

GAHC010250502023



2026:GAU-AS:6270

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

Case No. : WP(C)/6465/2023

NEELIM PATHAK
S/O- BHABANANDA PATHAK, R/O- 14, MILAN PATH, CYCLE FACTORY,
KALAPAHAR, P.O. GOPINATH NAGAR, GUWAHATI-781016, DIST.
KAMRUP(M), ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, PUBLIC WORKS DEPARTMENT, DISPUR,
GUWAHATI-6.

2:THE ASSAM PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS CHAIRMAN
ASSAM PUBLIC SERVICE COMMISSION
JAWAHARNAGAR
KHANAPARA
GUWAHATI-22
DIST. KAMRUP(M)
ASSAM

3:THE CHAIRMAN
ASSAM PUBLIC SERVICE COMMISSION
JAWAHARNAGAR
KHANAPARA
GUWAHATI-22
DIST. KAMRUP(M)
ASSAM

4:THE SECRETARY
ASSAM PUBLIC SERVICE COMMISSION
JAWAHARNAGAR

KHANAPARA
GUWAHATI-22
DIST. KAMRUP(M)
ASSAM

5:THE DEPUTY SECRETARY
ASSAM PUBLIC SERVICE COMMISSION
JAWAHARNAGAR
KHANAPARA
GUWAHATI-22
DIST. KAMRUP(M)
ASSAM

6:THE PRINCIPAL CONTROLLER OF EXAMINATION
ASSAM PUBLIC SERVICE COMMISSION
JAWAHARNAGAR
KHANAPARA
GUWAHATI-22
DIST. KAMRUP(M)
ASSA

Advocate for the Petitioner : MR. P K ROYCHOUDHURY, MR. N G KUNDU, MS. P
UPAMANYU, MS. D R BASUMATARY

Advocate for the Respondent : SC, APSC, SC, PWD

Linked Case : WP(C)/6506/2023

ABU AHMED NURUL HASAN LASKAR
S/O- SHRI ABDUL HAQUE LASKAR

RESIDENT OF VILLAGE- BHATISANG JURAI

P.O.- KALIBARI BAZAR

P.S.- ALGAPUR

DISTRICT- HAILAKANDI

PIN- 788150
ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM

DISPUR
GUWAHATI-06.

2:THE ASSAM PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS CHAIRMAN

JAWAHARNAGAR
GUWAHATI-22.

3:THE SECRETARY
ASSAM PUBLIC SERVICE COMMISSION
JAWAHARNAGAR
GUWAHATI-22.

4:THE DEPUTY SECRETARY
ASSAM PUBLIC SERVICE COMMISSION
JAWAHARNAGAR
GUWAHATI-22.

5:THE PRINCIPAL CONTROLLER OF EXAMINATIONS
ASSAM PUBLIC SERVICE COMMISSION
JAWAHARNAGAR
GUWAHATI-22.

Advocate for : MR. I H LASKAR
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 4 ORS.

:::BEFORE:::

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of Hearing : 30.01.2026

Date of Judgment : 30.04.2026

Judgment and Order (CAV)

Heard Mr. P. K. Deka, learned counsel, appearing for the petitioner in WP(C).No.6506/2023 and Mr. P. K. Roy Choudhury, learned counsel, appearing for the petitioner in WP(C).No.6465/2023. Also heard Mr. B. Gogoi, learned Additional Advocate General, Assam, and Mr. P. P. Dutta, learned Standing Counsel, APSC, for the above noted 02 (two) writ petitions.

2. The above noted writ petitions having raised similar questions of law based on same facts, were taken up for hearing for final consideration, with the consent of the parties and is being disposed of by this common Judgment and Order.

3. The petitioners in the above noted writ petitions have projected that they suffer from Locomotor disability and accordingly are Persons with Benchmark Disability. The petitioners in the above noted writ petitions in pursuance to an advertisement dated 15.03.20223, issued by the Assam Public Service Commission (hereinafter referred to as the Commission), inviting applications for recruitment against 244 post of Assistant Engineer (Civil) under the joint cadre of Public Works Roads Department (PWRD) and Public Works (Building and National Highway) Department, had submitted their respective applications. The said advertisement having also earmarked 12 (twelve) vacant posts, for Persons with Benchmark Disability, the petitioners project that they had submitted the requisite certificates to bring them within the purview of the said

reservations mandated for Persons With Benchmark Disability.

The Commission thereafter, vide a corrigendum dated 03.08.2023, set out the break up of vacancies so advertised and 15 (fifteen) vacancies were shown to have been reserved for various categories of Person with Benchmark Disability. The applications submitted by the petitioners being found to be in conformity with the eligibility criteria set out, they were permitted to participate in the recruitment process. The petitioners cleared the screening test held for the purpose and accordingly, the petitioners were called for appearing in the viva voce/interview segment of the selection process.

On conclusion of the selection process the Commission vide notification dated 19.10.2023, declared the results of the selection process. In the select list so published, the names of the petitioners in the above noted 02 (two) writ petitions did not find mention. The result sheet further having projected that 06 (six) vacancies pertaining to reserved for Persons with Benchmark Disability could not be filled up due to non availability of suitable candidates and the same including vacancies which were backlog vacancies, the petitioners have instituted the present writ petitions praying for a direction upon the respondent authorities for filling up of the said vacancies which had remained unfilled for want of suitable Person with Benchmark Disability by interchanging the said vacancies amongst the other categories of Person with Benchmark Disability.

4. Mr. P. K. Roy Choudhury, learned counsel, appearing for the petitioner in

WP(C).No.6465/2023, by reiterating the facts noticed, hereinabove, has submitted that in terms of the provisions of the Rights Of Persons with Disabilities Act, 2016, more particularly Section 34 (2), thereof, the backlog vacancies which had remained unfilled was not permissible to be carried forward and the said backlog vacancies were required to be so filled up by interchange amongst the 05 (five) categories of Person with Benchmark Disability. It is submitted that from the materials coming on record, the 06 (six) post which was reserved for Person with Benchmark Disability, which had remained unfilled in the selection process belong to the category of Deaf and Hearing Impaired as well as Autism. He submits that 03 (three) vacancies against the said categories had remained unfilled.

5. Mr. P. K. Roy Choudhury, by referring to the corrigendum dated 03.08.2023, submitted that with regard to the Deaf and Hearing Impaired category 05 (five) post were reserved and out of the 05 (five) post 04 (four) post were backlog vacancies. It is further submitted that 05 (five) post were reserved for the autism category and out of it 04 (four) were backlog vacancies. It is further submitted that vacancies, highlighted as backlog vacancies against the said 02 (two) categories, was mandated to be first filled up by interchange amongst the other categories. It is submitted that the petitioner in WP(C).No.6465/2023, being a candidate qualifying in the selection process, and belonging to the Locomotor Disability category, it was mandated that his case be considered against the said unfilled vacancies by interchange of the category.

6. Mr. P. K. Roy Choudhury, has further submitted that the petitioner in

WP(C).No.6465/2023, having approached this Court raising a grievance with regard to his non-selection and the other candidates in the Locomotor category having not approached this Court, even if, there were candidates placed above the petitioner in WP(C).No.6465/2023, on merits, in the selection process, it is the case of the petitioner that would now be mandated to be so directed to be considered, inasmuch as, the other candidates have not approached this Court raising any grievance.

It is submitted that the petitioner being also a reserved community candidate, his candidature as a Person with Benchmark Disability is also to be considered reckoning his reserved status.

7. In the above premises, Mr. P. K. Roy Choudhury, submits that a direction is mandated to be issued to the respondent authorities to consider the case of the petitioner in WP(C).No.6465/2023 against any of the 06 (six) unfilled vacancies reserved for Person with Benchmark Disability.

8. Mr. P. K. Deka, learned counsel, appearing for the petitioner in WP(C).No.6506/2023, by reiterating the submissions made by Mr. P. K. Roy Choudhury, learned counsel for the petitioner in WP(C).No.6465/2023, has submitted that against the post reserved for the persons with Blindness and Low Vision, only 02 (two) candidates were absorbed and accordingly, only 01 (one) post remained unfilled. He submits that with regard to the Deaf and Hearing Impaired, 03 (three) post had remained unfilled which falls within the backlog category. He submits that against the autism quota, no candidate having been selected, 05 (five) post kept reserved for the said category had remain unfilled and out of it 04 (four) post being backlog vacancies,

the same was mandated to be filled by applying the provisions of Sub-Section(2) of Section 34 of the Act of 2016. He submits that there being candidates with Benchmark Disability available but belonging to other categories, the said unfilled post were required to be so filled up from amongst the candidates of other categories by interchange of vacancies.

9. Mr. P. K. Deka, has further submitted that the petitioner in WP(C).No.6506/2023, having approached this Court raising a grievance with regard to the discrimination meted out to him and other candidates belonging to the category of Person with Benchmark Disability, participating in the selection process, having not approached this Court, it is to be construed that they had waived their rights in this connection. Accordingly it is submitted that the petitioner in the said writ petition having approached this Court along with the petitioner in WP(C).No.6465/2023, vacancies being available within the category of Persons with Benchmark Disability, appropriate direction is mandated to be issued by this Court for appointing them against the unfilled vacant post available.

10. Per contra Mr. P. P. Dutta, learned Standing Counsel, APSC, submits that the candidates found suitable for appointment against various categories of Person with Benchmark Disability were selected for appointment against the quota mandated for such categories. It is highlighted that on conclusion of the selection process, it was found that 06 (six) post i.e 03 (three) posts reserved for Deaf and Hearing Impaired & Autism category, could not be filled up due to non-availability of candidates in the

respective categories. The posts involved were thereafter, considered for recruitment by following the provisions of the Office Memorandum dated 21.05.2022. It is submitted that the vacant posts now becoming available to the extent of being backlog vacancies, were filled up by following the prescription of Clause 8.1 of the said Office Memorandum dated 21.05.2022. It is further submitted that applying the said provisions, 2 (two) post were identified to be filled up from amongst the Locomotor category and accordingly 02 (two) persons i.e Alyaman Firdus Ahmed and Deepjyoti Talukdar were selected and placed in the select list basing on the merit position obtained by them in the selection process. It is submitted that no further vacancy would be mandated to be apportioned to the Locomotor Disability category.

Mr. P. P. Dutta has further submitted from records that even if, it is to be construed that further posts, which have remained unfilled is also to be apportioned to the Locomotor Disability category, the petitioner in the above noted writ petitions would not be benefitted, inasmuch as, considering the number of posts so available and the merit position obtained by the petitioners in the above noted 02 writ petitions in the selection process, there are many persons placed above the petitioners in the selection process, on merit. It is submitted that there are 08 (eight) persons placed above the petitioner in WP(C).No.6465/2023 and 15 (fifteen) persons placed above the petitioner in WP(C).No.6506/2023 on merits in the selection process.

11. I have heard the learned counsel for the parties and perused the

materials available on records.

12. The Commission had issued an advertisement dated 15.03.2023, for recruitment against the post of Assistant Engineer (Civil) against vacancies available in the joint cadre of the Public Works Roads Department (PWRD) and Public Works (Building and National Highway) Department. 244 (Two Hundred Forty Four) post identified were put up for recruitment. Out of the post so put up for recruitment, 12 (twelve) post were reserved for Person with Benchmark Disability and the posts were also apportioned amongst the various categories available. Thereafter, vide a corrigendum dated 03.08.2023, the break up of the reserved post as well as backlog vacancies were published. The posts reserved for various categories amongst the Person with Benchmark Disability was set out, therein, as follows ;

Post reserved for PwBD				
Total numbers of post reserved for PwBD	Category	Nos. of vacant post	Backlog vacancy	
15	Blindness & Low Vision	2	1	
	Deaf & HI	5	4	
	Locomotor Disability etc.	3	1	
	Autism etc	5	4	

13. A perusal of the said break up of the vacancies reserved for Persons

with Benchmark Disability would go to reveal that the posts so identified including fresh vacancies as well as carry forward vacancies or backlog vacancies. With regard to the Locomotor Disability category 03 (three) posts were reserved including 01 (one) backlog vacancy. Similarly for the Blindness and Low Vision category, 02 (two) post were reserved and out of them 01 (one) was a backlog vacancy. For the Deaf and Hearing Impaired category 05 (five) post were reserved and amongst them 04 (four) were backlog vacancies. For the Autism category also 05 (five) post were reserved and amongst them 04 (four) were shown to be backlog vacancies. Against the posts reserved for Blindness and Low Vision category all the 03 (three) posts has been found to be filled up. Similarly for the Locomotor Disability category also 03 (three) post reserved were found to have been filled up. For the Deaf And Hearing impaired category although there were 05 (five) vacant post, only 02 (two) candidates had appeared and both of them were selected. Accordingly 03 (three) post remained unfilled. For the Autism category as no candidate had appeared all the 05 (five) post reserved remained unfilled. Considering the said facts coming on record, it is seen that 03 (three) posts belonging to the Deaf and Hearing Impaired category and 05 (five) posts belonging to the Autism category were not filled up. 04 (four) post with regard to the Deaf and Hearing Impaired category being backlog vacancies, it is to be construed that 02 (two) persons having been appointed, 02 (two) post had remained unfilled against the backlog category. With regard to the Autism category no candidate having been available, 04 (four) post being backlog

vacancies have to be deemed to have remained unfilled. Accordingly in total 06 (six) posts out of the post reserved for Persons with Benchmark Disability remained unfilled.

14. Sub Section (2) of Section 34 of the Act of 2016 mandates that backlog vacancies i.e. vacancies which had been carried forward from the earlier recruitment process cannot further be carried forward and must be filled up initially by interchange amongst the 05 (five) categories of Person with Benchmark Disability and in the event, no suitable candidate is available, it would be permissible to fill up the said posts by appointing a person other than a Person with Benchmark Disability. The Government of Assam, vide issuance of a Office Memorandum (OM) dated 21.05.2022, had laid down the manner in which reservation of post for Persons with Benchmark Disability and other concessions is to be implemented in terms of the provisions of the Act of 2016. Clause 8.1 of the said Office Memorandum being relevant is extracted, hereinbelow;

“INTER SE EXCHANGE AND CARRY FORWARD OF RESERVATION IN CASE OF DIRECT RECRUITMENT/PROMOTION:

8.1 Where, in any recruitment year, any post cannot be filled up due to non availability of a suitable person with benchmark disability or for any other sufficient reason, such post alongwith category of reservation shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the following four categories of disabilities, at one percent each to each category.

(1) Category A

(a) blindness and low vision:

(II) Category B

(b) deaf and hard of hearing.

(III) Category C

(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy:

(IV) Category D

(d) autism, intellectual disability, specific learning disability and mental illness.

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness.”

15. A perusal of the provisions of Clause 8.1 would reveal that in a recruitment year any post remaining unfilled due to non-availability of a suitable Persons with Benchmark Disability or any other sufficient reasons, such post along with the category of reservation shall be carried forward to succeeding recruitment year and if in the succeeding recruitment year also suitable Person with Benchmark Disability is not available, the post is to be filled up first by interchange amongst the categories of disabilities as set out, therein, to the extent of 1 (one) percent to each of the categories. The respondent authorities have understood the said interchange of the vacancies in accordance with Clause 8.1 of the Office Memorandum dated 21.05.2022, to mean 1 (one)percent of the total number of vacancies as advertised vide the advertisement for the recruitment, in question. Accordingly, applying the said provision, 02 (two) posts are found to be available to be filled up amongst persons with Locomotor

Disability. It is seen that 02 (two) post having been apportioned from amongst the unfilled vacancies reserved for Person with Benchmark Disability, for Locomotor Disability category, 02 (two) persons i.e. Alyaman Firdus Ahmed and Deepjyoti Talukdar were placed in the select list basing on the merit position obtained by them in the selection process. The apportionment made is found to be in accordance with the provisions of Clause 8.1 of the O.M dated 21.05.2022. Accordingly, this Court is of the considered view that the provisions of Sub Section (2) of Section 34 has not been violated by the respondent authorities in the matter.

16. Having drawn the said conclusion, this Court would now consider the submissions of the learned counsel for the petitioners in the above noted 02 (two) writ petitions that there being further available vacant posts reserved for Person With Benchmark Disability in the recruitment process, the same would now be mandated to be also apportioned amongst the other categories in compliance with the provisions of Sub Section (2) of Section 34 of the Act of 2016. This Court has considered the said submissions. 06 (six) post reserved for persons with disability having remained unfilled, 02 (two) post having been filled up by apportioning the said post to Persons with Locomotor Disability, further 04 (four) post is found to be available. The learned counsel for the respondents from records have submitted that there are 08 (eight) persons above the petitioner in WP(C).No.6465/2023, and 15 (fifteen) persons above the petitioner in WP(C).No.6506/2023, on merits obtained by them in the selection process.

Accordingly, even if the said 04 (four) post are now required to be so filled up from persons with Locomotor Disability category available in the selection process, it is seen that the petitioners would not entitled to be accommodated against the said post, inasmuch as, the merit position obtained by them in the connected selection process would not mandate the same. Accordingly, the said contentions raised by the petitioners in the present proceeding would not mandate acceptance from this Court.

17. The learned counsel for the petitioners have further submitted that although there may be persons placed above them belonging to the Locomotor Disability category, on merits in the selection process, the petitioners having approached this Court raising grievance with regard to the denial of appointment to them and the other candidates who were placed above them on merits, having not raised similar demands, it is the case of the petitioners that would now be mandated to be considered for appointment and not the persons who had not approached this Court asserting their rights in the matter. The said contentions is considered only to be rejected. In the event, the remaining unfilled vacant post reserved for Person with Benchmark Disability is required to be directed to be filled up, such selection can only be made on the basis of merit obtained by the candidates in the selection process. It will not be permissible for this Court to direct the respondent authorities to include the petitioners, herein, in the select list, inasmuch as, such direction would be violative of the basic principle of a selection process which mandates that placement in the select list would only be

made, within the respective categories, basing on the merit position obtained by the candidates in the selection process. Accordingly, the said claim made by the petitioners stand rejected.

18. In view of the foregoing discussion, this Court is of the considered view that the claims made by the petitioners in the above noted 02 (two) writ petitions would not mandate any acceptance and accordingly the said writ petitions are held to be devoid of any merit and the same stand dismissed. However there would be no order as to costs.

JUDGE

Comparing Assistant