

GAHC010122392023



2026:GAU-AS:336

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

Case No. : WP(C)/3286/2023

MRIDUL HAZARIKA AND 3 ORS.

S/O- MR. JOGEN HAZARIKA, VILLAGE NO.2 PITHAGURI, P.O. PITHAGURI,
P.S. BIHPURIA, DIST.- LAKHIMPUR, ASSAM, PIN- 784163

2: MD. NASIOR RAHMAN

S/O- MD. ASHOK ALI

VILL- MOURIPAM P.O. MANDIA

P.S. BARBHAG

DIST.- BARPETA

ASSAM

PIN- 781308

3: MRINAL MEDHI

S/O- LATE NARAYAN MEDHI

R/O- KUNDILNAGAR

BASISTHA CHARIALI

P.O. BASISTHA

DIST.- KAMRUP (M)

ASSAM

GHY-29

4: ZAKIR HUSSAIN

S/O- LATE NURUL ISLAM

VILL- GHILAZARI

P.O. GHILAZARI

P.S. HOWLY

DIST.- BARPETA

ASSAM

PIN- 78131

VERSUS

THE STATE OF ASSAM AND 8 ORS.

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, HEALTH AND

FAMILY WELFARE DEPTT., DISPUR, GHY-06

2:THE DIRECTOR
HEALTH SERVICE
HENGHERABARI
GHY-5

3:THE DIRECTOR OF MEDICAL EDUCATION
ASSAM
SIXMILE
KHANAPARA
GUWAHATI
KAMRUP (M)
ASSAM
GHY-06

4:THE PRINCIPAL-CUM-CHIEF SUPERINTENDENT
TEZPUR MEDICAL COLLEGE AND HOSPITAL
TEZPUR
ASSAM
PIN- 784153

5:MRINAL KR. SARMA
SELECTED FOR THE POST OF LABORATORY TECHNICIAN
TEZPUR MEDICAL COLLEGE AND HOSPITAL VIDE NOTICE PUBLISHED
ON 31.05.2023 IN THE ASOMIYA PRATIDIN
AN ASSAMESE DAILY
BY THE PRINCIPAL-CUM-CHIEF SUPERINTENDENT
TEZPUR MEDICAL COLLEGE AND HOSPITAL
TEZPUR
ASSAM C/O- PRINCIPAL-CUM-CHIEF SUPERINTENDENT
TEZPUR MEDICAL COLLEGE AND HOSPITAL
TEZPUR
ASSAM
PIN- 784153

6:JOGAMAYA HAZARIKA
SELECTED FOR THE POST OF LABORATORY TECHNICIAN
TEZPUR MEDICAL COLLEGE AND HOSPITAL VIDE NOTICE PUBLISHED
ON 31.05.2023 IN THE ASOMIYA PRATIDIN
AN ASSAMESE DAILY
BY THE PRINCIPAL-CUM-CHIEF SUPERINTENDENT
TEZPUR MEDICAL COLLEGE AND HOSPITAL
TEZPUR
ASSAM C/O- PRINCIPAL-CUM-CHIEF SUPERINTENDENT
TEZPUR MEDICAL COLLEGE AND HOSPITAL
TEZPUR
ASSAM

PIN- 784153

7:KHAGEN BARMAN
SELECTED FOR THE POST OF LABORATORY TECHNICIAN
TEZPUR MEDICAL COLLEGE AND HOSPITAL VIDE NOTICE PUBLISHED
ON 31.05.2023 IN THE ASOMIYA PRATIDIN
AN ASSAMESE DAILY
BY THE PRINCIPAL-CUM-CHIEF SUPERINTENDENT
TEZPUR MEDICAL COLLEGE AND HOSPITAL
TEZPUR
ASSAM C/O- PRINCIPAL-CUM-CHIEF SUPERINTENDENT
TEZPUR MEDICAL COLLEGE AND HOSPITAL
TEZPUR
ASSAM
PIN- 784153

8:KABITA BORA
SELECTED FOR THE POST OF LABORATORY TECHNICIAN
TEZPUR MEDICAL COLLEGE AND HOSPITAL VIDE NOTICE PUBLISHED
ON 31.05.2023 IN THE ASOMIYA PRATIDIN
AN ASSAMESE DAILY
BY THE PRINCIPAL-CUM-CHIEF SUPERINTENDENT
TEZPUR MEDICAL COLLEGE AND HOSPITAL
TEZPUR
ASSAM C/O- PRINCIPAL-CUM-CHIEF SUPERINTENDENT
TEZPUR MEDICAL COLLEGE AND HOSPITAL
TEZPUR
ASSAM
PIN- 784153

9:SAMARJIT ROY
SELECTED FOR THE POST OF LABORATORY TECHNICIAN
TEZPUR MEDICAL COLLEGE AND HOSPITAL VIDE NOTICE PUBLISHED
ON 31.05.2023 IN THE ASOMIYA PRATIDIN
AN ASSAMESE DAILY
BY THE PRINCIPAL-CUM-CHIEF SUPERINTENDENT
TEZPUR MEDICAL COLLEGE AND HOSPITAL
TEZPUR
ASSAM C/O- PRINCIPAL-CUM-CHIEF SUPERINTENDENT
TEZPUR MEDICAL COLLEGE AND HOSPITAL
TEZPUR
ASSAM
PIN- 78415

Advocate for the Petitioner : MR. I H LASKAR, MD. S ALOM,MR. M S ALAM,MR. P K DEKA

Advocate for the Respondent : GA, ASSAM, SC, HEALTH

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

JUDGMENT & ORDER (CAV)

Date : 06-01-2026

Heard Mr. K.N. Choudhury, learned Sr. counsel assisted by Mr. P.K. Deka, learned counsel for the petitioners. Also heard Mr. B. Gogoi, learned Addl. AG, Assam appearing for the State.

2. The writ petitioner in the present petition has presented a challenge to the selection of the respondent Nos. 5 to 9 for appointment as Laboratory Technician against the vacant post advertised vide advertisement dated 19-02-2011.

3. The petitioner in the present proceeding had, in pursuance to the advertisement dated 19-02-2011 issued by the Principal, Tezpur Medical College and Hospital inviting applications for recruitment against 48 (forty eight) numbers of vacant posts of Laboratory Technician in his establishment, had submitted their respective candidature for the said post. The applications submitted by the petitioners being found to be confirming to the required eligibility criteria, they were called for appearing in an interview held for the purpose. On conclusion of the selection process, a select list came to be published wherein the names of the petitioners did not find mention. Accordingly, 44 (forty four) candidates whose name figured in the select list, came to be appointed against the advertised vacant posts of Laboratory Technician. The petitioners, herein, having come to learn that amongst the appointed persons there were many candidates who did not fulfill the eligibility criteria as set out in the advertisement dated 19-02-2011, assailed the

appointment and selection of the ineligible candidates by way of instituting a writ petition before this Court being W.P.(C) No. 6279/2018. The Coordinate Bench of this Court upon examining the contention raised by the parties to the proceeding, proceeded vide judgment and order dated 27-09-2022 to dispose of the said writ petition being W.P.(C) No. 6279/2018 interfering with the appointment of the private respondents therein, who were found to be ineligible for such selection and appointment as Laboratory Technician in pursuance to the advertisement dated 19-02-2011. The Coordinate Bench further directed the respondent authorities to fill up the vacancies now arising by recasting the select list in question, on the basis of marks obtained by the candidates in the selection process and to appoint those candidates who are found to be eligible on the basis of the qualification as per the advertisement dated 19-02-2011, including the petitioners, herein. The judgment and order dated 27-09-2022 was assailed by the candidates whose appointments now came to be interfered with before the Division Bench of this Court by way of instituting a writ appeal being W.A. No. 345/2022. The said writ appeal was disposed of vide order dated 01-11-2022 permitting the appellants, therein, to withdraw the said writ appeal to approach the learned Single Judge by way of filing a review application. The review application being Review Petition No. 168/2022 was instituted, however, the same was dismissed vide judgment and order dated 25-11-2022. The candidates whose selection was now interfered with, assailed the judgment and order dated 27-09-2022 as well as the review order dated 25-11-2022 by way of instituting a writ appeal being W.A. No. 23/2023. The said writ appeal upon consideration was dismissed by the Division Bench of this Court vide order dated 28-02-2023.

Upon conclusion of the said proceeding, the Principal-cum-Chief Superintendent, Tezpur Medical College and Hospital, Tezpur after recasting of the select list, proceeded to publish a select list of 05 (five) candidates, i.e. the respondent Nos. 5 to 9 in the present proceeding who were found to be provisionally selected for appointment against the 05 (five) vacancies arising in the matter. The respondent No. 9, herein, who was placed at Sl. No. 5 of the select list published vide the notice dated 31-05-2023, however, did not join his services. The respondent No. 8 who was placed at Sl. No. 4 of the said select list although had appeared for joining, on verification of her educational qualification, she being found to be ineligible for appointment against the post of Laboratory Technician she was also not permitted to join. The respondent Nos. 5, 6 & 7 were accordingly appointed as Laboratory Technician.

Being aggrieved, the petitioners have instituted the present proceeding.

4. Mr. K.N. Choudhury, learned Sr. counsel for the petitioners has submitted that the respondents in the present proceeding had projected that the respondent Nos. 5 to 9 were selected purely on the basis of the marks obtained by them in the original selection process and also by application of the reservation policy of the State Government. Mr. Choudhury has submitted that the advertisement dated 19-02-2011 had not set out there-in any procedure for selection against the post of Laboratory Technician so put up for recruitment. Mr. Choudhury further submits that the respondent in the present proceeding has projected that the selection was made by way of viva-voce examination, under two heads, viz. General Knowledge and General Aptitude Test consisting of 20 (twenty) marks each. Mr. Choudhury has questioned the manner in which the Selection

Committee had conducted the selection process. Mr. Choudhury submits that the records as produced in the matter would reveal that no selection in accordance with law was conducted by the respondent authority before publishing the initial select list in the matter and accordingly, he submits that the shortlisting of the respondent Nos. 5 to 9 vide notice dated 31-05-2023 on recasting of the select list cannot be held to be so made on the basis of merit. Mr. Choudhury has submitted that given the nature of the selection that has been held in the matter, the same is found to be vitiated on account of non-application of a uniform standard of evaluation by the Selection Committee constituted in the matter and accordingly, he submits that the selection process stood vitiated and no appointment therefrom could have been effected against the vacant post of Laboratory Technician put up for recruitment. Mr. Choudhury by referring to the affidavit filed in the matter by the petitioners after having perused the records of the selection as produced by the respondent authorities and permitted to be so perused by this Court vide order dated 11-03-2025, has submitted that the petitioners have not found anything on record with regard to the constitution of the Selection Committee and also the procedure required to be followed by the Selection Committee. He further submits that the marks as set out in the selection for the various components is also not demonstrated to have been so done by an authority competent to earmark such marks for different components of the selection process. He further submits that there is nothing on record to demonstrate the constitution of more than one Selection Board, however, the petitioners have appeared before different Selection Boards in the matter. He submits that the tenor of the selection process reveals that the provision of Assam Laboratory Technician Service Rules, 2012 (in

short "the Rules of 2012") was factored in by the Selection Committee for conducting the selection in question. He submits that the said Rules having been so enacted after the issuance of the advertisement dated 19-02-2011, the same could not have form the basis of the selection process. In the above premises, Mr. Choudhury submits that the entire selection having stood vitiated on account of the fact that there was no determination made prior to the selection process with regard to the manner in which the same would be so conducted and the selection having been so conducted basing on the whims and caprices of the Selection Committee members, a fair selection cannot be said to have occasioned in the matter. He accordingly, submits that the selection in question would require interference by this Court with a further direction to conduct a fresh selection and to have the merit of the petitioners evaluated by setting down the said procedure to be followed by the Selection Committee for the purpose.

5. Per contra, Mr. B. Gogoi, learned Addl. AG, Assam by referring to the relief sought for in the present writ petition has submitted that the original selection process is not under challenge in the present proceeding. He further submits that in the earlier round of litigation also the petitioners had not challenged the selection procedure but had only questioned the eligibility of a few candidates who had appeared in the said selection process. In this connection he submits that in the earlier round of litigation the challenge was to the selection and appointment of the respondent Nos. 5 to 14, therein, with a further prayer to appoint the petitioners in place of private respondents Nos. 5 to 14, therein, by considering the petitioners merit of the work experience and age. Mr. Gogoi by referring to the affidavit filed in the matter by the Director of Medical Education, Assam

(respondent No. 3, herein) has submitted that the selected candidate, i.e. the respondent No. 5 to 9, herein, who were provisionally selected vide notice dated 31-05-2023 for appointment as Laboratory Technician upon recasting of the select list had secured higher marks in the selection than the petitioners. Mr. Gogoi has submitted that the respondent No. 9 although selected for appointment upon recasting of the select list had not reported for joining and accordingly, he was not issued with an appointment order. He further submits that the respondent No. 8 although shortlisted for the said selection process, however, on verification of her educational qualification certificate, the same being not found to be in conformity with the stipulation made in the advertisement dated 19-02-2011, she was also not permitted to join her services. He submits that the respondent No. 5, 6 & 7, however, on the basis of the marks scored by them in the original selection process, upon recasting of the select list having been found to be within the merit position for appointment by applying the principles of reservation, were issued with the appointment orders and are continuing in their respective services as on date.

6. Mr. Gogoi has further submitted that the selection process not being under challenge in the first round of litigation initiated by the petitioners, herein, and the same also not being under challenge in the present proceeding, the petitioners having participated in the selection process cannot now turn around and question the same and that too in the second proceeding instituted by them in the matter. In the above premises, Mr. Gogoi submits that the instant writ petition would mandate to be dismissed *in limine*.

7. I have heard the learned counsel for the parties and also perused the materials

available on record.

8. The facts noticed, hereinabove, are not in dispute. The petitioners, herein, had earlier approached this Court by way of instituting W.P.(C) No. 6279/2018 specifically challenging the selection and appointment of the respondent Nos. 5 to 14 as Laboratory Technician in the Tezpur Medical College & Hospital, Tezpur in pursuance to the advertisement dated 19-02-2011. The petitioners had also made a further prayer for their appointment against the post held by the said respondent Nos. 5 to 14. A Coordinate Bench of this Court on considering the issue involved in the matter proceeded to dispose of the said writ petition being W.P.(C) No. 6279/2018 vide judgment and order dated 27-09-2022. The Coordinate Bench of this Court had found on examination that most of the private respondents, therein, did not fulfill the eligibility criteria as set out in the advertisement dated 19-02-2011 and proceeded to interfere with the appointments effected in their respective cases. Having interfered with the appointment of the private respondents in the said writ petition who were found to be ineligible for appointment as Laboratory Technician, the Coordinate Bench of this Court had passed the following direction.

“31. Having decided the writ petition in the aforesaid manner, it is directed that the vacancies that have arisen and may arise shall be filled up by recasting the select list in question, on the basis of marks obtained by the candidates in the selection process and appoint those candidates who are found to be eligible on the basis of the qualification as per the advertisement dated 19.02.2011, Including the petitioners, except the petitioner Nos. 2 & 4 who have withdrawn their names from the present petition.”

9. A perusal of the said direction would reveal that this Court had required the

respondent authorities, to fill up the vacancies, now arising on account of interference made with the appointments effected in respect of ineligible persons against the post of Laboratory Technician, by recasting of the select list in question on the basis of the marks obtained by the candidates in the selection process. Such consideration was also directed to be extended in respect of the petitioners, herein. The challenge as presented to the judgment and order dated 27-09-2022 being negated by the Division Bench of this Court, it is seen that the respondent authorities had proceeded to recast the select list and after deleting, therefrom, the names of the persons found ineligible for such appointment, proceeded to incorporate, therein, the names of the respondent Nos. 5 to 9 in the present proceeding. The said re-casted select list was so published vide notice dated 31-05-2023. The names of the petitioners, however, did not find place in the select list in question. At this stage, it is to be noted that the respondent authorities by way of filing an affidavit had brought on record the marks secured in the original selection process by the petitioners, herein, as well as by the respondent Nos. 5 to 9. The marks so secured being relevant is extracted here-in-below:

Table- 1

<i>Sl. No.</i>	<i>Name of the selected candidates</i>	<i>Marks obtained</i>	<i>Category under which selected</i>
1.	Mrinal Kumar Sarma	32	UR
2.	Jogamaya Hazarika Borah	28	SC
3.	Khagen Bora	28.5	OBC
4.	Kabita Bora	27.5	OBC

5.	Samrat Roy	28.5	SC

Table-2

Sl. No.	Name of the petitioner	Marks obtained	Category
1.	Mridul Hazarika	19	UR
2.	Mrinal Medhi	22.5	UR
3.	Md. Nasior Rahman	22.5	UR
4.	Zakir Hussain	21	UR

A perusal of the marks so secured by the respondent Nos. 5 to 9 as well as the petitioners, herein, would reveal that the petitioners had scored much lower marks than that scored by the private respondents, herein, in the selection process. Accordingly, this Court is of the considered view that even on recasting of the select list, the petitioners by virtue of marks scored by them cannot be held to be placed within the merit position mandating appointment in their respective cases.

10. Having drawn the said conclusion, this Court would examine the contention raised by the petitioners' counsel that the selection process was vitiated inasmuch as the same was so conducted by only holding viva-voce examination in the matter. This Court at the outset would notice that the advertisement dated 19-02-2011 had not spelt out any procedure for holding the selection in question. Accordingly, it was open to the

respondent authorities including the Selection Committee as constituted in the matter to lay down the procedure for holding the selection in question.

11. The records of the selection has been produced by the learned counsel for the respondent for perusal by this Court. This Court on perusal of the records finds that there were two Committees constituted for conducting the interview process. Each of the two Committees consisted of two members each. One of the Committees so constituted was to undertake viva-voce examination of the candidates for the General Knowledge subject and the other was to evaluate the candidate on the basis of their General Aptitude. The marks scored by the candidates in the said two segments of the selection process, thereafter, were totalled and a select list was prepared. This Court finds that the Selection Committee had evaluated the candidates appearing before it and thereafter had assigned marks to each of them. There being no allegation of malafide raised against the members of the Selection Committee in the present writ petition, this Court is not required to examine the manner in which the marks were so allotted to the candidates appearing before the Selection Committee including the marks allotted to the petitioners, herein.

12. The petitioners in the present proceeding has raised objection with regard to the manner in which the said selection process was held, however, this Court finds that in the earlier round of litigation involved in the proceeding of W.P.(C) No. 6279/2018, no such plea was raised by the petitioners. It was to the knowledge of the petitioners that the said selection process was so conducted solely basing on the viva-voce examination of the candidates appearing in the selection. In the event the petitioners were of the view that the said procedure was not permissible to be applied for the selection in question, they

ought to have raised objection in this connection before this Court in the initial round of litigation. The Coordinate Bench of this Court having required the respondent authorities to fill up the vacant post becoming available on setting aside of the appointment of ineligible candidates, solely basing on the marks obtained by the candidates in the selection process, the petitioners now cannot assail such direction passed by the Coordinate Bench of this Court in the present proceeding. The petitioners have not assailed the direction passed by the Coordinate Bench of this Court vide judgment dated 27-09-2022 in W.P.(C) No. 6279/2018 and the same accordingly has attained the finality. This Court in the present proceeding, would not be in a position to sit over the said direction passed by the Coordinate Bench of this Court and hold that the selection process was not held in the manner prescribed. The petitioners, herein, having participated in the selection process, without protest, cannot now assail the very selection process and such challenge is held to be hit by the principles of acquiescence and waiver and the petitioners cannot be permitted to raise the said issue before this Court in the present proceeding. It is reiterated that the petitioners have not leveled any allegation of malafide against the members of the Selection Committee.

13. In view of the above discussions, this Court is of the considered view that in absence of any allegation of malafide, the petitioners, herein, having invoked the writ jurisdiction of this Court earlier and obtained only a direction for recasting of the select list and having permitted the said process to be taken to its logical conclusion, without bringing on record materials to demonstrate that the petitioners had secured more marks than the respondent Nos. 5 to 9, herein, the petitioners cannot be permitted to maintain

a fresh challenge to the very selection process on the plea of absence of a prescribed mode of selection.

14. Another aspect which is noticed by this Court in the present proceeding is that while the petitioners have questioned the very selection process, the candidates selected and appointed in pursuance to the original select list have not been arrayed as party respondents in the present proceedings. Accordingly, in absence of the selected candidates also, this Court would not be in a position to pass any order adverse to their interest.

15. For the reasons noticed, hereinabove, this Court is of the considered view that the challenge by the petitioners to the selection of the respondent Nos. 5 to 9 vide notice dated 31-05-2023 would not mandate any acceptance.

15. The writ petition is accordingly held to be devoid of any merit and the same stands dismissed. However, there would be no order as to cost.

JUDGE

Comparing Assistant