

GAHC010086972018



2026:GAU-AS:5211

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

Case No. : WP(C)/4342/2018

SHRI RUP KUMAR NATH AND 6 ORS
S/O- LT DILIP KR. NATH, VILL- NEW GOALPARA, PO BALADMARI, DIST-
GOALPARA, ASSAM

2: SHRI RAJIBUL ISLAM
S/O- LT TAHER ALI
R/O- VILL- GERGERIACHUNI
PO PUB REHABARI
DIST- BARPETA
ASSAM

3: SHRI RUHINI KR. NATH
S/O- LT GOHIN CH. NATH
R/O- VILL- MAYENGIA
PO CHORAIBAHI
DIST- MORIGAON
ASSAM

4: SHRI TARUN BORA
S/O- DINESWAR BORA
R/O- VILL- TELIAPONIGAON
PO HAIBORGAON
DIST- NAGAON
ASSAM

5: SHRI UTPAL CHAKRABORTY
S/O- LT PROMOD CHAKRABORTY
R/O- VILL- MOLIGAON
PO BOITAMARI
DIST- BONGAIGAON
ASSAM

6: SHRI AJIT RAI
S/O- LT KAMESWAR RAI

R/O- VILL- CHANDANNAGAR
PO- JORHAT
DIST- JORHAT
ASSAM

7: SRI RAHUL NATH
S/O- LT ROBINDRA MOHAN NATH
R/O- LINL ROAD
LANE NO.2
PO- SILCHAR-6
DIST- CACHAR
ASSA

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE CHIEF SECY., TO THE GOVT. OF ASSAM, DISPUR, GHY-6

2:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
FISHERY DEPTT.
DISPUR
GHY-6
ASSAM SACHIVALAYA
DIST- KAMRUP (M)
ASSAM

3:THE COMM. AND SECY.
TO THE FINANCE DEPTT.
DISPUR
GHY-6

4:THE ASSAM PUBLIC SERVICE COMMISSION
REP. BY THE CHAIRMAN
APSC
ASSAM
JAWAHARNAGAR
KHANAPARA
GHY-22

5:THE DIRECTOR OF FISHERIES
ASSAM
GUWAHATI
MEEN BHAWAN
PO BIRUBARI
GHY-1

Advocate for the Petitioner : MR. S P DAS, MR. S CHOUDHURY,MR. S D PURKAYASTHA

Advocate for the Respondent : SC, APSC, SC, FISHERY,MR P SHARMA,MR. C BARUAH

Linked Case : WP(C)/6448/2017

UTPAL CHAKRABORTY AND 6 ORS
S/O- LATE PROMOD CHAKRABORTY
R/O- VILL- MOLIGAON
P.O- BOITAMARI
DIST- BONGAIGAON
ASSAM

2: RAJIBUL ISLAM
S/O- LATE TAHER ALI
R/O- VILL- GERGERIACHUNI
P.O- PUB REHABARI
DIST- BARPETA
ASSAM

3: RUHINI KR. NATH
S/O- LATE GOHIN CH. NATH
R/O- VILL- MAYENGIA
P.O- CHORAIBAHI
DIST- MORIGAON
ASSAM

4: TARUN BORA
S/O- DINESWAR BORA
R/O- VILL- TELIAPONIGAON
P.O- HAIBORGAON
DIST- NAGAON
ASSAM

5: RUP KUMAR NATH
S/O- LATE DILIP KR. NATH
VILL- NEW GOALPARA
P.O- BALADMARI
DIST- GOALPARA
ASSAM

6: AJIT RAI
S/O- LATE KAMESWAR RAI
R/O- VILL- CHANDANNAGAR
P.O- JORHAT
DIST- JORHAT

ASSAM

7: RAHUL NATH
S/O- LATE ROBINDRA MOHAN NATH
R/O- LINI ROAD
LANE NO.2
P.O- SILCHAR-6
DIST- CACHAR
ASSAM
VERSUS

THE STATE OF ASSAM AND 36 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
FISHERY DEPARTMENT
DISPUR
GHY-6
ASSAM SACHIVALAYA
DIST- KAMRUPM
ASSAM

2:THE SECRETARY
TO THE GOVT OF ASSAM
FISHERY DEPARTMENT
DISPUR
GUWAHATI-6
ASSAM SACHIVALAYA
DIST- KAMRUPM
ASSAM

3:THE ASSAM PUBLIC SERVICE COMMISSION
REP. BY THE CHAIRMAN
APSC
ASSAM
JAWAHAR NAGAR
KHANAPARA
GHY- 22

4:THE JOINT SECRETARY
TO THE GOVT OF ASSAM
FISHERY DEPTT.
DISPUR
GHY-6
ASSAM SACHIVALAYA
DIST- KAMRUPM
ASSAM

5:THE DIRECTOR OF FISHERIES
ASSAM

GUWAHATI
MEEN BHAWAN
P.O- BIRUBARI
GUWAHATI- 16

6:NABAJYOTI GOGOI
ROLL NO. 0000971

7:JAYANTA SONOWAL
ROLL NO. 0000321

8:MRINMOY MAHANTA
ROLL NO. 0000352

9:GITANJALI LASKAR
ROLL NO. 0000461

10:UDIPTA GOGOI
ROLL NO. 0001478

11:MITHUN ROY
ROLL NO. 0000304

12:HEMANTA DEKA
ROLL NO. 0001090

13:DEEBYAJEET BARMAN
ROLL NO. 0001652

14:PRANKRISHNA BHUYAN
ROLL NO. 0001738

15:JUGAL KUMAR RAHBA
ROLL NO. 0000305

16:RAKTIM BORAH
ROLL NO. 0001684

17:PRITHIBI DAS
ROLL NO. 0001748

18:KAUSHIK KUMAR SARMA
ROLL NO. 0000380

19:BISWAJIT ADHIKARI
ROLL NO. 0000805

20:JAYA CHETRI

ROLL NO. 0001521

21:KARISHMA DEKA
ROLL NO. 0000422

22:NABIN BARMAN
ROLL NO. 0001274

23:AMIT CH. DAS
ROLL NO. 0000376

24:DIMPI NATH
ROLL NO. 0000244

25:SANJUKTA DUTTA
ROLL NO. 0000978

26:MANIKANKANA KAKATI
ROLL NO. 0000259

27:JAGADISH DAS
ROLL NO. 0000053

28:PRATISHA HANDIQUE
ROLL NO. 0000442

29:BHASKAR RABHA
ROLL NO. 0000135

30:RUPANJIT NATH
ROLL NO. 0000670

31:MINAKSHI DAS
ROLL NO. 0000132

32:ANAMIKA DEKA
ROLL NO. 0000401

33:JAYA KALITA
ROLL NO. 0000980

34:SAMAINA BRAHMA
ROLL NO. 0001214

35:NGI CHENG WEINGKEN
ROLL NO. 0000090

36:MOHENDRA MOHAN MILI

ROLL NO. 0000789

37:UMALIU RONGMEI

ROLL NO. 0001315

RESPONDENT NOS 6 TO 37 ARE REPRESENTED BY THE STANDING

COUNSEL

APSC

Advocate for : MR. P KATAKEY

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 36 ORS

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 02-04-2026

Heard Mr. S.P. Das, learned counsel for the writ petitioners. Also heard Ms. M. Bhattacharjee, learned Addl. Sr. Govt. Advocate, Assam appearing for the respondent Nos, 1, 2, 4 & 5 and Ms. P. Sharma, learned standing counsel, APSC appearing for the respondent No. 3.

2. The above noted writ petitions, instituted by the same set of petitioners, raising inter-related issues, basing on the same set of facts, as consented to by the learned counsel for the parties, were taken up for hearing analogously and are being disposed of vide this common order.

3. In W.P.(C) No. 6448/2017, the petitioners have presented a challenge to a select list dated 17-10-2017, published by the Assam Public Service Commission (APSC), in terms of a selection held for recruitment against 32 (thirty two) vacant posts of Junior Engineer (Civil) in the Fisheries Department, in pursuance to an advertisement dated 02-04-2015. In W.P.(C)

No. 4342/2018, the petitioners have prayed for their absorption against 09 (nine) vacant posts of Junior Engineer (Civil) available in the Fisheries Department. In both the above noted writ petitions the petitioners have also prayed for the regularization of their services.

4. The petitioners, herein, who were earlier engaged as District Engineering Consultant (Fisheries), in the Assam Agriculture Competitiveness Project, aided by the World Bank, had submitted their respective applications in pursuance to the advertisement dated 02-04-2015, issued by the APSC for recruitment against 32 (thirty two) vacant posts of Junior Engineer (Civil) in the Fisheries Department. The petitioners having found that they were beyond the maximum age limit as mandated in the said advertisement, for applying against the post of Junior Engineer (Civil) in the Fisheries Department, had approached this Court by way of instituting a writ petition being W.P.(C) No. 3750/2015, praying for relaxation of their overage. A coordinate Bench of this Court vide judgment and order dated 04-09-2015, on considering the submissions advanced in the matter by the parties to the proceeding, proceeded to dispose of the said writ petition, requiring the respondents to consider the cases of each of the petitioners for relaxation of their respective overage, on their individual merit. It is seen that in pursuance to the said direction, the respondents had proceeded to condone the overage of the petitioners, herein. The petitioners at that stage had also instituted a writ petition being W.P.(C) No. 8026/2015, praying for appointment against the post as advertised vide advertisement dated 02-04-2015, by extending to them weightage for their services rendered by them as District Engineering Consultant (Fisheries). A coordinate Bench of this Court vide order dated 22-05-2017, proceeded to dispose of the said writ petition by observing that the respondent authorities shall abide by the terms of reference as provided in the advertisement to the effect that a preference will be given to those candidates having

experience in execution/ supervision of civil works under the Fisheries Department. However, the coordinate Bench vide the said order also stipulated that such preference can only be availed by the writ petitioners and those who are alike, if they are successful in the written examination to be conducted. However, the later portion of the observation as made by the coordinate Bench of this Court by the said order, on a review application being Review Petition No. 115/2017, being instituted by the petitioners, came to be recalled vide order dated 28-08-2017. Thereafter, the screening examination having been held, the results, thereof, were declared on 26-09-2017. Thereafter, on conclusion of the viva-voce segment of the selection process, the APSC authorities published a select list dated 17-10-2017. The petitioners being aggrieved had instituted W.P.(C) No. 6448/2017 assailing the select list along with the selection held in the matter. The petitioners in W.P.(C) No. 6448/2017, on coming to learn about existence of 09 (nine) vacant post of Junior Engineer (Civil) in the Fisheries Department, have again instituted W.P.(C) No. 4342/2018, praying for their absorption against the same by considering the services rendered by them earlier as District Engineering Consultant (Fisheries).

5. Mr. S.P. Das, learned counsel for the petitioner as the outset has submitted that the although a prayer for regularization is made in the above noted writ petitions, he would not press the said prayer, inasmuch as, a similar prayer is also made in W.P.(C) No. 4342/2018, which is pending disposal before this Court. He submits that he would only press the challenge to the select list published on 27-09-2017 and for a direction for absorption of the petitioners against the vacant post of Junior Engineer (Civil) available in the Fisheries Department.

6. Mr. Das by referring to the advertisement dated 02-04-2015, has submitted that in the

said advertisement a provision was incorporated towards grant of preference to those candidates having experience in execution/ supervision in civil works under the Fisheries Department. He submits that the petitioner having worked w.e.f. 2007 to 2015 as District Engineering Consultant (Fisheries), the preference clause as incorporated in the said advertisement, stood attracted to their respective cases and accordingly, the same was to be reckoned by the APSC authorities while conducting such selection. He submits that the coordinate Bench vide order dated 22-05-2017, passed in W.P.(C) No. 8026/2015, had also mandated that the respondent authorities shall abide by the terms of reference provided in the advertisement to the effect that preference will be given to those candidates who are having experience in execution/ supervision in civil works under the Fisheries Department. Mr. Das submits that for the purpose of giving full effect to the said preferential clause to the candidate to whom the same stood attracted, the candidate concerned must be permitted to take part in every stage of the selection process. He submits that the APSC authorities in view of the said preference clause being incorporated in the advertisement ought not to have excluded the petitioners from the purview of the selection process, on they not achieving the cutoff marks in the screening test. He submits that the petitioners were required to be permitted to participate in the selection process further and after the completion of the viva-voce segment of the selection process, it would have been permissible for the respondent authorities to exclude the petitioners from the select list, in the event it was found that the marks scored by them in the selection process was not equal to the marks so secured by the candidates who were now incorporated in the final select list. Accordingly, he submits that the exclusion of the petitioners after the stage of screening examination had caused prejudice to their interest and the same was also in violation of the stipulation with regard to grant of

preference, as made in the advertisement dated 02-04-2015. Mr. Das by referring to a RTI reply received, has submitted that there being still 09 (nine) vacant posts of Junior Engineer (Civil) available in the Fishery Department, the cases of the petitioners can be directed to be considered for appointment against it, by reckoning the services rendered by them earlier as District Engineering Consultant (Fisheries).

7. In support of his submissions Mr. Das has relied upon the following decisions of the Hon'ble Supreme Court:

(a) ***Govt. of Andhra Pradesh Vs. P. Dilip Kr. & Anr.*** reported in ***(1993) 2 SCC 310.***

(b) ***Secretary, AP Public Service Commission Vs. Y.V.V.R. Srinivasulu & Ors.*** reported in ***(2003) 5 SCC 341.***

(c) ***Secretary, AP Public Service Commission Vs. B. Swapna & Ors.*** reported in ***(2005) 4 SCC 154.***

(d) ***State of UP & Anr. Vs. Om Prakash & Ors.*** reported in ***(2006) 6 SCC 474.***

(e) ***Surinder Singh Vs. UoI & Ors.*** reported in ***(2007) 11 SCC 599.***

8. Mr. Das has further relied upon a decision of this Court in the case of ***The GB Asom Jyoti Jr. College Vs. Indira Devi & Ors.*** reported in ***(2016) 4 GauLR 572.***

9. In the above premises, Mr. Das, submits that the select list in question would mandate interference from this Court with a further direction to the respondents to redo the selection process afresh and permit the petitioners, herein, to participate in the viva-voce segment of the selection process and thereafter, to publish the select list.

10. Per contra, Ms. M. Bhattacharjee, learned Addl. Sr. Govt. Advocate, Assam, has submitted that the department had only proceeded to effect appointment against the

advertised post basing on the select list as furnished by the APSC authorities upon conclusion of the selection process held in pursuance to the advertisement dated 02-04-2015. She further submits that the appointments against the advertised post was so effected, strictly in terms of the select list prepared by APSC.

11. Ms. P. Sharma, learned standing counsel, APSC, has submitted that in pursuance to the advertisement dated 02-04-2015, the petitioners being found to satisfy the eligibility criteria set out, therein, were issued with call letters requiring them to appear in the written test/ screening test. The said written test/ screening test was held on 04-06-2017. Thereafter, the results of the said written examination/ screening test was declared on 26-09-2017. She submits that the APSC authorities had determined cutoff marks for the various categories of candidates appearing in the said selection process and the said cutoff mark was further so determined in relation to male/ female candidates for each of the categories, involved. She further submits that the petitioners, who are all male candidates belonging to General/ OBC/ MOBC community, for whom the cutoff marks was determined as 60 (sixty) [for General Community-male] and 52 (fifty two) [for OBC/ MOBC – male], had secured marks lower than the cutoff marks. Accordingly, the names of the petitioners were not shortlisted for the viva-voce segment of the selection process, which was scheduled to be held on 04-06-2017. She submits that the names of the candidates who had secured marks above the cutoff marks, were included in a list published vide notification dated 26-09-2017 for appearing in the viva-voce segment of the selection process.

12. Ms. P. Sharma, learned standing counsel, APSC, further submits that in view of the stipulation as contained in the advertisement dated 02-04-2015 that “preference would be given to those candidates having experience in execution/ supervision of civil works under

Fisheries Department”, the selection process involving a written examination and a viva-voce, the said preference would be mandated to be so applied only in respect of candidates who have succeeded in both the segments of the selection process. She submits that the said preference would be mandated to be considered while preparing merit list and in the event, a candidate who is entitled to the said preference is found to have secured equal marks with another candidate, who is not entitled to be extended with the said preference, applying the said preferential qualification, a candidate entitled to the said preference would be included in the select list. She submits that the petitioners, herein, having not cleared the written examination, there would arise no occasion for applying the said preferential qualification in their respective cases.

13. The learned standing counsel, APSC further submits that in the event the contention of the petitioners that they being entitled to the preferential qualification set out in the advertisement dated 02-04-2015, must be permitted to appear in both the segments of the selection process, even if they don't achieve the cut-off marks as prescribed for the written examination, is to be accepted, the same would render the selection process nugatory and the preferential qualification would have the effect of granting placement of such candidates like the petitioner, covered by the preferential qualification, in the select list, without having their merit assessed in the selection process. She submits that such a situation was not envisaged while setting out the preferential qualification in the advertisement in question.

14. In the above premises, Ms. P. Sharma, learned standing counsel, APSC submits that the claims of the petitioners in the present writ petition would not mandate an acceptance and accordingly, the writ petition would be called upon to be dismissed.

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

16. The facts noticed, hereinabove, are not in dispute and accordingly, the same are not reiterated. It is to be noted that the petitioners, herein, in pursuance to the advertisement dated 02-04-2015, had submitted their respective applications for recruitment against the post of Junior Engineer (Civil) under the Fisheries Department. In the said advertisement a stipulation to the following effect was made;

“Preference will be given to those candidates having experience in executive/ supervision of civil works under Fishery Department”,

17. The petitioners by projecting that they had rendered service as District Engineering Consultants, have claimed that they are entitled to be extended that preference, in terms of the stipulation made in the advertisement. The petitioners, upon condonation of their respective overages were allowed to participate in the written examination held in the matter. On the results of the said written examination being published, the names of the petitioners, herein, did not find mention in the panel so published by the APSC authorities. The petitioners were found to have secured marks lower than the cut-off marks prescribed in the said selection process by the APSC authorities. The cut-off marks for the screening test for the post of Junior Engineer (Civil) under the Fisheries Department, Govt. of Assam for the General (Open Category), OBC/ MOBC was as follows:

<i>Category</i>	<i>Cut-off marks</i>	
<i>Open Category</i>	<i>Male</i>	<i>60</i>
	<i>Female</i>	<i>52</i>

<i>OBC/ MOBC</i>	<i>Male</i>	<i>52</i>
	<i>Female</i>	<i>43</i>

The petitioners in the written examination had secured marks as follows:-

<i>Sl. No.</i>	<i>Roll No.</i>	<i>Name</i>	<i>Caste</i>	<i>Gender</i>	<i>Marks obtained</i>
<i>1.</i>	<i>0001407</i>	<i>Rup Kumar Nath</i>	<i>OBC</i>	<i>Male</i>	<i>31</i>
<i>2.</i>	<i>0001135</i>	<i>Rajibul Islam</i>	<i>MOBC</i>	<i>Male</i>	<i>33</i>
<i>3.</i>	<i>0001144</i>	<i>Ruhini Kumar Nath</i>	<i>OBC</i>	<i>Male</i>	<i>43</i>
<i>4.</i>	<i>0001287</i>	<i>Tarun Bora</i>	<i>OBC</i>	<i>Male</i>	<i>37</i>
<i>5.</i>	<i>0001310</i>	<i>Utpal Chakraborty</i>	<i>General</i>	<i>Male</i>	<i>43</i>
<i>6.</i>	<i>0001323</i>	<i>Ajit Rai</i>	<i>OBC</i>	<i>Male</i>	<i>31</i>
<i>7.</i>	<i>0001288</i>	<i>Rahul Nath</i>	<i>OBC</i>	<i>Male</i>	<i>13</i>

18. Accordingly, the petitioners in the written examination have admittedly secured marks lower than the marks prescribed for the category against which they had submitted their applications. After conclusion of viva-voce segment of the selection process, the APSC authorities published the final select list on 17-10-2017 and the said select list was implemented by the Government by appointing candidates so selected by the APSC.

19. The learned counsel for the petitioners in the present writ petitions has contended that given the preferential qualification set out in the advertisement, candidates fulfilling the said

preferential qualification have to be considered as a separate class in the selection process and was required to be permitted to take part in all the segments of the selection process so as to give full effect to the said preferential qualification. It is submitted by the learned counsel for the petitioner that exclusion of the petitioners, who possessed the preferential qualification, at the stage of the written examination, would render the said preferential qualification nugatory. It is a settled position of law that a preferential qualification set out in a recruitment process, wherein recruitment is to be made on the basis of merit performance involving competition, such preferential qualification is only an additional factor in the process of selection. The possession of the preferential qualification by a candidate cannot be construed to mean that such candidate would be put whole lot ahead of others, de hors his/her intrinsic worth or proven *inter-se* merit or suitability, duly assessed by the competent authority in the selection so held. Preference in the context of all such competitive scheme of selection would only mean that other things qualitatively and quantitatively being equal, those satisfying the preferential qualification would have to be preferred. Prescription of a preferential qualification in a process of recruitment, cannot be construed to have the effect of eliminating from the process of recruitment, candidates not possessing such preferential qualification, inasmuch as, the same would prevent an effective and comparative consideration on merits. If the interpretation as advanced by the petitioners in the present proceeding is to be accepted, the same would result in an *en bloc* precedence being granted in favour of those like the petitioners, who possess the preferential qualification, irrespective of their respective merits and demerits. The Hon'ble Supreme Court in the case of ***Secretary, A.P. Public Service Commission Vs. Y.V.V.R. Srinivasulu & Ors.***, reported in **(2003) 5 SCC 341**, in this connection had held as follows:-

“10.The word 'preference' in our view is capable of different shades of meaning taking colour from the context, purpose and object of its use under the scheme of things envisaged. Hence, it is to be construed not in an isolated or detached manner, ascribing a meaning of universal import, for all contingencies capable of an invariable application. The procedure for selection in the case involve, a qualifying test, a written examination and oral test or interview and the final list of selection has to be on the basis of the marks obtained in them. The suitability and all round merit, if had to be adjudged in that manner only what justification could there be for overriding all these merely because, a particular candidate is in possession of an additional qualification on the basis of which, a preference has also been envisaged. The rules do not provide for separate classification of those candidates or apply different norms of selection for them. The 'preference' envisaged in the rules, in our view, under the scheme of things and contextually also cannot mean, an absolute en bloc preference akin to reservation or separate and distinct method of selection for them alone. A mere rule of preference meant to give weightage to the additional qualification cannot be enforced as a rule of reservation or rule of complete precedence. Such a construction would not only undermine the scheme of selection envisaged through Public Service Commission, on the basis of merit performance but also would work great hardship and injustice to those who possess the required minimum educational qualification with which they are entitled to compete with those possessing additional qualification too, and demonstrate their superiority, merit wise and their suitability for the post. It is not to be viewed as a preferential right conferred even for taking up their claims for consideration. On the other hand, the preference envisaged has to be given only when the claims of all candidates who are eligible are taken for consideration and when anyone or more of them are found equally positioned, by using the additional qualification as a tilting factor, in their favour vis-a-vis others in the matter of actual selection.”

20. In view of the above decision of the Hon'ble Supreme Court in the case of **YVVR Srinivasulu (Supra)**, in the event the contention of the petitioners is to be accepted, it would amount to first including the petitioners in the select list, de hors their *inter-se* merit performance, only by reckoning the preferential qualification possessed by them and thereafter to consider separately those who does not possess such preferential qualification. In a selection process like the one in the present case, *inter-se* merit performance should be the decisive factor for actual selection for appointment. Relief cannot be granted to the petitioners for the mere asking only on the basis of the fact that they possessed the

preferential qualification set out in the advertisement irrespective of their individual performance in the selection process. The decision of the Hon'ble Supreme Court in the case of **YVVR Srinivasulu (Supra)** was noticed with approval in a subsequent decision of the Hon'ble Supreme Court in the case of **State of UP & Anr. Vs. Om Prakash & Ors.** reported in **(2006) 6 SCC 474**. The Hon'ble Supreme Court in the said decision has observed as follows:-

“16. This Court has consistently held that when selection is made on the basis of merit assessed through the competitive examination and interview preference to additional qualification would mean other things being quantitatively and quantitatively equal, those having additional qualification would be preferred. It does not mean en bloc preference irrespective of inter se merit and suitability.”

21. Accordingly, in the light of the decisions of the Hon'ble Supreme Court noticed, hereinabove, the preferential qualification as set out in the advertisement dated 02-04-2015, would be permissible to be so applied only on conclusion of the selection process and while preparing the select list and in such a situation if it is found that person covered by the said preferential qualification and another person not covered by the same have scored equal marks, then reckoning the preferential qualification, the balance would tilt in favour of the person covered by it and he would be so included in the select list. Accordingly, only the basis of possessing the preferential qualification as set out in the advertisement, it would not be permissible to direct the respondent authority to proceed to appoint the petitioners, herein, *en bloc* dehors the merit obtained by them in the selection process, against the post of Junior Engineer (Civil) advertised vide the advertisement dated 02-04-2015.

22. Having drawn said conclusion, this Court would now examine the claim of the petitioner that it was not permissible for the APSC authorities to exclude the petitioners from

the purview of the selection process at the stage of the written examination, on they not obtaining the requisite cut-off marks as prescribed. The said issue is no longer *res integra* and has been laid to rest by the decision of the Hon'ble Supreme Court in the case of **Govt. of Andhra Pradesh & Anr. Vs. P. Dilip Kumar & Anr.** reported in (1993) 2 SCC 310. The operative part of the same is extracted hereinbelow:-

“15. The second decision to which our attention was invited is a judgment of a learned Single Judge of the Gujarat High Court in Gujarat State Sales Tax Non-Gazetted Employees' Association v. State of Gujarat. In that case 120 posts of Sales Tax Inspectors were required to be filled in by direct selection. An advertisement was issued in the newspapers and as many as 15,000 candidates applied in response thereto. This necessitated screening of the candidates at the threshold. It was found that more than 1000 applicants were holding first class degrees in different faculties of recognised Universities; 580 of them were first class Commerce graduates, 101 first class Arts graduates and about 500 first class Science graduates. Having regard to the number of vacancies the field of choice was restricted to first class graduates only and it was decided not to call for interview a second class or third class graduate including graduates having Commerce degree with Accountancy as a subject. It was this decision which was put in issue before the learned Single Judge by candidates who were eliminated at the threshold from consideration. The relevant rule provided that the appointment to the post of Sales Tax Inspectors shall be made either (a) by direct selection or (b) by promotion. Insofar as direct selection was concerned, the educational qualification required was stated to be a degree of a recognised University. The proviso laid down as under:

"Provided that preference shall be given to a candidate who possesses the degree of B. Com with Accountancy or Chartered Accountants, or possesses a qualification recognised to be equivalent to such examination by the Government of Gujarat."

In the context of this preference rule it was observed in para 7 of the judgment as under:

"To hold that the rule of preference was enacted to give to Commerce graduates with Accountancy or to candidates having other prescribed qualifications an absolute preference over the graduates of other faculties would be to denude the substantive provision of much of its force and effect and to covert the rule of preference into a rule of reservation thereby

obliterating altogether the right of other candidates possessing degree of recognised Universities in various other faculties to be considered for the post."

It is true that notwithstanding the preference rule it is always open to the recruiting agency to prescribe a minimum eligibility qualification with a view to demarcating and narrowing down the field of choice with the ultimate objective of permitting candidates with higher qualifications to enter the zone of consideration. It was, therefore, held that screening a candidate out of consideration at the threshold of the process of selection is neither illegal nor unconstitutional if a legitimate field demarcating the choice by reference to some rationale formula is carved out. Thus the challenge based on Articles 14/16 of the Constitution was repelled. We are in agreement with the ratio of this decision and that is enough to negative the claim of candidates who had preferred O.A. Nos. 1736 to 1739 of 1990 and who were not called for interview on their failing to secure the minimum qualifying marks in the written test.

16. In the present case also the zone of consideration was narrowed by eliminating candidates who did not succeed in the qualifying test and out of those who succeeded in the qualifying test and secured the minimum marks after interview were considered and thereafter in the process of selection the preference rule was applied by first choosing the post-graduates and thereafter the graduates....."

23. Applying the decision of the Hon'ble Supreme Court in the case of **P. Dilip Kumar (Supra)**, to the facts of the present case, this Court finds that the APSC authorities had not committed any error in excluding the petitioners from the selection process at the stage of the written examination, on they being found to have not secured the cut-off marks as determined in the matter. The preferential qualification as set out in the advertisement admittedly had no application at the stage of the written examination and the same was mandated to be applied in respect of candidates, possessing such preferential qualification, on they succeeding in all the stages of the selection process. Accordingly, this Court does not find any prejudice being caused to the petitioner, in the matter, as their exclusion from the

selection process was on account of their below par performance in the written examination.

24. This Court would now consider the claim made by the petitioners, for a direction upon the respondent authorities to absorb/ appoint the petitioners against the 09 (nine) vacant posts of Junior Engineer (Civil) available in the Fisheries Department. The said prayer has been made on the basis of RTI reply received in the month of January, 2018. The post of Junior Engineer (Civil) in the Fisheries Department is mandated to be filled up by way of a process of recruitment made by the APSC authorities. The petitioners by virtue of the contractual services rendered by them earlier as District Engineering Consultant (Fisheries) under a project w.e.f. 2006 to 2015, cannot stake a claim for recruitment against the post of Junior Engineer (Civil) in the Fisheries Department, dehors the process of recruitment mandated for the said post. This Court having also rejected the challenge presented by the petitioners to the select list dated 17-10-2017, the petitioners under no circumstances can claim absorption/ appointment against the available vacant posts of Junior Engineer (Civil) in the Fisheries Department. The vacant post of Junior Engineer (Civil) as available would be required to be filled up, as and when decided by the competent authority, by way of a regular process of recruitment.

25. For the reasons noticed, hereinabove, the writ petitions being W.P.(C) No. 6448/2017 and W.P.(C) No. 4342/2018 are held to be devoid of any merit and accordingly, the same stand dismissed. However, there would be no order as to cost.

JUDGE

Comparing Assistant