

GAHC010023732024



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

Case No. : WP(C)/610/2024

AMRITA DUTTA
W/O SRI SUBIT DUTTA
R/O H. NO. L-5
UDAYACHAL LANE
NATIONALHIGHWAY
P.O. SILCHAR
DIST. CACHAR, ASSAM
PIN-788005

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
HIGHER EDUCATION DEPARTMENT, DISPUR, GUWAHATI, ASSAM-781006

2:THE DIRECTOR

HIGHER EDUCATION DEPARTMENT

KAHILIPARA
GUWAHATI
ASSAM-781019

3:THE PRINCIPAL

GURUCHARAN COLLEGE
SILCHAR
CACHAR
ASSAM-788004

4:THE GOVERNING BODY
GURUCHARAN COLLEGE

SILCHAR
REPRESENTED BY THE PRESIDENT OF THE GOVERNING BODY
CACHAR
ASSAM- 788004

5:THE SELECTION COMMITTEE

REPRESENTED BY CHAIRPERSON
GURUCHARAN COLLEGE
SILCHAR

CACHAR
ASSAM-788004.

6:SRI SAYANTAN GUHA MAZUMDER
ASSISTANT PROFESSOR

DEPARTMENT OF COMMERCE

GURUCHARAN COLLEGE

SILCHAR
CACHAR
ASSAM-78800

Advocate for the Petitioner : MR. K SINGHA, M DEVI,MS N BEGUM

Advocate for the Respondent : SC, HIGHER EDU, MR J K SHARMA (R-6),MS B DAS (R-6),MR. A D GUPTA (R-6),MS S MOCHAHARI (R-3,4),MR S DUTTA (R-3,4),MR. S DUTTA (R-3,4),MR S DUTTA (R-3,4)

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 19.03.2026

Heard Mr. K Singha, Learned Counsel for the petitioner. Also heard Mr. S Bhuyan, Learned Standing Counsel, Department of Higher Education, Assam, Mr. S Dutta, Learned Senior Counsel, appearing for the respondent nos. 3, 4 & 5 and Mr. A Dasgupta, Learned Senior Counsel, appearing for the respondent no. 6.

2. The petitioner, in the present writ petition, has assailed the appointment, effected in the case of the respondent no. 6, as Assistant Professor, Department of Commerce in Gurucharan College, Silchar. The petitioner further prays that a direction be issued to the respondent authorities to appoint the petitioner against the post, the respondent no. 6 was so appointed, by reckoning her merit position, obtained in the connected selection process.

3. At the outset, it is to be noticed that the learned counsel for the parties have apprised this Court that during the pendency of the present writ petition, the petitioner, in terms of her selection for the post in question, was appointed as Assistant Professor in the Department of Commerce, Gurucharan College, Silchar vide an order dated 13.11.2025, issued by the Director of Higher Education, Assam.

4. Accordingly, in the present writ petition, the relief that would be permissible to be granted to the petitioner, would be whether the appointment, now effected in her respect, is to be given a retrospective effect i.e. with effect from the date the respondent no. 6 was so appointed and if so, with what further consequential benefits.

5. The authorities of Gurucharan College, Silchar, (hereinafter referred to as the College), upon receipt of due approvals from the Director of Higher Education, Assam, had proceeded to issue an advertisement dated 27.01.2021, inviting applications from eligible candidates for filling up of vacant posts of Assistant Professors available in various departments of the College, including the Department of Commerce. Vide the said advertisement, 2 (Two) posts of Assistant Professors in the Department of Commerce of the said College, was put up for such recruitment for unreserved community candidates, against roster point no. 1 & 4. The petitioner, herein, and the respondent no. 6, being eligible for recruitment against the post of Assistant Professor, in the Department of Commerce, as advertised, vide the said advertisement dated 27.01.2021, had submitted

their respective candidature for the same, along with 59 (Fifty-Nine) other candidates.

6. On the receipt of the applications and a scrutiny being made, thereof, the College authorities had shortlisted 55 (Fifty-Five) candidates, for the selection, holding them to be eligible for the purpose and issuing to them, call letters. Accordingly, the petitioner and the respondent no. 6, appeared for the selection which was held on 01.12.2022 and 02.12.2022. In total 29 (Twenty-Nine) candidates had appeared in the selection process.

The materials brought on record, received by the petitioner, under the provisions of the Right to Information (RTI) Act, 2005, reveal that on conclusion of the selection process, the Selection Committee had recommended the name of the petitioner at Serial No. 1 and that of the respondent No. 6 at Serial No. 2, for recruitment against the 2 (Two) posts of Assistant Professors, available in the Department of Commerce of the College, in question. The placement of the petitioner and the respondent no. 6, by the Selection Committee, in the above manner, was on merits.

The petitioner, at this stage, came to learn that the respondent no. 6, was appointed in the Department of Commerce as an Assistant Professor and she being denied her due appointment, although placed on merits above the respondent no. 6, proceeded to make an enquiry in the matter. The enquiry made by the petitioner reveals that she was recommended in terms of a selection for appointment against the roster point no. 1, while the respondent no. 6 was so recommended for appointment against the roster point no. 4.

7. However, after the recommendations were so made, a confusion had arisen as to whether the roster point no. 1, is to be so reserved for unreserved (PWD) category candidates. Accordingly, the clarifications in the matter, being sought for from the College authorities, further processing with regard to the appointment of the petitioner, in terms of her selection to the post of Assistant Professor, was kept in abeyance and there being no

confusion, with regard to the roster point no. 4, the case of the respondent no. 6 was processed and the order, appointing him, was so issued.

8. It is in the above background that the petitioner has instituted the present writ petition with the reliefs as noticed, hereinabove.

9. Mr. K Singha, Learned Counsel for the petitioner, by reiterating the facts noticed, hereinabove, has submitted that the respondent authorities, for the delay, occasioning in appointing the petitioner, have projected that the same had so occasioned only on account of the confusion arising as to the actual identification of roster point no. 1. He submits that the 2 (Two) posts having been advertised and the petitioner, admittedly, having been placed on Serial No. 1, on merits, above the respondent no. 6, it was the petitioner, who was required to be appointed first. He submits that it is inconsequential, as to the roster point, against which the petitioner was so recommended for appointment by the college authorities, he submits that what is material is that the petitioner in the selection process, was placed on Serial No. 1, on merits, above the respondent no. 6. He submits that as against roster point No. 4, which was also one of the roster points involved, no confusion being existing, thereto, it is the petitioner who was required to be appointed against the same and, thereafter, the respondent no. 6, was mandated to be so appointed by considering his merit position. Mr. K Singha, Learned Counsel for the petitioner, accordingly, submits that the reasoning, as advanced by the respondent authorities, for the delay occasioning in appointing the petitioner, to be clearly perverse. He submits that the roster points could not have been given primacy, while effecting appointment and the appointments were to be strictly made, in accordance with the merit position obtained by the candidates in the selection proceedings and the roster points would be mandated to be considered only, thereafter.

10. Mr. K Singha, Learned Counsel for the petitioner, submits that the petitioner now being appointed, vide the order dated 13.11.2025, from the

said selection process, from which the respondent no. 6, was also appointed, the petitioner being placed on merits above the respondent no. 6, in the connected selection process, the appointment of the petitioner would now be mandated to be given retrospective effect, i.e. with effect from the date the respondent no. 6, was so appointed with all consequential benefits of seniority, pay etc.

11. Mr. S Dutta, Learned Senior Counsel, appearing for the respondent College and Mr. A Dasgupta, Learned Senior Counsel appearing for the respondent no. 6, have submitted that the petitioner, now being appointed as Assistant Professor, the grievance raised by the petitioner, in the present writ petition, stands redressed and accordingly, the claim of the petitioner having been rendered infructuous, the present Writ petition would be mandated to be closed.

12. Mr. S Bhuyan, Learned Standing Counsel, Department of Higher Education, Assam, has submitted that on conclusion of the selection process, the petitioner was selected for appointment as Assistant Professor in the Department of Commerce of the College in question, against roster points No. 1 (UR) vice Dr. Suvendu Kumar Das, Associate Professor, Department of Commerce, who had retired on superannuation on 30.06.2019. He further submits that the Principal of the college had submitted a proposal for appointment of the petitioner against said roster point no. 1 (UR). However, on a verification being done, it was found that the roster point no. 1 is to be reserved for unreserved (PWD) candidates. Accordingly, the Director of Higher Education, Assam, had sought for clarifications from the College authorities in this connection, vide issuance of a communication dated 22.09.2023. The clarifications received from the college authorities had revealed that the post, against which the petitioner was proposed to be appointed i.e. the post earlier held by Dr. Suvendu Kumar Das, Associate Professor, Department of Commerce, had now fallen under roster point No. 1, unreserved. He further submits that verification of

the updated roster and being satisfied with the clarifications, the proposal received from the college authorities for appointment of the petitioner against the post of Assistant Professor, Department of Commerce, was processed and the matter was sent to the Government of Assam, Higher Education Department for approval. He submits that on receipt of the approval, the petitioner was appointed as an Assistant Professor, vide the order dated 13.11.2025. Accordingly, he submits that it is only on account of a confusion arising in the matter, that a delay had occasioned in appointing of the petitioner against the post of Assistant Professor and for the same, the Department is not at fault.

13. I have heard the learned counsel for the parties and perused the materials available on record.

14. From the materials brought on record, it is evident that in pursuance to the advertisement dated 27.01.2021, a selection was held and the Selection Committee, on conclusion of the selection, had recommended the petitioner and the respondent no. 6, as the selected candidates. In the said recommendation, on merits, the petitioner was placed above the respondent no. 6.

15. The Governing Body of the respondent college, while accepting the recommendations of the Selection Committee, proceeded to approve the recommendations of the Selection Committee by adopting a resolution for appointment of the petitioner against roster point No. 1 and the respondent no. 6 against roster point no. 4. The said proposal, on being placed before the Director of Higher Education, Assam, as noticed, hereinabove, a doubt had arisen as to whether the roster point No. 1, against which the petitioner was recommended for appointment, in terms of a selection, would be required to be reserved for unreserved (PWD) category candidates. The said confusion having arisen, the Director of Higher Education, Assam, had not proceeded to appoint the petitioner, however, no confusion being found with the recommendations made, in favour of the

respondent no. 6, against roster point No. 4, the case of the respondent no. 6 was processed and he came to be appointed vide order dated 07.10.2023.

16. As noticed, hereinabove, the petitioner, on merits, was placed at Serial No. 1 and the respondent no. 6, was placed at Serial No. 2, by the Selection Committee. It is further not disputed that the post involved were both for unreserved category community candidates. It is a settled position of law that the appointments, in pursuance to a selection process, that too when the selection process only involved posts, identified for unreserved community candidates, the appointment is to be effected, basing on the merit position obtained by the candidates, in the selection process. The roster point is only a facilitator to ensure that the appointments made, are so made with due regard to quota, mandated for reserved community candidates. The roster points cannot be the determining factor for effecting appointments against posts, put up for recruitment. That is to say that the roster points cannot be fixed to any candidate, more so when the recruitment was, *intra se*, General Community candidates. In the event there was any doubt, with regard to the roster point no. 1, the respondent authorities were duty bound to appoint the petitioner by reckoning the roster point no. 4 which was also available. However, the respondent authorities ignored the said procedure and proceeded to appoint the respondent no. 6, ignoring the merit position of the petitioner, herein. The Director of Higher Education, Assam, is found to have given primacy to the roster points involved than to the merit position of the candidates. The procedure followed by the Director of Higher Education, Assam, in the matter, in the considered view of this Court, was clearly erroneous, in as much as, the merit position obtained by the candidates in the connected selection process was not mandated to be ignored. In the case on hand, it is seen that because of the roster points, against which the petitioner and the respondent no. 6, came to be so recommended, a confusion arising against the roster point of the petitioner was so recommended, the delay

occasioning in the appointment of the petitioner, herein, has the effect of the roster points having a overriding effect upon the merit position, obtained by the petitioner and the respondent no. 6, in the connected selection process, more so when the post involved, were only for candidates belonging to the Unreserved Community.

17. In view of the above discussion, this Court holds that the petitioner was deprived of a due appointment at the relevant point of time when the respondent no. 6 was so appointed and accordingly, this Court holds that the appointment of the respondent no. 6, vide order dated 07.10.2023, ignoring the superior merit of the petitioner, has rendered the appointment of the respondent no. 6, liable to be interfered by this Court. However, noticing that the petitioner was also appointed during the pendency of the present Writ petition, this Court restrains itself from proceeding to interfere with the appointment effected in respect of the respondent no. 6.

18. Having drawn the said conclusion, this Court further holds that noticing the deprivation caused to the petitioner, and the loss of seniority occasioning, this Court is of the considered view that by balancing the equities, the appointment of the petitioner, as effected vide the order dated 13.11.2025, is to be given a retrospective effect with effect from the date the respondent no. 6 was so appointed from the same selection process i.e. w.e.f 07.10.2023. It is to be noted that the appointment effected, in respect of the petitioner, vide the order dated 13.11.2025, was prospective in nature only. In view of the above conclusions drawn by this Court, this Court in the facts and circumstances of the present case, passes the following directions :

(i) The appointment of the petitioner effected vide the order dated 13.11.2025, is interfered with to the extent that it is made with prospective effect. The appointment of the petitioner be deemed to have been so effected with retrospective effect, i.e. with effect from 07.10.2023, the date the respondent no. 6 was so appointed.

(ii) On a retrospective effect being granted to the appointment of petitioner, in terms of the direction, at Serial No. 1 above, the petitioner be given seniority over the respondent no. 6, in the cadre of Assistant Professor in the College and the further service benefits, due to the petitioner including advancement in service be so granted by deeming her to have been also appointed, w.e.f 07.10.2023.

(iii) The petitioner's, appointment having now been granted a retrospective effect w.e.f 07.10.2023, the Director of Higher Education, Assam, shall notionally fix the pay of the petitioner w.e.f 07.10.2023, till the date, the petitioner had joined her services as an Assistant Professor, in pursuance to the order dated 13.11.2025. The petitioner, however, will not be entitled to any arrears of salary for the period from 07.10.2023, till the date she had joined her services, in pursuance to the order dated 13.11.2025. However, on the notional fixation of her pay w.e.f 07.10.2023, the pay of the petitioner, on the date she had joined her services, in pursuance to the order dated 13.11.2025, shall be re-fixed and the arrears now working out, on account of the such re-fixation, shall be released to the petitioner within a period of 3 (Three) months from the date of receipt of a certified copy of this order.

(iv) The consequential orders as would now be required for compliance with the directions passed, hereinabove, shall be passed by the Director of Higher Education, Assam, within 45 (Forty-Five) days from the date of receipt of a certified copy of this order.

19. With the above observations and directions, the present Writ Petition stands disposed of.

JUDGE

Comparing Assistant