

GAHC010250872022



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

Case No. : WP(C)/7920/2022

ABUL HUSSAIN BARBHUIYA AND 8 ORS
S/O- LT. LAKI MIA BARBHUIYA, VILL- BARBAND PART-I, MEMBER GROUP
NO. 3 OF BORBAND GAON PANCHAYAT, P.S. AND DIST.- HAILAKANDI

2: KAMAL UDDIN LASKAR
S/O- SABIR AHMED LASKAR
VILL- DUDPUR
P.O. BORBAND
MEMBER GROUP NO. 10 OF BORBAND GAON PANCHAYAT
P.S. AND DIST.- HAILAKANDI

3: SHALIM UDDIN LASKAR
S/O- SUNDAR RAJA LASKAR
VILL- CHANDRAPUR
P.O. KUCHILA
MEMBER GROUP NO. 9 OF BORBAND GAON PANCHAYAT
P.S. AND DIST.- HAILAKANDI

4: DEBOBRATA ROY
S/O- LT. SUKLAL ROY
VILL- KUCHILA
P.S. KUCHILA
MEMBER GROUP NO. 5 OF BORBAND GAON PANCHAYAT
P.S. AND DIST.- HAILAKANDI

5: ALIA BEGUM BARBHUIYA
W/O- FARUK AHMED BARBHUIYA
VILL- BORBAND PART-I
P.O. HAILAKANDI
MEMBER GROUP NO. 2 OF BORBAND GAON PANCHAYAT
P.S. AND DIST.- HAILAKANDI

6: RUKIYA BEGUM MAZUMDER
W/O- JALAL UDDIN MAZUMDER

VILL- CHANDRAPUR
P.O. KUCHILA
MEMBER GROUP NO. 8 OF BORBAND GAON PANCHAYAT
P.S. AND DIST.- HAILAKANDI

7: GAURANGA DAS PURKAYASTA
S/O- LT. GOHINDRA DAS PURKAYASTA
VILL- BORBAND PART-I
P.O. BORBAND
MEMBER GROUP NO. 4 OF BORBAND GAON PANCHAYAT
P.S. AND DIST.- HAILAKANDI

8: JAHNARA BEGUM BARBHUIYA
W/O- LT. SIRAJ UDDIN MAZARBHUIYA
VILL- BORBAND PART-I
P.O. HAILAKANDI
MEMBER GROUP NO. 1 OF BORBAND GAON PANCHAYAT
P.S. AND DIST.- HAILAKANDI

9: SOFIA BEGUM BARBHUIYA
W/O- SAMS UDDIN BARBHUIYA
VILL- KUCHILA GRANT
P.O. KUCHILA
MEMBER GROUP NO. 7 OF BORBAND GAON PANCHAYA

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM, PANCHAYAT AND RURAL
DEVELOPMENT DEPTT., DISPUR, GHY-06

2:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPTT.
ASSAM
JURIPAR
GHY-37

3:THE SECRETARY/EXECUTIVE OFFICER
HAILAKANDI ZILLA PARISHAD
HAILAKANDI

4:THE CHIEF EXECUTIVE OFFICER
LALA ANCHALIK PANCHAYAT
MONACHERRA

5:THE DY. COMMISSIONER
HAILAKANDI
ASSAM

PIN- 788055

6:THE BLOCK DEVELOPMENT OFFICER
LALA DEVELOPMENT BLOCK
MONACHERRA
HAILAKANDI

7:THE SECRETARY
BARBANDH GAON PANCHAYA

Advocate for the Petitioner : MS. S B CHOUDHURY

Advocate for the Respondent : SC, P AND R.D.

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

04.08.2023

Heard Ms. S. B. Choudhury, learned counsel for the writ petitioners. Also heard Mr. S. Dutta, learned Standing Counsel, P & RD Department, Assam appearing for the respondent Nos.1 to 4, 6 and 7. Ms. M. Barman, learned Govt.

Advocate, Assam is present on behalf of respondent No.5.

The writ petitioners herein are all elected members of the Borbond Gaon Panchayat in the district of Hailakandi. Aggrieved by the inaction on the part of the respondents in their failure to fill up the vacant post of Vice President of the said Gaon Panchayat, the petitioners have approached this Court by filing the present writ petition praying for a writ of mandamus directing the authorities to take appropriate action in the matter for filling up the vacant post of Vice President of the Gaon Panchayat.

Ms. Choudhury submits that earlier, the 9 (nine) elected members, who are the writ petitioners herein, had submitted a representation before the Deputy

Commissioner, Hailakandi ventilating their grievance in the matter. However, despite receipt of the representation on 03.12.2022 no action has been taken in the matter till today. Hence, this writ petition.

Responding to the grievance expressed in the writ petition, Mr. Dutta, learned Standing Counsel, P & RD Department, submits that the post of Vice President of Borbond Gaon Panchayat is reserved for woman candidate belonging to the Scheduled Caste (SC) category. However, at present there is no elected member of the Gaon Panchayat who is a woman belonging to the SC category. Mr. Dutta further submits that as per Section 11 of the Assam Panchayat Act, 1994, the Deputy Commissioner would have the jurisdiction to decide any dispute regarding election to the post of Vice President of a Gaon Panchayat. However, the Deputy Commissioner (now District Commissioner) would not have the authority or jurisdiction to de-reserve the post of Vice President. Mr. Dutta further submits that until and unless the post of Vice President of the Gaon Panchayat is de-reserved, the same cannot be filled up by any of the elected members. Under the circumstances, the matter will have to be examined by the Government at the appropriate level.

Similar is the stand of Ms. Barman, learned Government Advocate, Assam appearing for the State.

It is not in dispute that the post of Vice President in the aforesaid Gaon Panchayat is lying vacant. The reason for which the said post could not be filled up till today has been brought to light by Mr. Dutta which has also been noticed herein above, If the post of Vice President of the Gaon Panchayat is in fact reserved for a woman candidate belonging to the SC category, unless the post is de-reserved, the same cannot be filled up by a member belonging to any

other category. Whether the aforesaid post can be de-reserved or not is a matter which will have to be examined by the Government of Assam in the department of P & RD and a decision in respect thereof will have to be taken, at the first instance, before the matter can receive proper consideration by this Court.

As such, this writ petition is being disposed of by granting four weeks time to the petitioners to submit appropriate representation before the Government through the concerned department, so as to address the issue within the ambit of the statutory framework. If such a representation is submitted within the prescribed time period, the same be considered on merit and a decision in respect thereof be taken by the competent authority within a further period of three months. Whatever by the decision, the same be communicated to the petitioners in writing. If the petitioners continue to remain aggrieved in the matter even thereafter, it would be open for them to approach this Court once again by filing a fresh writ petition.

The writ petition stands disposed of.

JUDGE

Comparing Assistant