

GAHC010120732022



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

**Case No. : WP(C)/4189/2022**

RAJESH KUMAR DAS  
S/O ASHUTOSH DAS, R/O VILL. AMBAGAN, P.O. KHALIPUR, DIST. DHUBRI,  
ASSAM-783325

VERSUS

THE STATE OF ASSAM AND 4 ORS.  
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM  
PANCHAYAT AND RURAL DEVELOPMENT DEPTT. DISPUR, GUWAHATI-6

2:THE COMMISSIONER AND SECRETARY  
PANCHAYAT AND RURAL DEVELOPMENT DEPTT. DISPUR GUWAHATI-6

3:THE ASSAM PUBLIC SERVICE COMMISSION  
REP. BY ITS CHAIRMAN  
JAWAHARNAGAR  
KHANAPARA  
GUWAHATI  
ASSAM-781022

4:THE UNDER SECRETARY  
ASSAM PUBLIC SERVICE COMMISSION  
JAWAHARNAGAR  
KHANAPARA  
GUWAHATI-781022

5:THE PRINCIPAL CONTROLLER OF EXAMINATION  
ASSAM PUBLIC SERVICE COMMISSION  
JAWAHARNAGAR  
KHANAPARA  
GUWAHATI-78102

**Advocate for the Petitioner** : MR. K M MAHANTA

**Advocate for the Respondent** : SC, P AND R.D.

**BEFORE**  
**HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

**ORDER**

**Date : 24.06.2022**

Heard Mr. K.K. Mahanta, learned senior counsel for the petitioner and Mr. T.J. Mahanta, learned counsel for the respondents in the Assam Public Service Commission. Also heard Mr. S. Dutta, learned counsel for the Panchayat & Rural Development Department.

An advertisement was issued by the Assam Public Service Commission (APSC) dated 24.06.2020, amongst other, for 344 posts of Junior Engineer (Civil) under the Panchayat & Rural Development Department. The advertisement itself provides that after applying the law of reservation, the total number of posts for SC category would be 13 and thereafter, applying horizontal reservation of 30% for women, it was provided that out of 13, 4 would be for SC women. But the advertisement also gives an indication that appropriate reservation for Persons with Disabilities would also be provided and accordingly, the candidates who intend to participate in the selection under the category of Persons with Disabilities were required to submit their necessary testimonials. But no indication had been given in the advertisement as to how the reservation for the Persons with Disabilities would be implemented. The law provides that the reservation of 4 persons for Persons with Disabilities would be a

horizontal reservation. One form of horizontal reservation had already been applied against the 13 posts for SC category by giving effect to 30% reservation for the women. It is stated that as per the select list, 2 further posts in the SC category had been provided for Persons with Disabilities i.e. over and above, 4 posts are already reserved for women with disabilities.

In other words, prima facie it has to be understood that repeated layers of reservation had been brought in for the 2 different categories i.e. Women and Persons with Disabilities. Prima facie it appears that when horizontal reservation is applied in layers one over the other for different categories, it again would be in the nature of a vertical reservation rather than remaining a horizontal reservation. Perhaps ideally the horizontal reservation would have been made applicable in a manner that for the given category of SC at the first instance, apply horizontal reservation for women and arrive that the numbers of posts to be reserved. Thereafter, if further horizontal reservation is required to be brought in for the Persons with Disabilities, another application of horizontal reservation of 4 % for Persons with Disabilities amongst the total number posts available for the SC category be made and thereafter, work it out as to which category would be entitled to how many posts after applying the multiple horizontal reservation. Prima facie it appears that requirement of law had not been duly followed in the calculation.

Considering the prima facie case, till the next returnable date for one post each in the SC category simpliciter, SC Persons with Disabilities and SC women be not filled up.

List on 26.06.2022 for further consideration.

On the next date, the respondents may provide the Court with the necessary material as to in what manner the aforesaid horizontal reservations had been made applicable. Depending on the material being produced, further consideration would be made as to the nature of the interim order that may be required to be continued with. We are deliberately not issuing notice in the matter and requiring the respondents to produce the records so as to arrive at the further prima facie satisfaction on the manner in which the law of reservation would have to be made applicable.

**JUDGE**

**Comparing Assistant**