsel for the petitioners has submitted that the certificate was to be for a period of the previous financial year which was accordingly done and therefore he argues that there was no reason to deny the appointments.

6. The learned counsel for the petitioners has also submitted that so far as the advertisement is concerned, the financial year is 2019-2020. Though the last date for submission of application was fixed on 24.07.2020, the same was extended to 30.08.2020. He has emphasized that there was no specific format with regard to the nature of the certificate for EWS to be submitted. He has also drawn the attention of this Court to another recruitment process of the year 2022 which was vide an advertisement dated 10.08.2022 wherein the format of

the EWS certificate was given. He has reiterated that the concept of EWS had started only in the year 2019 and the petitioners were the first batch of candidates to have applied under the aforesaid category.

7. *Per contra*, Shri Chutia, learned Additional Senior Government Advocate appearing for the Personnel Department has submitted that the certificates of the petitioners in question do not meet the requirement to establish that the petitioners are to be treated under the EWS category. He has also informed this Court that subsequently vide Office Memorandum dated 04.07.2023, the said category has been kept in abeyance.

8. Shri Nayak, the learned Standing Counsel, P & RD Department has submitted that there is no confusion with regard to the definition of financial year and the certificates submitted by the petitioners in support of their claim would not meet the requirement. He submits that though such certificates were given in the midst of a year, the same could not have been valid for the same year as the financial year would begin only on 1st of April of that particular year. Shri Nayak has also relied upon the judgment of ***Divya Vs. Union of India [2023:INSC:900]*** with regard to the definition of financial year.

9. Shri RM Deka, learned counsel appearing for the private respondent Nos. 7 to 28 except respondent Nos. 15 and 18, has submitted that all his clients have been duly appointed as they meet the EWS criteria. He has also informed this Court that 35 nos. of vacancies were reserved under the EWS category and out of those, 7 nos. of posts are still lying vacant.

10. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

11. The 103rd Amendment of the Constitution of India had brought in the

concept of EWS from 14.01.2019 and accordingly Articles 15 (6) and 16 (6) were incorporated. After the same amendment, the advertisement in question was published on 24.06.2020 wherein the last date for submission of candidatures was 30.08.2020. It is an admitted position that no particular format of EWS certificate was notified in the said advertisement and the only criteria was that such certificate has to be for the financial year 2019-2020. The reason cited for rejecting the candidatures of the petitioners is that the certificate submitted by them in support of EWS, though said to be for the financial year 2019-2020 was issued in the midst of the said financial year. Though in a very technical sense, a certificate for a financial year can be given only after completion of the financial year and not in the midst of the same. At the same time, this Court cannot be oblivious of the fact that the advertisement was published in the midst of the financial year and the last date being 30.08.2020, the certificates which were submitted by the petitioners though is dated in the midst of the financial year 2019-2020 is for the said period. This Court has also noted that after the Amendment of the Constitution in the year 2019, the petitioners were the first batch to apply under the aforesaid quota. This Court has also noted that only in the subsequent advertisement of the year 2022, the format of the EWS certificate has been given. In absence of a clear-cut certificate format, the rejection of the certificates submitted by the petitioners cannot be termed as a reasonable approach, more so, when the concept itself was in a nascent stage. This Court has also noted the submission which is not denied that while out of the 7 nos. of petitioners, only 6 nos. of petitioners are espousing their case, 7 nos. of vacancies still exist in the EWS quota. This Court has also noted that an interim order dated 19.09.2022 is in operation as per which the selected candidates has to give way to the

petitioners in case they are successful which indicates that the aspect of expiry of the select list would not arise in the instant case. The diligence of the petitioners is also demonstrated that even earlier they had filed WP(C)/4441/2022 for the aspect of publishing a select list with aggregate marks. It is not in dispute that the marks obtained by the petitioners is more than the cut-off mark, details of which have been mentioned above.

12. In view of the aforesaid discussion, this Court is of the considered opinion that interest of justice would be served if the benefit of EWS is granted to the petitioners by accepting their certificates. The aforesaid observation is however confined to the peculiar facts and circumstances of the case as the concept itself was in a very nascent stage and there was no format of the certificate.

13. In view of the above, the writ petition is allowed by directing that the petitioners be afforded the appointment to the post of Junior Engineer (Civil) in the P & RD Department pursuant to the said recruitment process. It is however made clear that such appointment is to be made in the existing vacancies and without disturbing the appointments of the private respondents.

14. The writ petition accordingly stands disposed of. The interim order dated 19.09.2022 stands merged with this final order.

JUDGE

Comparing Assistant