

GAHC010215482021



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

Case No. : WP(C)/89/2022

PANKAJ DAS
S/O. SRI CHITTARANJAN DAS, VILL. BRIDABAN HATI, P.O. BARPETA, P.S.
BARPETA, DIST. BARPETA, ASSAM, PIN-781301.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM, DEPTT. OF
HEALTH AND FAMILY WELFARE, ASSAM, DISPUR, GUWAHATI-22.

2:THE DIRECTOR OF MEDICAL EDUCATION

ASSAM
SIXMILE
KHANAPARA
GUWAHATI-781022.

3:PRINCIPAL CUM CHIEF SUPERINTENDENT

FAKARUDDIN ALI AHMED MEDICAL COLLEGE
AND HOSPITAL
BARPETA
DIST. BARPETA
ASSAM
PIN-781301

4:SUBHAM DEY
S/O. SIBU TOSH DEY
VILL. ANANDANAGAR
P.O. ADABARI
P.S. JALUKBARI
DIST. KAMRUP (M)

ASSAM
PIN-781012.

5:MITUL DAS
C/O. KALICHARAN DAS
VILL. EMTUAKUCHI
P.O. BARPETA
P.S. BARPETA
DIST. BARPETA
ASSAM
PIN-781301.

6:RANI GOGOI
D/O. MANESWAR GOGOI
VILL. RUDRESWAR
P.O. RONGMAHAL
P.S. CHANGSARY
DIST. KAMRUP (R)
ASSAM
PIN-781030

Advocate for the Petitioner : MR T H HAZARIKA

Advocate for the Respondent : SC, HEALTH

Linked Case : WP(C)/5484/2023

HIMANGSHU DAS
S/O- LATE KUMUD CHANDRA DAS
R/O- KUMARHATI WARD NO. 6
DIST. BARPETA
ASSAM
PIN- 781301.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
HEALTH AND FAMILY WELFARE (B) DEPARTMENT
DISPUR
GUWAHATI-781006.

2:THE DIRECTOR OF MEDICAL EDUCATION

ASSAM

SIXMILE

KHANAPARA

GUWAHATI-781022.

3:THE PRINCIPAL CUM CHIEF SUPERINTENDENT

FAKHARUDDIN ALI AHMED MEDICAL COLLEGE AND HOSPITAL

BARPETA

ASSAM

PIN- 781301.

4:NIPAL KUMAR

C/O- THE OFFICE OF THE PRINCIPAL CUM CHIEF SUPERINTENDENT

FAKHARUDDIN ALI AHMED COLLEGE AND HOSPITAL

BARPETA

ASSAM

PIN- 781301.

5:PANKAJ DAS

C/O- THE OFFICE OF THE PRINCIPAL CUM CHIEF SUPERINTENDENT

FAKHARUDDIN ALI AHMED COLLEGE AND HOSPITAL

BARPETA

ASSAM

PIN- 781301.

6:RUPAK JYOTI DAS

C/O- THE OFFICE OF THE PRINCIPAL CUM CHIEF SUPERINTENDENT

FAKHARUDDIN ALI AHMED COLLEGE AND HOSPITAL

BARPETA

ASSAM

PIN- 781301.

Advocate for : MR. U K NAIR

Advocate for : SC

HEALTH appearing for THE STATE OF ASSAM AND 5 ORS

BEFORE

HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

01.05.2024

Heard Shri BD Goswami, learned counsel for the petitioner in WP(C)/89/2022 and Shri A. Boro, learned counsel for the petitioner in WP(C)/5484/2023. Also heard Shri DP Borah, learned Standing Counsel, Health

Department and Shri BK Bhagwati, learned counsel for the respondent no. 6 in WP(C)/5484/2023. It may be mentioned that the petitioner in WP(C)/89/2022 is also the respondent no. 5 in the second writ petition being WP(C)/5484/2023.

2. The issue is in connection with a recruitment process for the post of Laboratory Attendant in the Fakaruddin Ali Ahmed Medical College & Hospital, Barpeta which was initiated vide an advertisement dated 10.03.2018. In the said recruitment process, the petitioners claim to have participated wherein they were allotted roll numbers. The written test was accordingly conducted on 30.09.2018 in which the petitioners claim to be declared successful and thereafter, they were called for the verification of original documents. However, vide the impugned communication dated 25.02.2019, only 12 candidates were selected and 2 vacant posts were left out. The petitioners had tried to obtain necessary information by invoking the RTI Act regarding the reasons and also the details of the selection. It is also averred that the second round in the recruitment process was only for verification of documents and therefore, there is no reason to keep any post vacant. In WP(C)/89/2022, a further allegation has been made on the candidature of the respondent no. 4 by stating that he does not have the requisite documents towards his claim to be an OBC candidate.

3. The learned counsel for the petitioners have submitted that though the recruitment process was initiated vide the advertisement dated 10.03.2018, the outcome of the same was clouded and there was lack of transparency. It is further submitted that as per the mandate of law, all the vacancies are required to be filled up in which case, the petitioners would have a fair chance of being appointed in any of the existing vacancies.

4. Shri Borah, learned Standing Counsel, Health Department by relying upon

a written instructions dated 30.04.2024 issued by the Director of Medical Education, Assam has submitted that though it is a fact that 12 out of 14 vacancies of the post of Laboratory Assistant were filled up, one post under the unreserved category had to be kept vacant as the candidate did not come up for verification of the testimonial. As regards the post of OBC/MOBC category, the same had to be kept vacant as there was a tie in the marks of the candidates and there was no mechanism stipulated in the advertisement for breaking of tie marks.

5. After considering the facts and circumstances and upon hearing of the learned counsel for the parties, this Court is of the view that the petitioner in the instant case being of the OBC category, their claim at best would be to one post for the said category. The reason assigned in the written instructions is for a situation which has emerged in which there is a tie of marks between the candidates. It is also mentioned that there was no mechanism for breaking of tie marks.

6. There is another aspect of the matter which would have a relevancy and a bearing in the present adjudication process. The recruitment process was of the year 2018 which had culminated in the select list dated 25.02.2019. A select list is valid for a period of one year unless the rules prescribe otherwise. In the instant case, this Court is of the opinion that no relief can be granted to the petitioners as the select list has spent its force. This Court has also noticed that the writ petitions itself were instituted in the year 2022 and 2023.

7. In view of the above, both these writ petitions are dismissed.

8. The written instructions dated 30.04.2024 are made a part of the records.

9. The authorities are at liberty to fill up the remaining vacancies in which

case, the candidature of the petitioners, if offered, is to be considered fairly, along with similarly situated candidates.

JUDGE

Comparing Assistant