

GAHC010189282021



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

Case No. : WP(C)/6005/2021

NITYA NANDA PAIT AND 18 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
RESIDENTIAL ADDRESS ARUNODOY PATH
CHRISTIAN BASTI
GUWAHATI.
PIN 781005

7: ABHINABA PAUL
S/O AMRIT LAL PAUL
AGE 33
RESIDENTIAL ADDRESS 2ND LINK ROAD
LANE NO 9
HOUSE NO 45
SILCHAR
PIN 788066

8: LACHIT DUTTA
S/O LOHIT DUTTA
AGE 33
RESIDENTIAL ADDRESS NO1 MOTIA
P.O. BARBALI
LAKHIMPUR
ASSAM
PIN 784163

9: DARSHANA SAIKIA
D/O LATE NOMALSAIKIA
AGE 31
RESIDENTIAL ADDRESS NEAR MORIGAON COLLEGE
SONARI GAON
MORIGAON
ASSAM
PIN 782105

10: HARUN AL RASHID MDGHALIB

S/O IZZAT ALI KHAN RESIDENTIAL ADDRESS MAZID ROAD
AZAD NAGAR
NAGOAN
ASSAM
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 78612

VERSUS

THE STATE OF ASSAM AND 27 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY, DEPARTMENT
OF HIGHER EDUCATION, GOVERNMENT OF ASSAM, DISPUR, GUWAHATI
781006, ASSAM

2:THE DIRECTOR OF TECHNICAL EDUCATION
DIRECTORATE OF TECHNICAL EDUCATION
KAHILIPARA
GUWAHATI 781019
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:DHURUBA 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.

20:ARUNIMA DUTTA
D/O SATYEN DUTTA
AGE ABOUT 33 YRS
H NO. 150
NAMGHAR PATH
HENGRABARI (NEAR NABAJYOTI CLUB)
P.O- HENGRABARI
P.S- DISPUR
PIN- 781036
GHY
ASSAM.

21:SURAJIT DAS
S/O DIMBESWAR DAS
AGE-ABOUT 40 YRS
VILL AND PO- NITYANANDA
P.S- PATACHARKUCHI
PIN- 781329
DIST- BAJALI
ASSAM.

22:BIPUL KUMAR TALUKDAR
S/O HARENDRA TALUKDAR
AGE- ABOUT 35 YRS
VILL- BARGOAN
HATIPARA
P.O- TIHU
P.S-TIHU
PIN- 781371.

23:PRAN JYOTI SAIKIA
S/O ATUL SAIKIA
AGE- ABOUT 31 YRS
SHYAMKALIA
RAIDONGIA
P.O- AIBHETI
P.S- JAJORI
PIN- 782002
DIST- NAGAON
ASSAM.

24:NITISH BHARDWAJ
S/O DEBEN BORDOLOI
AGE- ABOUT 33 YRS
FLAT NO. B5A
PRALAY RESIDENCY SB HOUSING
TRIPURA ROAD
JAYANAGAR

BELTOLA
P.O AND P.S- DISPUR
PIN- 781028
GHY
KAMRUP (M)
ASSAM.

25:NILAVJYOTI SARMAH
S/O JAGADISH CHANDRA SARMAH
AGE- ABOUT 32 YEARS
FLAT NO. 1/B
NARAYANI NIVAS
GOPAL THAN
JALUKBARI
P.O- MALIGAON
P.S- JALUKBARI
PIN- 781011
GHY
ASSAM.

26:REKIB UDDIN AHMED
S/O JAHAN UDDIN AHMED
AGE- ABOUT 33 YRS
MALAYA NAGAR
JANAPATH NO. 1
NEAR AEC HOTEL NO. 3
P.O AND P.S- JALUKBARI
PIN- 781013
KAMRUP (M)
ASSAM.

27:MUNMI DUTTA
D/O HAREN CHANDRA DUTTA
AGE- ABOUT 35 YEARS
CHANDAN NAGAR
NEAR BYLANE-18
P.O- JORHAT
P.S- LICHUBARI
PIN- 785001
JORHAT
ASSAM.

28:AMLAN JYOTI DAS
S/O NIRANJAN DAS
AGE- ABOUT 35 YRS
H NO. 1883
NEAR ABHAYAPURI P.S. WARD NO. 3
ABHAYAPURI MAIN ROAD

ABHAYAPURI
DIST- BONGAIGAON
PIN- 783384
ASSAM

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

Advocate for the Respondent : SC, APSC

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Judgment & Order(Oral)

Date : 16.05.2024

Heard Mr. Diganta Das, learned Senior Counsel, assisted by Mr. K Mohammad, learned counsel, appearing for the petitioners.

Also heard Mr. K. Gogoi, learned standing counsel, Higher Education Department; appearing on behalf of respondents No. 1 & 2; Mr. T. J. Mahanta, learned senior counsel, assisted by Ms. P. Sarma, learned counsel, appearing on behalf of respondent No. 3[Assam Public Service Commission(APSC)]; Mr. S. Borthakur, learned counsel, appearing on behalf of respondents No. 4 to 18; Mr. S. Dutta, learned senior counsel, assisted by Mr. D. J. Medhi, learned counsel, appearing on behalf of respondent No. 19; and Mr. D. S. Bhattacharya, learned counsel appearing on behalf of respondents No. 20 to 28.

2. As consented to by the learned counsels appearing for the parties; this writ petition is taken-up for final consideration and disposal.

3. The facts as requisite for consideration of the issue as arising in the present proceeding, is noticed as under:

The Assam Public Service Commission(APSC) on a requisition being placed before it by the concerned Department, proceeded to issue an Advertisement, dated 25.05.2017, inviting applications, amongst others, for 66 post of Assistant Professor(Technical) in nine different subjects in various Government Engineering Colleges of the State.

The petitioners, herein, contend that they being so eligible, had submitted their respective applications in pursuance to the said Advertisement and they on being found to have satisfied the eligibility criterias as mandated therein; they were permitted to appear in the written examination held by the Assam Public Service Commission(APSC) in the matter w.e.f. 07.11.2019 to 13.11.2019. On conclusion of the said examination, the Assam Public Service Commission(APSC) vide the Notification, dated 28.05.2020, proceeded to publish the list of candidates, subject-wise, who had qualified for appearing in the next segment of the selection process i.e. the language test on local languages of the State.

The names of the petitioners duly figured in the said list as published vide the Notification, dated 28.05.2020. Thereafter, the petitioners, herein, along with other candidates whose names figured in the Notification, dated 28.05.2020, undertook the Language test on local languages of the State. On conclusion of the said language test, which has to be noted was of a qualifying

nature, the Assam Public Service Commission (APSC) proceeded to publish a Notification, dated 06.10.2021, short-listing the candidates for appearing in the viva voce/interview segment of the selection process. The names of the petitioners, herein, did not figure in the said Notification, dated 06.10.2021, and accordingly, being aggrieved; the present proceeding has been instituted before this Court.

4. This Court while issuing notice in the matter vide an order, dated 12.11.2021, noticing the grievance raised by the petitioners in the matter that there were candidates included in the said Notification, dated 06.10.2021, who did not satisfy the eligibility criterias as mandated in the said Advertisement; directed the Assam Public Service Commission(APSC) to verify the respective educational qualifications of the candidates short-listed for the viva voce/interview segment of the selection process in respect of each Department for which they had so applied and to subject only such candidates who fulfill the eligibility criterias, to the interview process.

5. In terms of the directions as passed by this Court; it is seen that the Assam Public Service Commission(APSC) proceeded to constitute a Committee of Experts in the matter and the said Expert Committee proceeded to verify the credentials of each of the candidates who were held to be qualified to appear for the viva voce/interview segment of the selection process. The said Expert Committee after verifying the educational qualifications of all the candidates who were short-listed vide the Notification, dated 06.10.2021, proceeded to recommend that 41 candidates who were so short-listed vide the Notification,

dated 06.10.2021, and in whose case, it was found that they did not possess the eligibility criterias as mandated and accordingly, they were held to be ineligible for being considered in the selection process underway in pursuance of the Advertisement, in question.

6. The said material coming on record; the Assam Public Service Commission(APSC) approached this Court by way of filing an interlocutory application being IA(c)2232/2022 seeking leave to publish a fresh list of candidates after the scrutiny as was undertaken in the matter by the said Expert Committee. The said interlocutory application was disposed of by this Court vide an order, dated 06.09.2022, wherein, it was directed that the Assam Public Service Commission(APSC) shall now also verify the educational qualifications of the candidates who would now replace the candidates excluded from the list of short-listed candidates as notified vide the Notification, dated 06.10.2021.

7. Accordingly, on the basis of the scrutiny so made; the Expert Committee recommended further inclusion of 12 candidates in lieu of the 41 candidates who were now excluded from the Notification, dated 06.10.2021. Thereafter, the said process having been so advanced; the Assam Public Service Commission(APSC) proceeded to institute a Interlocutory Application being IA(c)3095/2022 giving the details of the 12 candidates who would now be included in the list as contained in the Notification, dated 06.10.2021. However, the petitioners raised objection with regard to 2 candidates out of the 12 candidates now so included and accordingly, a review was further carried-out by the said Expert Committee and thereafter, on coming to a conclusion that

actually the 2 candidates identified by the petitioners, were not eligible to take part in the selection process; the number of candidates so recommended was reduced to 10 candidates. The Expert Committee, thereafter, on 28.11.2022, proceeded to submit a list, department-wise, of candidates, now found eligible to be called for the viva voce/interview segment of the selection process.

8. At this stage; it is to be noted that this Court had vide an order, dated 18.11.2022, passed in the present proceeding, on the scrutiny so carried-out by the said Expert Committee being brought to the notice of this Court, permitted the Assam Public Service Commission(APSC) authorities to proceed with the selection process for the Assistant Professor(Non-Technical) and Librarian posts, which were also advertised vide the Advertisement, dated 25.05.2017. However, the leave for notifying the fresh list of candidates now short-listed against the advertised posts of Assistant Professor(Technical) after the process of verification undertaken by the said Expert Committee, was not permitted to be published without further clarifications. The Assam Public Service Commission(APSC) authorities, in terms of the said order, dated 18.11.2022, proceeded to publish the list of candidates found eligible to appear against the advertised posts of Assistant Professor(Non-Technical) and Librarian, as advertised and thereafter, conducted the viva voce/interview and prepared the select list in the matter. The Assam Public Service Commission (APSC) authorities, thereafter, approached this Court by way of filing an Interlocutory Application being IA(c)1960/2023, seeking leave to publish the final select list with regard to the posts of Assistant Professor(Non-Technical) and Librarian, advertised for the Government Engineering Colleges of the State vide the Advertisement, in question. This Court, vide order, dated 17.02.2024, proceeded

to dispose of the said interlocutory application, granting leave to the Assam Public Service Commission(APSC) authorities to publish the final select list against the advertised posts of Assistant Professor(Non-Technical) and the posts of Librarian as existing in the Government Engineering Colleges of the State and advertised vide the Advertisement, in question.

9. It is stated at the Bar that the said process with regard to the posts of Assistant Professor(Non-Technical) and Librarian, respectively, were taken to its logical conclusion and the select list in the matter was so published. However, in view of the order, dated 18.11.2022, passed by this Court; the list as now finalized by the Expert Committee pertaining to the post of Assistant Professor(Technical) advertised by the said Advertisement, could not be published although the same was brought on record in the present proceeding.

10. As the matter was placed at that stage and the present proceeding taken-up for consideration; this Court had on appreciating the contentions made by the parties, proceeded vide order, dated 09.05.2024, to require the Assam Public Service Commission(APSC) to furnish the information on the issues as culled-out therein. The said order being relevant is extracted hereinbelow:

“Ms. P. Sharma, assisting Mr. T.J Mahanta, Senior Advocate , appearing for the Assam Public Service Commission shall receive instructions on the following points:

1. As to whether the Commission had prescribed any cut off marks for the ‘Language Test’ Component of the selection process. The cut off mark if prescribed be disclosed.

2. If a cut off mark was so prescribed for the ‘Language Test’ Component of the selection process, the following further information be received.

(i) As to whether the petitioners had achieved the cut off marks in the 'Language Test' Component.

(ii) As to whether, the candidates subsequently held to be eligible for the viva-voce/interview component had achieved the cut off marks in the 'Language Test' Component.

The above instructions be received in writing from an authority of the Commission empowered to issue the same, and be placed before this Court on the next date fixed, if required in a sealed cover."

11. In terms of the said directions, Ms. Sharma, learned counsel appearing for the Assam Public Service Commission (APSC), has placed the information as sought for before this Court, in a sealed cover for perusal of this Court.

12. Mr. Das, learned senior counsel appearing for the petitioners, by taking this Court through the irregularities as highlighted by the petitioners in the matter and the rectification process thereof as undertaken by the Assam Public Service Commission(APSC), which was highlighted to be an admission of the said selection process not being carried-out in the manner required, has contended that in view of the irregularities as taking place in the matter; this Court would be pleased to interfere with the selection process and direct the Assam Public Service Commission(APSC) authorities to carry-out the process involved *de novo*.

13. Mr. Das, learned senior counsel, has fairly submitted that the petitioners, herein, have not questioned the manner in which the language test was held and they had participated in the said examination without raising any objection

thereto, but he has submitted that given the irregularities available in the process of selection as undertaken by the Assam Public Service Commission (APSC); the same does not inspire confidence and therefore, the process ought to be interfered with by this Court and a direction for carrying-out the same *de novo* is called upon to be issued in the matter.

14. Per contra, Mr. T. J. Mahanta, learned Senior Counsel appearing for the Assam Public Service Commission(APSC), appearing in the matter, has submitted that the allegations as highlighted with regard to the selection process basically pertains to the educational qualifications possessed by the candidates who were short-listed for the purpose of appearing in the viva voce/interview segment of the selection process and included in the list as published vide the Notification, dated 06.10.2021. The learned Senior Counsel has also submitted that the exercise as carried-out by the Assam Public Service Commission(APSC) involves verification of voluminous records and it is possible that certain candidates although not eligible, may have been permitted to continue in the selection process and may have also been short-listed for the purpose of viva voce/interview. However, Mr. Mahanta, has submitted that as per the practice followed by the Assam Public Service Commission(APSC), the credentials of each and every candidate is thoroughly scrutinized at every stage and at any stage, if it is found that any of the candidates is not eligible to take part in the selection process; the candidature of such candidate is rejected.

15. Mr. Mahanta, learned Senior Counsel, has further submitted that the nature of allegations raised by the petitioners, herein, the Assam Public Service

Commission(APSC) authorities had constituted an Expert Committee comprising of 3 eminent persons having experience and expertise in the matter and the said Expert Committee had meticulously verified the credentials of each and every candidate so short-listed vide the Notification, dated 06.10.2021, to ascertain as to whether each one of them meets the eligibility standards as prescribed in the advertisement. He has also submitted that on such exercise being carried-out; it was found that 41 candidates did not possess the requisite educational qualifications for participating in the selection process against the posts for which they had offered their respective candidatures and the said 41 candidates so identified, belonged to the different subjects against which the posts of Assistant Professor(Technical) were so advertised.

16. Mr. Mahanta, learned Senior Counsel, has submitted that on the said 41 candidates being so identified, requisite steps were taken by the Assam Public Service Commission(APSC) authorities for exclusion of their names from the selection process and 12 candidates were then identified as being eligible for being considered in the viva voce/interview segment of the selection process.

17. Mr. Mahanta, learned Senior Counsel, has fairly submitted that on a further scrutiny made; out of the said 12 candidates, 2 candidates were again found to be not eligible for being permitted to be considered in the selection process and accordingly, they were also excluded therefrom. He has further submitted that after the verification/scrutiny process as undertaken by the Expert Committee; the candidates having been short-listed by the said Expert Committee and the same having been brought on record of the present proceeding, no further

allegation thereon being raised by the petitioners; it can be construed that the said candidates who have now been so short-listed for various posts involved i.e. the posts of Assistant Professor(Technical), meet the requisite eligibility criterias as prescribed.

18. During the course of deliberation in the matter; this Court had raised a query to the learned standing counsel, Assam Public Service Commission(APSC), as to why the 41 candidates so found ineligible to participate in the selection process and removed, were not replaced by another set of 41 candidates and as to why only 10 candidates were selected for replacement against the 41 candidates now removed from the selection process.

19. To the above query; Mr. Mahanta, learned Senior Counsel appearing for Assam Public Service Commission(APSC), has referred to a Notification, dated 04.10.2021, issued by the Assam Public Service Commission (APSC), wherein, the ratio in which candidates would be short-listed for the interview segment of the selection process, was spelt-out. It was submitted by Mr. Mahanta that in terms of the said Notification for various categories of posts advertised, the ratio of the candidates to be called for the viva voce/interview, would be:- (i). for 1 to 5 number of posts as advertised, candidates in the proportion of 6 times the number of posts, would be called for the interview; (ii). for 6 to 10 number of posts as advertised; candidates in the proportion of 5 times the number of posts, would be called for the interview; and (iii). for 11 and above number of posts as advertised; candidates in the proportion of 4 times the number of posts, would be called for the interview.

20. Mr. Mahanta, learned Senior Counsel, by referring to a chart brought on record in the written argument submitted in the Interlocutory Application being IA(c)1960/2023, filed in the present proceeding; has contended that the ratio in accordance with the said prescription, was met and even after removal of the candidates found to be ineligible, it was not mandated for incorporation of more candidates in many of the categories as available in-as-much as the ratio as mandated for calling candidates to the viva voce/interview segment of the selection process did not call for such further inclusion and the ratio continued to be maintained. Mr. Mahanta, learned Senior Counsel, has further clarified that while short-listing candidates for the viva voce/interview segment of the selection process, candidates securing similar marks were also included and that lead to incorporation of candidates being short-listed in excess of the ratio mandated and while removing candidates from such list on being found to be ineligible, the number of candidates remaining in the fray, satisfied the ratio mandated to be maintained in this connection. It is further submitted that for maintaining the ratio mandated, 10 candidates being so required to be so incorporated against various Departments, the same was accordingly done.

21. Mr. Mahanta, in view of the developments taking place in the matter, has further submitted that the Assam Public Service Commission(APSC) authorities be now permitted to proceed to publish the list of the candidates now short-listed by the Expert Committee, subject-wise, against the posts of Assistant Professor(Technical) advertised vide the Advertisement, in question, and thereafter, proceed to take the selection process to its logical conclusion.

22. Mr. Dutta, learned Senior Counsel, and Mr. Borthakur, learned counsel, appearing for their respective respondents, while adopting the arguments advanced by Mr. Mahanta, learned Senior Counsel appearing for Assam Public Service Commission (APSC), in the matter; have contended that the selection process was initiated in the year 2017, precisely, on 25.05.2017, and the same is still to be taken to its logical conclusion because of the pendency of the present proceedings as initiated in the matter by the petitioners.

23. It is contended by the learned counsels for the private respondents that there is no allegation against the private respondents, as represented by them, in the present matter and accordingly, for the fact that certain candidates were found to be ineligible to participate in the said selection process; their rights to have their respective cases considered for recruitment against the posts to which they had applied, cannot be denied to them. It was submitted that the delay as occasioning in the matter in taking the selection process to its logical conclusion, has caused severe prejudice to their interests and accordingly, it was prayed that this Court would be pleased in view of the materials coming on record, to dismiss the instant writ petition and thereafter, permit the Assam Public Service Commission(APSC) authorities to take the selection process to its logical conclusion.

24. Mr. Gogoi, learned Standing Counsel, Higher Education Department, has submitted that in view of the materials now coming on record; it is abundantly clear that the writ petitioners have not made-out a prima facie case in the

matter requiring the interference of this Court with the selection process, in issue, in the present proceeding. Mr. Gogoi, has also submitted that the delay as occasioning in affecting the appointments against the vacant posts of Assistant Professor(Technical) advertised vide the Advertisement, dated 25.05.2017, is adversely affecting the functioning of the Government Engineering Colleges of the State and the same if permitted to continue; would adversely affect the interest of the students studying therein, which would not be in larger public interest and accordingly, he also urges this Court to permit the Assam Public Service Commission(APSC) to take the process of recruitment involved, to its logical conclusion at the earliest and facilitate appointment of selected persons against the posts, in question.

25. I have heard the learned counsels appearing for the parties and also perused the materials made available on record.

26. It is to be noted at the outset that the objections as raised by the petitioners in the matter had led to a scrutiny by the Assam Public Service Commission(APSC) authorities wherein certain candidates who were admittedly not eligible to participate in the selection process, were found to be permitted to continue in the selection process; the endeavour as made by the petitioners in highlighting the said aspect of the matter before this Court and the directions of this Court to the Assam Public Service Commission(APSC) authorities to carry-out a detail review in the matter; it is found that the candidates not eligible to participate in the selection process, have now been taken out of same. It is also found that the Assam Public Service Commission(APSC) authorities had brought

on record, the list of candidates short-listed by the Expert Committee after scrutiny of the educational qualifications of all the candidates included in the list as published vide the Notification, dated 06.10.2021, including the 10 candidates subsequently incorporated and it is seen that there is no further allegation brought on record by the petitioners of any further candidate being permitted to continue in the selection process inspite of being ineligible for being extended with such consideration. In that view of the matter, the list of short-listed candidates now available on record as prepared by the Expert Committee in the matter, has to be reckoned to be one consisting of persons who fulfill the requisite educational qualifications as mandated in the Advertisement, dated 25.05.2017, for the posts, they had so applied.

27. At this stage, it is also to be noted that Mr. Das, learned Senior Counsel for the petitioners, has fairly submitted that the petitioners have no grievance with regard to the manner in which the language test on local languages of the State was so held by the Assam Public Service Commission(APSC) in-as-much as the petitioners had participated in the said segment of the selection process without any objection.

28. The learned counsels appearing for the parties have submitted that the materials as now placed on record by the Assam Public Service Commission(APSC) pertaining to the performance of the petitioners in the selection process, be perused by this Court and basing on the revelations as would be available therefrom, to pass appropriate orders in the matter.

29. Mr. Mahanta, learned Senior Counsel appearing for Assam Public Service Commission(APSC), has requested this Court not to disclose the cut-off marks and/or the marks secured by the petitioners, herein, at this stage, in-as-much as the said revelations can only be made after the selection process is taken to its logical conclusion. The above submission was also supported by the other learned counsels appearing for their respective respondents.

30. Accepting the above request, this Court has perused the materials as placed on record by Ms. Sharma, learned counsel, appearing on behalf of the Assam Public Service Commission (APSC). On examination of the same; it is seen that the petitioners No. 1, 3, 4, 6, 8, 12, 16, 18 and 19 although were short-listed in the list as contained in the Notification, dated 28.05.2020, and were eligible for appearing in the language test on local languages of the State; the said petitioners had not qualified in the said segment of the selection process. At this stage; it is to be noted that the Assam Public Service Commission (APSC) had, before the said examination was so conducted, determined that a candidate to qualify in the said segment of the selection process, must have secured 25 marks therein. It is found from the materials brought on record that none of the above-noted petitioners had secured 25 or more marks in the said segment of the selection process and accordingly, there exists no further requirement of this Court to consider their cases.

31. As regards the remaining 10 petitioners who had qualified in the language test on local languages of the State; this Court has examined the materials placed on record and has found that the petitioners involved, had applied

against different posts as advertised vide the Advertisement, dated 25.05.2017; more particularly, against the posts of Assistant Professor(Technical).

32. On a careful scrutiny of the materials as placed on record, it is found that the petitioners No. 2, 5, 7, 9, 10, 11, 14 and 15, although had qualified in the said language test but in the written test, they had, upon application of the ratio as mentioned herein above; not achieved the cut-off marks requisite for being included in the list of candidates now found eligible, for their respective subjects, for appearing in the viva voce/interview segment of the selection process. The said petitioners not having achieved the requisite cut-off marks; this Court is not in a position to direct the Assam Public Service Commission(APSC) authorities to continue to consider them in the said selection process and accordingly, it has to be held basing on materials as placed on record, that the said writ petitioners also do not have any vested right to demand to have their cases continued to be considered in the said selection process. It is reiterated that as per the disclosure made by the Assam Public Service Commission(APSC) authorities, the petitioners No. 2, 5, 7, 9, 10, 11, 14 and 15, had not secured marks in their respective written examination that would have mandated their inclusion in the list of candidates, now short-listed for appearing in the viva voce/ interview segment of the selection process by application of the ratio as applied in the matter for calling candidates for the viva voce/interview segment of the selection process.

33. As far as the remaining 2 petitioners i.e. petitioners No. 13 and 17, are concerned; it is found that the Assam Public Service Commission(APSC)

authorities in their respect, on scrutiny; had come to a conclusion that the said petitioners do not meet the requirement with regard to the educational qualifications as mandated against the posts for which they had so applied in pursuance of the Advertisement, dated 25.05.2017, and accordingly, it was held by the Assam Public Service Commission (APSC) authorities that the said petitioners were ineligible to be considered for recruitment against the posts of Assistant Professor (Technical) for which they had applied. In other words, it is the conclusion of the Assam Public Service Commission (APSC) authorities that the educational qualifications as possessed by the petitioners No. 13 and 17 does not satisfy the educational qualifications as prescribed in the Advertisement, in question, for the posts against which they had submitted their respective candidates. In the above view of the matter; the petitioners No. 13 and 17 are also held to be not eligible for being considered in the said selection process.

34. At this stage; it is to be noted that this Court while making the scrutiny, had also taken the note of the fact that amongst the petitioners, there are petitioners who had applied for more than one post and the examination as carried-out by this Court was so extended to all the posts; the said petitioners had submitted their candidature. This Court had also in respect of the female petitioners considered whether they had achieved the cut-off marks as now determined against the category they belong to and this Court found that the female petitioners as involved in the present proceeding, with the marks they had secured in the written examination, did not achieve the said cut-off marks and accordingly, they were found not eligible for being included as female candidates in the list so prepared for being called for the viva voce/interview

segment of the selection process.

35. This Court upon examination of the materials as brought on record by the Assam Public Service Commission(APSC) authorities, having found the petitioners to be not eligible for being called for the viva voce/interview segment of the selection process, in issue, and given the facts and circumstances involved; holds that the rights of the petitioners have not been infringed in any manner and they are disentitled to present a challenge to the consideration now sought to be extended by the Assam Public Service Commission(APSC) in the matter to candidates found to be satisfying all requisite parameters. Further, the irregularity existing in the selection process highlighted by the petitioners, having been remedied, and no further irregularity/illegality having been brought to the notice of this Court by the petitioners; this Court is of the considered view that it would not be in public interest to keep the selection process involved in abeyance any further.

36. In view of the conclusions reached herein above; this Court is of the considered view that the stalemate as continuing with regard to the selection process against the posts of Assistant Professor(Technical) need not be permitted to be continued any further and the petitioners having been found to be ineligible for being called for the viva voce/interview segment of the selection process, and no further material coming on record to indicate the existence of any further illegality in the said selection process; this Court passes the following directions:

(i). The Assam Public Service Commission(APSC) authorities would now proceed to publish the list of the qualified candidates against the posts of Assistant Professor(Technical) as short-listed by the Expert Committee, in pursuance of the directions passed in the present proceeding by this Court by its earlier orders, and thereafter, proceed with the matter and hold viva voce/interview for such short-listed candidates strictly in accordance with the procedure as mandated in the matter.

(ii). On conclusion of the said viva voce/interview segment of the selection process; the Assam Public Service Commission(APSC) authorities shall duly publish the select list and recommend the names of the candidates now found eligible for appointment against the posts of Assistant Professor(Technical) as advertised vide the Advertisement, dated 25.05.2017, to the Government for further necessary action in the matter.

(iii). The above exercise as now required to be carried-out in terms of the directions passed by this Court herein above, shall be so initiated and completed within a period of 2(two) months from the date of receipt of a certified copy of this order.

37. Before parting with the records of the case; this Court would like to observe that the petitioners, herein, having not been granted access to the marks secured by them in the selection process and also the 2(two) petitioners who were found to be ineligible to participate in the selection process on account of the educational qualifications possessed by them, being not

permitted to raise the issue in the present proceeding; liberty is reserved to all the petitioners to raise objections in the matter with the authorities of the Assam Public Service Commission (APSC) and also to approach this Court by way of filing appropriate applications raising any grievance pertaining to the manner in which their cases were so considered, after the selection process is complete and the information/documents pertaining to their performance/qualification are provided to them by the Assam Public Service Commission (APSC).

38. With the above directions and observations, this writ petition stands disposed of.

JUDGE

Comparing Assistant