

GAHC010208662022



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

Case No. : I.A.(Civil)/1960/2023

THE ASSAM PUBLIC SERVICE COMMISSION AND ANR.
REPRESENTED BY ITS CHAIRMAN AND HAVING ITS OFFICE AT JAWAHAR
NAGAR
GUWAHATI 781022
ASSAM

2: THE SECRETARY
THE ASSAM PUBLIC SERVICE COMMISSION
JAWAHAR NAGAR
GUWAHATI 781022
ASSAM

VERSUS

NITYA NANDA PAIT AND 20 ORS.
S/O LATE NANDIRAMPAIT AGE 33 YEARS R/O VILL NO.1
MURKONGSELEK
P.O- JONAI
PIN787060 DISTRICT DHEMAJI
ASSAM

2:SHRI ANNUSHREE KURMI
D/O ARJUN PRASAD KURMI
RESIDENTIAL ADDRESS KALYANPUR
WARD NO. 11
BISWANATH CHARIALI
DISTRICT BISWANATH
ASSAM
PIN CODE 784176

3:MS UPASANA SARMAH
D/O LATE TEJEN SARMAH
AGE 29
RESIDENTIAL ADDRESS 1 NO. RAIL GATE

CHANDMARI
TEZPUR
784001
PIN 784001

4:POOJA DUTTA
D/O PUSPADUTTA
AGE 32
RESIDENTIAL ADDRESS HOUSE NO 8
BYE LANE NO 3
AJANTA PATH
SURVEY
BELTOLA
GUWAHATI
PIN 781028

5:SAIFUDDIN AHMED
S/O JOYNAL ABEDIN SK
AGE 33
ADDRESS VILL SAGOLIA PART 2
P.O SAGOLIA
DIST DHUBRI
PIN 783335

6:EMON BARUA
S/O RATUL BARUA
AGE 32
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CHRISTIAN BASTI
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7:ABHINABA PAUL
S/O AMRIT LAL PAUL
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RESIDENTIAL ADDRESS 2ND LINK ROAD
LANE NO 9
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PIN 788066

8:LACHIT DUTTA
S/O LOHIT DUTTA
AGE 33
RESIDENTIAL ADDRESS NO1 MOTIA
P.O. BARBALI
LAKHIMPUR
ASSAM
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9:DARSHANA SAIKIA
D/O LATE NOMALSAIKIA
AGE 31
RESIDENTIAL ADDRESS NEAR MORIGAON COLLEGE
SONARI GAON
MORIGAON
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PIN 782105

10:HARUN AL RASHID MDGHALIB
S/O IZZAT ALI KHAN RESIDENTIAL ADDRESS MAZID ROAD
AZAD NAGAR
NAGOAN
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PIN 782003

11:PALLAVI DAS
D/O PRAFULLA KUMAR DAS
AGE 32
RESIDENTIAL ADDRESS HOUSE NO 4
GANESHGURI
HENGRABARI ROAD
KAMRUP(M)
ASSAM
PIN 781006

12:ANUP JYOTI DAS
S/O BANIKANTA DAS
AGE 32
RESIDENTIAL ADDRESS H/N 08
SITALA MANDIR PATH
FATASHIL MANPARA
GUWAHATI
ASSAM
PIN 781025

13:RABINDRA KANGSHA BANIK
S/O JIBAN KANGSHA BANIK

AGE 32
RESIDENTIAL ADDRESS MAZBAT KALIBARI
PO MAZBAT
DIST UDALGURI (BTR)
ASSAM
PIN 784507

14:ANKUR JYOTI SARMAH
S/O RAMANI SARMA
AGE 32
RESIDENTIAL ADDRESS HOUSE NO 01
NIZARA PATH
NARAKASUR
KAHILIPARA

GUWAHATI

PIN 781019

15:SHASANKA SEKHAR BORKOTOKY

FATHER'S NAME LATE KRISHNA PRASAD BORKOTOKY AGE 35

RESIDENTIAL ADDRESS NEAR BORGURI KALI MANDIR

RANGAGORA ROAD

BORGURI

TINSUKIA

ASSAM PIN 786126

16:CHIRANJIB DAS

FATHER'S NAME ANIL CHANDRA DAS AGE 32 RESIDENTIAL ADDRESS

FLAT NO 1/C. QUEENS GARDEN APARTMENT

BELTOLA

GUWAHATI PIN 781028

17:DR. MAYUR BARMAN

D/O RAMANI BARMAN AGE 32 RESIDENTIAL ADDRESS MOHAN BHAORIA

PATH

GOPAL BAZAR

NALBARI

ASSAM PIN 781353

18:DEVARSHI KASHYAP

D/O HARESWAR MAHANTA AGE 32 RESIDENTIAL ADDRESS H/NO 9

PALASH PATH

ZOO ROAD

GUWAHATI

ASSAM PIN 781024

19:PIYUSH SINGH

FATHER'S NAME BABAN SINGH AGE 35 ADDRESS CLASSIC

COMMUNICATION

A.T. ROAD

NEAR RAILWAY OVER BRIDGE

DHEKIAJURI

TINSUKIA

ASSAM PIN 786125

20:THE STATE OF ASSAM

REPRESENTED BY THE COMMISSIONER AND SECRETARY

DEPARTMENT OF HIGHER EDUCATION

GOVERNMENT OF ASSAM

DISPUR

GUWAHATI 781006

ASSAM

21:THE DIRECTOR OF TECHNICAL EDUCATION

DIRECTORATE OF TECHNICAL EDUCATION

KAHILIPARA

GUWAHATI 781019

ASSAM

Advocate for : MR. P P DUTTA

Advocate for : MR. D DAS SR. ADV appearing for NITYA NANDA PAIT AND 20 ORS.

Advocate for the Petitioner : SC, APSC

Advocate for the Respondent : MR. D DAS SR. ADV

Linked Case : WP(C)/6005/2021

NITYA NANDA PAIT AND 18 ORS.
S/O LATE NANDIRAMPAIT
AGE 33 YEARS
R/O VILL NO.1
MURKONGSELEK
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D/O PRAFULLA KUMAR DAS
AGE 32
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HENGRABARI ROAD
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12: ANUP JYOTI DAS
S/O BANIKANTA DAS
AGE 32
RESIDENTIAL ADDRESS H/N 08
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FATASHIL MANPARA
GUWAHATI
ASSAM
PIN 781025

13: RABINDRA KANGSHA BANIK
S/O JIBAN KANGSHA BANIK

AGE 32
RESIDENTIAL ADDRESS MAZBAT KALIBARI
PO MAZBAT
DIST UDALGURI (BTR)
ASSAM
PIN 784507

14: ANKUR JYOTI SARMAH
S/O RAMANI SARMA
AGE 32
RESIDENTIAL ADDRESS HOUSE NO 01
NIZARA PATH
NARAKASUR
KAHILIPARA
GUWAHATI
PIN 781019

15: SHASANKA SEKHAR BORKOTOKY
FATHER'S NAME LATE KRISHNA PRASAD BORKOTOKY
AGE 35
RESIDENTIAL ADDRESS NEAR BORGURI KALI MANDIR

RANGAGORA ROAD
BORGURI
TINSUKIA
ASSAM
PIN 786126

16: CHIRANJIB DAS
FATHER'S NAME ANIL CHANDRA DAS
AGE 32
RESIDENTIAL ADDRESS FLAT NO 1/C. QUEENS GARDEN APARTMENT
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17: DR. MAYUR BARMAN
D/O RAMANI BARMAN
AGE 32
RESIDENTIAL ADDRESS MOHAN BHAORIA PATH
GOPAL BAZAR
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ASSAM
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18: DEVARSHI KASHYAP
D/O HARESWAR MAHANTA
AGE 32
RESIDENTIAL ADDRESS H/NO 9
PALASH PATH
ZOO ROAD
GUWAHATI
ASSAM
PIN 781024

19: PIYUSH SINGH
FATHER'S NAME BABAN SINGH
AGE 35
ADDRESS CLASSIC COMMUNICATION
A.T. ROAD
NEAR RAILWAY OVER BRIDGE
DHEKIAJURI
TINSUKIA
ASSAM
PIN 786125
VERSUS

THE STATE OF ASSAM AND 18 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY
DEPARTMENT OF HIGHER EDUCATION

GOVERNMENT OF ASSAM
DISPUR
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ASSAM

2:THE DIRECTOR OF TECHNICAL EDUCATION
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ASSAM

3:THE ASSAM PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS CHAIRMAN AND HAVING ITS OFFICE AT JAWAHAR
NAGAR
GUWAHATI 781022
ASSAM

4:MR. KANGKAN KISHORE NATH
S/O- INDRA PRASAD NATH
R/O- DAILY BAZAAR AREA
PO- JAMUGURIHAT
PS- JAMUGURIHAT
DIST- SONITPUR
PIN-784180.

5:DR. PLABAN BORA
S/O- DHANESWAR BORA
R/O- AHOM GAON
PO- SAWKUCHI
PS- GORCHUK
DIST- KAMRUP (M)
PIN- 781040.

6:MANIPUSPAK HAZARIKA
S/O- BALIN CHANDRA HAZARIKA
R/O- NABAPUR
MAZGAON
PO- TEZPUR
PS- TEZPUR
DSIT- SONAPUR
PIN-784001.

7:DR. BISWAJIT SHYAM
S/O- MR. LALIT SHYAM
R/O- OUGURI SHYAM VILLAGE
PO- OUGURI SHYAM
PS- SONARI
DIST- CHARAIDEO
PIN-785692.

8:DHRUBA JYOTI SARMA
S/O- BABUL CH SARMA
R/O- TIHU
DIST- NALBARI

PIN- 781371.
9:DR. ARNOB BORMUDOI
S/O- DR. ANANDA BORMUDOI
R/O- 9Q PIYA TOWERS
RADHANAGAR VIP ROAD
PO- KHANAPARA
KAMRUP (R)
PIN- 781022.
10:DR. SUJAN SINHA
S/O- PARAN SENA SINHA
R/O- RAJIB NAGAR
PO- KAHILIPARA
PS- DISPUR
DIST- KAMRUP (M)
PIN 781019.
11:PRERONA GOGOI
S/O- JUGA JIBAN GOGOI
R/O- JAYANAGAR
TIPLING ROAD
DULIAJAN
PO AND PS- DULIAJAN
DIST- DIBRUGARH
PIN- 786602.
12:KASTURI GOGOI
S/O- PRASHANTA GOGOI
R/O- TENGA KHAT
PO AND PS- TENGA KHAT
DIST- DIBRUGARH
PIN-786103.
13:HIMANGSHU JYOTI GOGOI
S/O- BIREN GOGOI
R/O- TARA JAN
GAYANGAON
PO AND PS- JORHAT
DIST- JORHAT
PIN- 785001.
14:JINTI HAZARIKA
S/O- PRASANTA HAZARIKA
R/O- TILOINAGAR
MORAN
PO- TILOINAGAR
PS- MORAN
DIST- DIBRUGARH
PIN- 785675.
15:DR. ANUPAL BARUAH
S/O- JITENDRA NATH BARUAH
R/O- JORHAT
PO- JORHAT

DIST- JORHAT
PIN- 785001.
16:PANKAJ BORUAH
S/O- TULON CHANDRA BORUAH
R/O- BORDOLONI VILLAGE
PO- SENCHOWA PUKHURI
DIST- DIBRUGARH
PIN- 785675.
17:DEBAJIT SARMA
S/O- DEBENDRA NATH SARMA
R/O- KRISHNA NAGAR
PATHSALA
PO AND PS- PATHSALA
DIST- BAJALI
PIN- 781325.
18:UDANGSHREE BORO
S/O- GOJEN CHANDRA BORO
R/O- KUMURMARI
PO AND PS- DHALIGAON
DIST- CHIRANG
BTR
PIN- 783385.
19:AMATYA BHARADWAJ
S/O SRI APURBA SARMA
AGED ABOUT 33 YRS
R/O TARUN NAGAR
BYE LANE NO. 1
HOUSE NO- 24
DIST- KAMRUP
GHY- 781005.

Advocate for : MR. D DAS SR. ADV
Advocate for : SC
APSC appearing for THE STATE OF ASSAM AND 18 ORS.

Linked Case : I.A.(Civil)/1960/2023

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20:THE STATE OF ASSAM

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21:THE DIRECTOR OF TECHNICAL EDUCATION

DIRECTORATE OF TECHNICAL EDUCATION
KAHILIPARA
GUWAHATI 781019
ASSAM

Advocate for : MR. P P DUTTA

Advocate for : MR. D DAS SR. ADV appearing for NITYA NANDA PAIT AND 20
ORS.

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 17.02.2024

Heard Mr. T. J. Mahanta, learned Senior Counsel, assisted by Ms. P. Sarma, learned counsel, appearing on behalf of the applicants-Assam Public Service Commission(APSC). Also heard Mr. Diganta Das, learned Senior Counsel, assisted by Mr. R. Sarma, learned counsel, appearing for the opposite parties/writ petitioners.

2. The instant interlocutory application being IA(c)1960/2023 has been instituted by the Assam Public Service Commission (APSC)[hereinafter referred to as the Commission], as applicants, in terms of the directions passed by this Court vide order, dated 18.11.2022, in WP(c)6005/2021, seeking leave of this Court to publish the final select list with regard to the post of Assistant Professor(Non-Technical) and the post of Librarian in Government Engineering Colleges of the State advertised vide Advertisement, dated 25.05.2017.

3. The facts leading to the institution of the proceedings in WP(c)6005/2021, is noted hereinbelow:

The Commission issued Advertisement No. 05/2017 calling for filling up of 292 numbers of posts in different disciplines in the Engineering Colleges and Polytechnics under the Higher Education(Technical) Department of the Government of Assam that includes (i). 66(sixty six) posts of Assistant Professors (Technical) in 9(nine) different subjects in the Engineering Colleges, (ii). 15(fifteen) posts of Assistant Professors(Non-Technical) in 5(five) different subjects in Engineering Colleges, (iii). 1(one) post of Librarian in Engineering Colleges, (iv). 113(one hundred and thirteen) posts of Lecturers(Technical) in 11 different subjects in Polytechnics, (v). 86(eighty six) posts of Lecturers(Non-Technical) in 5 different subjects in Polytechnics and, (vi). 11(eleven) posts of Librarian in Polytechnics including the posts in open category, reserved category for women, SC/ ST(P)/ST(H)/OBC/MOB and persons with disability, prescribing the requisite educational qualifications and the scale of pay for each of those 6 categories of posts advertised. As per the said advertisement, dated 25.05.2017,

the last date of submission of complete application was fixed as 27.06.2017.

By Notification, dated 28.05.2020, the respondent Commission declared the results of the OMR based Screening Test for the posts advertised on 25.05.2017, including that of the posts of Assistant Professors (Technical), Assistant Professors (Non-Technical) and Librarian in the Government Engineering Colleges of the State, that was conducted by the Commission w.e.f. 07.11.2019 to 13.11.2019, informing the candidates that they have qualified for the Written Test on Local Languages of Assam, the date of which was to be notified later. The names of the petitioners figured in the said Notification dated 28.05.2020 for the posts of Assistant Professors(Technical) and they had also qualified for appearing in the Written Test on Local Language of Assam. Thereafter, the date for the written test on Local Language was notified and held.

By Notification No. 176 PSC/CON/Exam-30/2018-2019 dated 06.10.2021, the APSC declared the list of 345 nos. of candidates who passed the qualifying Written Test on Local Languages of Assam held on 03.01.2021 and who were shortlisted for the viva-voce/interview to be held for the said posts of Assistant Professors(Technical and Non-Technical).

The petitioners, who had applied for the posts of Assistant Professors(Technical) in the Engineering Colleges under the Higher Education(Technical) Department of the State pursuant to the APSC's Advertisement, dated 25.05.2017, though appeared in the qualifying Written

Test on Local Languages of Assam but their names did not find mention in the list of qualified candidates notified vide the Notification, dated 06.10.2021, for being called for the viva-voce/interview for the posts of Assistant Professors (Technical).

Thereafter, the petitioners filed the connected writ petition on 09.11.2021 stating that some of the candidates who were selected for the viva-voce/interview for the posts of Assistant Professors(Technical/Non-technical) and Librarian in the State Engineering Colleges of Assam as notified by the APSC on 06.10.2021 did not possess the requisite qualifications as per the Advertisement, dated 25.05.2017 and in spite of that the Commission had allowed those ineligible candidates to apply and participate in the said selection process.

This Court vide order, dated 12.11.2021, while issuing notice in WP(c)6005/2021, noticing the inconsistencies as pointed-out by the petitioners in the selection process undertaken by the Commission for the posts advertised, passed the following directions:

“4. The allegation raised in this writ petition by referring certain instances is that some candidates, who do not have the requisite qualification for the post of Assistant Professor in the Department where they have applied for are also been called in the Interview. It is also stated that the interview process would be conducted by the respondent APSC on and from 15.11.2021 and according to Mr. T J Mahanta, learned Senior counsel, it is likely to continue upto 26.11.2021.

5. In view of such allegation raised, in the interim, we provide that the interview process may be carried forward by the APSC, but the final result thereof be not declared without leave of the Court. It is also provided that if the allegation of the petitioners is that some

candidates who do not have the required qualification as on the last date of submission of the application form are being called in the interview, the authorities in the APSC can mitigate the situation by verifying the respective educational qualifications of the candidates in respect of the department where they have applied for and subject only such candidates to the interview process, who do meet the required educational qualification in the subject concerned of the respective department as on the last date of submission of the application pursuant to the advertisement dated 25.05.2017."

4. The passing of the said directions, resulted in the Commission, postponing the scheduled interview and constituting an Expert Committee vide order, dated 15.11.2021, to undertake an exhaustive scrutiny of the applications submitted by the candidates declared successful in the screening and language test already held, to ascertain as to whether the such candidates fulfilled the eligibility criterias as spelt-out in the Advertisement for the posts, in question. The Expert Committee accordingly undertook the said exercise and upon such scrutiny, submitted its report and therein identified 41 candidates out of 345 candidates clearing the said test to have not fulfilled the eligibility criterias as spelt-out in the said Advertisement. On receipt of the said report from the Expert Committee, and after carrying-out due processing thereof; the Commission approached this Court by way of instituting an Interlocutory Application being IA(c)3095/2022 in WP(c)6005/2021, seeking leave of this Court, to publish/notify a fresh list of eligible candidates, who have now been found to be eligible to participate in the viva voce segment of the selection process. The said select list sought to be published/notified pertained to the posts of Assistant Professor(Technical); Assistant Professor(Non-Technical) and Librarian in Government Engineering Colleges of the State as advertised vide Advertisement, dated 25.05.2017.

5. The said interlocutory application being IA(c)3095/2022 was taken-up for consideration by this Court and vide order, dated 18.11.2022 passed in WP(c)6005/2021; the issues as raised in the said interlocutory application were given a due consideration by this Court. This Court upon noticing the developments taking place in the matter after passing of the order, dated 12.11.2021 in WP(c)6005/2021, permitted the Commission to publish/notify a fresh list of eligible candidates for the next round of selection i.e. viva voce/interview segment and also permitted the Commission to hold the viva voce/interview with regard to such candidates. The said leave was specifically granted by this Court for the candidates appearing for the post of Assistant Professor(Non-Technical) and the post of Librarian in Government Engineering Colleges as advertised vide Advertisement, dated 25.05.2017.

6. It is to be noted here that with regard to the post of Assistant Professor(Technical) wherein a similar exercise was also carried-out, this Court did not permit publication of the list prepared by the Commission after the scrutiny by the Expert Committee and for the said posts, this Court had passed the following directions:

“23. Further, with regard to granting of leave to the APSC to publish/notify a fresh list of eligible candidates from amongst the qualified candidates who have qualified the Language Test on Local Languages of Assam that was held on 03.01.2021 for Interview to the posts of Assistant Professors (Technical), as prayed for, shall be considered only after filing of an additional affidavit by the APSC In said I.A. (Civil) 3095/2022 on or before 24.11.2022 clarifying their stand with regard to their mistakes as pointed out by the petitioners in their affidavits in the said Interlocutory Application.”

7. It is to be mentioned that this Court while granting leave to the

Commission to proceed to publish the fresh list of candidates for the post of Assistant Professor(Non-Technical) and the post of Librarian in Government Engineering Colleges, had made it clear that the Commission after holding the viva voce/interview shall not declare the result thereof without the leave of this Court.

It is in the said above premises that the instant interlocutory application has been instituted by the Commission seeking leave of this Court to publish the final select list for the advertised posts of Assistant Professor(Non-Technical) and the post of Librarian in Government Engineering Colleges pursuant to the interview held on 09.12.2022.

8. Mr. Mahanta, learned Senior Counsel appearing on behalf of the Commission, has submitted that the petitioners in WP(c)6005/2021, are all aspirants for the posts of Assistant Professor(Technical) in Government Engineering Colleges of the State as advertised vide Advertisement, dated 25.05.2017. The learned Senior Counsel, by referring to the different categories of posts that were advertised through Advertisement, dated 25.05.2017, contended that selection process for recruitment against each of such category of posts so advertised, would be an independent one basing on the norms governing each of such category of posts.

9. It is contended by Mr. Mahanta, learned Senior Counsel, that the petitioners in WP(c)6005/2021, having specifically applied for the post of Assistant Professor(Technical), they do not have the *locus* to assail the selection

process for the post of Assistant Professor(Non-Technical) and the post of Librarian in the Government Engineering Colleges and in the event, the selection process is permitted to be completed in respect of the posts other than the posts where the petitioners are aspirants, no prejudice would be caused to them in this connection.

10. Mr. Mahanta, learned Senior Counsel, by taking this Court through the objections as raised by the opposite parties/writ petitioners in the present interlocutory application, has contended that the objections so raised pertain to the eligibility of 2(two) candidates who were called for participation in the viva voce segment against the posts of Assistant Professor (Non-Technical), on the ground that the said candidates were not residents within the State. It is the contention of the learned Senior Counsel that the advertisement, in question, did not mandate any such requirement and as such, the eligibility of such candidates cannot be questioned on the ground that they are not residents of the State.

11. Per contra, Mr. Diganta Das, learned Senior Counsel, appearing for the Opposite Parties/writ petitioners, has submitted that the irregularities as pointed-out by the opposite parties/writ petitioners in the process of selection involved cuts across the various posts as put up for a selection vide the Advertisement dated 25.05.2017 in-as-much as the Commission had followed the same procedure for all the posts so put up for selection.

12. Mr. Das, learned Senior Counsel, has referred in this connection to the

proceedings in WP(c)2089/2020[Arunav Kar & 61 ors. v. State of Assam & ors.] and has contended that in the said case, issues similar to the one raised in the connected writ petition being WP(c)6005/2021 was raised and a Coordinate Bench of this Court, upon hearing the parties to the proceedings, has reserved its judgment in the matter.

13. Mr. Das, learned Senior Counsel, has also submitted that the decision that would be rendered in the case of Arunav Kar(supra) would have a bearing on the issues arising in the present proceedings and as such, has requested this Court to defer the consideration of this interlocutory application till the judgment in the said case is delivered by the Coordinate Bench of this Court.

14. Mr. Das, learned Senior Counsel, has further contended that the Commission while preparing the list after the recommendations of the Expert Committee as noted above, has not maintained the ratio that is required to be followed for short-listing of the candidates for the viva voce segment of the selection process.

15. It is the apprehension of Mr. Das, learned Senior Counsel, that in the event, this Court permits the Commission to publish the final select list of Assistant Professor(Non-Technical) despite the inconsistencies as existing in the selection process and highlighted by the petitioners in WP(c)6005/2021; the same would have a serious bearing in the selection process pertaining to the post of Assistant Professor(Technical) and prejudice would be caused to the petitioners in WP(c)6005/2021.

16. Mr. Das, learned Senior Counsel, has further submitted that in the matter of recruitment against posts of similar status, the competent authorities having mandated possession by the candidate applying, of a Permanent Residence Certificate(PRC) issued by the designated authorities of the State, the said prescription could not have been ignored in the selection held for the posts advertised vide the Advertisement, dated 25.05.2017. As such, it is the contention of Mr. Das, that any candidate not in possession of a PRC on the last date stipulated for submission of application, ought to held to be ineligible to participate in the selection process held in pursuance of the Advertisement, dated 25.05.2017.

17. Mr. Das, learned Senior Counsel, has also referred to the cases of 2(two) of such persons who have now been permitted to appear in the viva voce segment held for the post of Assistant Professor(Non-Technical) although they are not eligible to participate therein on the ground of not being permanent residents of the State. It is the further contention of Mr. Das that in the event, such an irregularity is permitted to stand on record by this Court, the same would cause prejudice to the writ petitioners in WP(c)6005/2021 when the process of selection in their cases against the posts of Assistant Professor(Technical) is carried-out by the Commission in-as-much as the same procedure would also be followed therein. Basing on the said premises, Mr. Das, learned Senior Counsel, requires that this Court reject the instant interlocutory application and defer the consideration in the connected writ proceedings till the judgment in the case of Arunav Kar(supra) is delivered by the Coordinate Bench of this Court.

18. Rejoining his submissions, Mr. Mahanta, learned Senior Counsel appearing on behalf of the Commission, submits that the grounds as raised by the opposite parties/writ petitioners in WP(c)6005/2021, have to be understood in the context of the challenge as presented by them in the said writ petition. The opposite parties/writ petitioners in WP(c)6005/2021 being aspirants for the post of Assistant Professor(Technical), they would have no locus to challenge the selection process as held for the other posts advertised vide Advertisement dated 25.05.2017.

19. Mr. Mahanta, learned Senior Counsel, has further submitted that the ratio for calling the candidates to the interview has been maintained in the present selection process as per the provisions of the Assam Public Service Commission (Conduct of Business Procedure) Rules, 2010 and has placed before this Court, a break-up with regard to the said position in relation to the various posts put up by the Commission for selection.

20. With regard to the issue of candidates figuring in the list prepared by the Commission, for calling candidates for the viva voce segment of the selection process, who are not the residents of the State, Mr. Mahanta, learned Senior Counsel, has submitted that the requirement of having a PRC for the purpose of participating in a selection process was already examined by this Court in the case of Piyali Debnath v. State of Assam & ors. [WP(c)1262/2022] and in the case of Sourav Saha v. State of Assam & ors.[WP(c)4089/2023] and this Court had concluded that such requirement of having a PRC to participate in a selection process is in violation of the provisions of Article 16 of the Constitution

of India and accordingly, the decision of the authorities mandating incorporation of a provision in the advertisements involved in the said cases, requiring production of a PRC by the candidates desirous to participate in the selection process, was interfered with.

21. Mr. Mahanta, learned Senior Counsel, has also submitted that the posts of Assistant Professor(Non-Technical) were lying vacant for a long period of time and the delay occasioning in filling up the said posts in addition to exposing such colleges to a situation wherein their recognition may be questioned, is also against the interest of the students studying therein and as such, he submits that the posts if not filled-up at the earliest, the same would be against the interest of public at large.

22. In the above premises, Mr. Mahanta, learned Senior Counsel, submits that the present interlocutory application requires to be allowed granting leave to the Commission to publish the final select list in pursuance of the interview held on 09.12.2022 for the post of Assistant Professor(Non-Technical) and the post of Librarian in the Government Engineering Colleges of the State.

23. At the outset, it is to be noted that this Court while proceeding to allow the Commission to hold the viva voce for the post of Assistant Professor(Non-Technical) and the post of Librarian in the Government Engineering Colleges of the State, vide order, dated 18.11.2022, passed in WP(c)6005/2021, had noticed the submissions of the learned Senior Counsel for the petitioners that the petitioners have applied only for the post of Assistant Professor(Technical), as

advertised vide Advertisement, dated 25.05.2017, and not for any other post advertised along with it. Thereafter, this Court had examined the process that was undertaken by the Commission to remove the inconsistencies as projected in WP(c)6005/2021, pertaining to the question of non-eligible candidates being allowed to take part in the various stages of the selection process. It was after appreciating such steps as taken by the Commission in the matter, that this Court proceeded to allow the Commission to publish the fresh/rectified list of the candidates against the post of Assistant Professor(Non-Technical) and the post of Librarian in the Government Engineering Colleges of the State for the purpose of allowing them to appear in the next segment of the selection process i.e. viva voce and further permitted the Commission to hold such viva voce for the said category of posts.

24. This Court, as noticed hereinabove; had not permitted the Commission to undertake a similar exercise in respect of the posts of Assistant Professor(Technical). It is also to be noted that the order, dated 18.11.2022, passed in WP(c)6005/2021, has not been put to challenge by the petitioners and the same continues to hold the field.

25. This Court would now proceed to consider the objections raised by the learned Senior Counsel for the opposite parties/writ petitioners. The first objection so raised pertains to the issue that a Coordinate Bench having already heard arguments in the case of Arunav Kar(supra) wherein, issues similar to the one arising in the present proceedings, has also arisen, this Court should defer further consideration in the present proceedings and should await for the

decision of the Coordinate Bench in the case of Arunav Kar(supra). The order, dated 19.03.2020, passed in the case of Arunav Kar(supra) was placed before this Court and on perusal of the same; it is seen that the petitioners therein are the aspirants for the post as advertised vide Advertisement, dated 25.05.2017, in different polytechnics of the State. In the said case, no challenge was presented to the selection process as carried-out for the posts of Assistant Professor(Technical) and Assistant Professor(Non-Technical). In the considered view of this Court, for the purpose of considering the aspect as to whether leave as prayed for by the Commission is to be granted or not; the proceedings in the case of Arunav Kar(supra) would be of no relevance at this stage. As to how the said proceedings would be relevant to the issues arising in the present proceedings, is a matter to be considered by this Court as and when such an occasion arises in the future.

26. The other objection with regard to the action of the Commission in permitting candidates who are not the residents of the State to take part in the selection process as held for the post of Assistant Professor(Non-Technical) is concerned; no further deliberation is called for therein, in view of the decisions of this Court rendered in the cases of Piyali Debnath(supra) and Sourav Saha(supra). Further, in the Advertisement, dated 25.05.2017, there being no stipulation made to the effect that only residents of the State would be eligible to apply, it may not be open to the opposite parties/writ petitioners to raise such objections after having participated in the selection process by reckoning the criterias as spelt-out therein. This Court is not empowered to incorporate eligibility conditions in an Advertisement in-as-much as such power is vested with the Executive only. Another aspect in this connection which is to be noticed

is that the writ petitioners in WP(c)6005/2021, have also not prayed before this Court for incorporation of such conditions in the said Advertisement.

27. The objection as raised with regard to the non-maintenance of the requisite ratio for calling the candidates for the posts for which interview was conducted by the Commission is concerned, it is to be noted that the same would require a detailed hearing and the same cannot be decided at the interlocutory stage. It is also to be noted that no candidate has instituted any proceeding before this Court questioning the ratio maintained by the Commission for calling candidates to the viva voce/interview held for the posts of Assistant Professor(Non-Technical) and the post of Librarian in Government Engineering Colleges of the State and in this view of the matter; this Court is of the considered view that the said objection does not merit consideration in so far as the issue arising in the present interlocutory application is concerned.

28. In view of the said conclusions arrived at by this Court with regard to the objections raised by the opposite parties/writ petitioners in WP(c)6005/2021, in connection with the prayer made by the Commission in the present interlocutory application; this Court is of the considered view that the rights of the opposite parties/writ petitioners would not be violated in the event, the selection process against the post of Assistant Professor(Non-Technical) and the post of Librarian in Government Engineering Colleges of the State, is permitted to be taken to its logical conclusion. As such, the Commission is hereby granted leave to publish the final select list against the advertised posts of Assistant Professor(Non-Technical) and the post of Librarian as existing in the Government Engineering

Colleges of the State as advertised vide Advertisement, dated 25.05.2017. However, this Court requires the Commission to inform the appointing authorities that the selection process involved with regard to the posts of Assistant Professor(Non-Technical) and the post of Librarian in the Government Engineering Colleges of the State as advertised vide Advertisement, dated 25.05.2017, is presently subjudiced before this Court in WP(c)6005/2021 and other analogous matters.

29. In the event, the appointing authorities decide to effect appointments against the posts of Assistant Professor(Non-Technical) and the post of Librarian in the Government Engineering Colleges of the State from the select list(s) prepared by the Commission, the appointing authorities are at liberty to do so. However, in the appointment orders so issued, a clause to the effect that the appointment so effected is subject to the outcome of the proceedings in WP(c)6005/2021 and other analogous matters being heard along with it, is to be incorporated without fail.

30. At this stage; this Court would like to deal with an objection raised by Mr. K. Pathak, learned counsel for the petitioners in WP(c)8073/2019 to the effect that in the event, this Court permits the authorities to take the selection process against the posts of Assistant Professor(Non-Technical) to its logical conclusion, the same would be contrary to the directions passed by this Court in favour of the said petitioners in WP(c)8073/2019.

31. On perusal of the records of WP(c)8073/2019, it is seen that this Court

vide order, dated 04.11.2019, had directed that till consideration of the issues that were raised in the said proceedings, the services of the petitioners therein, as Guest Faculty/Part-time Member in Barak Valley Engineering College, Karimganj, should not be disturbed without specific leave of this Court. In that view of the matter, it is provided that in the event, the selection process with regard to the posts of Assistant Professor(Non-Technical) is taken up to its logical conclusion and appointments are made from the select list prepared by the Commission, the services of the petitioners in WP(c)8073/2019, shall not be disturbed and a status quo as on today with regard to their such services shall be continued till the authorities file appropriate application before this Court seeking leave to disturb the services of the petitioners in WP(c)8073/2019.

32. With the above directions and observations, this interlocutory application stands disposed of.

JUDGE

Comparing Assistant