

GAHC010010012017



In the Gauhati High Court
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WP(C) 158/2017

Dr. Hemam Sunita Devi

Address - D/O. Lt. H. Ibonaha Singh, W/O. L. Rajkumar Singha, Vill. Moirang Hemam Leikai, P.O. And P.S. Moirang, Dist. Bishnupur, Manipur, Pin. 795133.

..... **Petitioner**

VERSUS

1) The State of Assam And 7 Ors.

Address - Represented By The Commissioner And Secretary To The Govt. Of Assam, Education Higher Deptt., Dispur, Guwahati-781006.

Advocate - Mr.R P Kakoti (R-7),

Sc, Higher Education,Mr.H Das (R-7),Mr. A T Sarkar (R8),Mr. D J Mahanta (R8),Ms. R Rahman (R8)

2) The Director Of Higher Education, Assam,
Kahilipara, Guwahati-781019.

3) The Governing Body Of Cachar College,
Represented By Its President, P.O. Silchar, Dist. Cachar, Assam, Pin. 788001.

4) The President Of Cachar College,
P.O. Silchar, Dist. Cachar, Assam, Pin. 788001.

5) The Principal Of Cachar College,
P.O. Silchar, Dist. Cachar, Assam, Pin. 788001.

6) The Selection Committee Of Cachar College
For Selection Of Assistant Professor In Zoology, Represented By The Principal Of Cachar College, P.O. Silchar, Dist. Cachar, Assam, Pin. 788001.

7) Dr. Doli Talukdar,
C/O. Sri Sarat Chandra Talukdar, R/O. Vill. Niz Namati, P.O. Niz Namati, Dist. Nalbari, Assam, Pin. 781355.

8) Sri Monoj Roy,
S/O. Manoranjan Roy,R/O. Fatasil Ganesh Para, Japti Path Near Bharalu River Side, P.O. Dhirenpara, Guwahati, Dist. Kamrup, Assam, Pin. 781025.

..... **Respondents**

With
WP(C) 5227/2017

Dr.Doli Talukdar

Address - C/O Sri Sarat Chandra Talukdar
R/O Vill- Niz Namati, P.O.Niz Namati
Dist. Nalbari, Assam,
Pin-781355.

VERSUS

1) The State of Assam and 7 Ors.

Address - Rep. By The Commissioner And Secretary And Secretary To The Govt. Of Assam,
Education Higher Department, Dispur, Guwahati - 781006.

2) The Director of Higher Education,

Assam, Kahilipara, Guwahati - 781019.

3)The Governing Body of Cachar College,

Rep. By its President, P.O. Silchar,

Dist. Cachar, Assam, Pin - 788001.

4)The President of Cachar College,

P.O. Silchar, Dist. Cachar, Assam, Pin - 788001.

5)The Principal of Cachar College,

P.O. Silchar, Dist. Cachar, Assam Pin - 788001.

6)The Selection Committee of Cachar College,

For Selection of Assistant Professor In Zoology,

Rep. By The Principal Of Cachar College,

P.O. Silchar, Dist. Cachar, Assam, Pin - 788001.

7)Dr. Hemam Sunita Devi D/O Lt. Ibonaha Singh

W/O L. Rajkumar Singh Vill- Moirang Hemam Leikai

P.O. And P.S. Moirang Dist. Bishnupur Manipur, Pin -795133.

8)Sri Monoj Roy S/O Manoranjan Roy R/O Fatasil Ganesh Para, Japti Path, Near Bharalu

River Side, P.O. Dhirenpara, Guwahati Dist. Kamrup M, Assam, Pin - 781025.

BEFORE

HON'BLE MR. JUSTICE KARDAK ETE

Advocate for the petitioner : Ms. S.B. Choudhury (in WP(C)
158/2017) Mr. A.D. Das (in WP(C) 5227/2017)
Advocate for the Respondent : Mr. R.P. Kakoti (in WP(c) 5227/2017)
Ms. S.B. Choudhury (in WP(C) 158/2017)
Mr. A.T. Sarkar (respondent no. 8)
Mr. S. Bhuyan (respondent nos. 1 and 2)

Date of Hearing : **15.02.2024**

Date of Judgment : **07.03.2024**

JUDGMENT & ORDER (CAV)

Heard Ms. S.B. Choudhury, learned counsel for the petitioner in WP(C) 158/2017 and for the respondent No. 7 in WP(C) 5227/2017. Also heard Mr. R.P. Kakoti, learned senior counsel assisted by Mr. A.D. Das, learned counsel for the petitioner in WP(C) 5227/2017 and for the respondent No.7 in WP(C) 158/2017 as well as Mr. A.T. Sarkar, learned counsel for the respondent No.8 in both the writ petitions and Mr. S. Bhuyan, learned State counsel for the respondents No. 1 and 2.

2. Having regard to the affinity of the factual background and the issues raised, both the writ petitions were heard analogously and are disposed of by this judgement.

3. Pleaded facts, in brief, are that the present writ petition being WP(C) 158/2017 has been instituted by the petitioner, challenging the non-selection of the petitioner for appointment to the post of Assistant Professor in Zoology

Department, Cachar College, Silchar, and selection and recommendation of respondents no. 7 and 8 in the first and second positions by selection committee despite the petitioner having scored highest marks. The petitioner has also challenged the impugned speaking order dated 13.12.2016 passed by the Director of Higher Education, Assam, whereby, it is held that the petitioner cannot be considered for appointment as she is not a scheduled caste (SC) from Assam and asked the selection committee to take fresh resolution and to consider the respondent no. 8 for appointment to the post of Assistant Professor in Zoology Department, Cachar College, Silchar.

4. The petitioner is B.Sc (Honours) and M.Sc in (Zoology) having State Eligibility Test (SET) with Ph.D. The petitioner belongs to Hemam Sageis of Lois Community, which is recognized as a Scheduled Caste as per the Constitution (Scheduled Castes) order, 1950.

5. An advertisement was issued vide Memo No. Advt./2015/637-A dated 23.12.2015 by the Principal (i/c) Cachar College, Silchar, inviting applications from eligible candidates having UGC norms with NET/SLET/SET (as mandatory requirement) Ph.D (in accordance with UGC regulations 2009), M. Phil (obtained on or before 10.07.2009) excluding candidates obtained M.Phil/Ph.D degree from off-campus centre for filling up of 5 (five) vacant posts of Assistant Professor including Assistant Professor, Zoology. In the advertisement, it is reflected that the post of Assistant Professor, Zoology, is reserved for Scheduled Caste (SC) candidate. It provides that the candidates must have permanent residential certificate (PRC) and must know local language. Pursuant to the said advertisement dated 23.12.2015, the petitioner being eligible and qualified for the said post of Assistant Professor in Zoology had applied by submitting all the

required certificates/testimonials. Thereafter, the petitioner was called for interview vide call letter dated 10.08.2016, which was scheduled to be held on 22.08.2016. Accordingly, she appeared in the interview on 22.08.2016 with all original documents/certificates. There were 14 (fourteen) candidates who applied for the said post, out of which 13 (thirteen) candidates were screened and called for interview but only 7 (seven) candidates appeared in the interview including the petitioner and the respondent nos. 7 and 8.

6. The petitioner scored highest marks with 65.05 but her case has been rejected as according to the Selection Committee, she did not have proficiency in local language and the Scheduled Caste certificate (SC) of the petitioner issued by the State of Manipur cannot be considered as she is a migrant from State of Manipur to the State of Assam. The Selection Committee recommended the names of the respondent no. 7 Dr. Doli Talukdar, who scored 61.08 marks and the respondent no. 8 Sri Manoj Roy, who scored 58.05 marks respectively as the first and second positions. The recommendation of the Selection Committee was placed before the Governing Body of the Cachar College, Silchar, and the meeting of the Governing Body of the college was held on 05.10.2016. The Governing Body, approved the selection and recommendation of the Selection Committee in respect of the respondent nos. 7 and 8 and the same was sent to the Director of Higher Education, Assam for approval for appointment as Assistant Professor in Zoology Department against the Scheduled Caste certificate (SC) reserved post.

7. Earlier the petitioner preferred a writ petition being WP(C) 4/2017 challenging the selection and recommendation of the respondent nos. 7 and 8 of the Selection Committee and also the subsequent approval of the Governing

Body of the college. Thereafter, vide impugned speaking order being Memo No. DHE/CE/AC/NET/SLET/486/2016/206 dated 03.12.2016, the Director of Higher Education, Assam has held that, the petitioner not being a recognized Scheduled Caste (SC) candidate of Assam, her case cannot be considered and also held that the respondent no. 7 does not have NET/SLET and having acquired Ph.D only after the last date of submission of application, she is also not eligible. It further asked the Selection Committee to take fresh resolution and also opined that the Selection Committee may consider the respondent no. 8 for appointment as Assistant Professor, Zoology, if they found that re-advertisement will cause unnecessary delay. Having come to knowledge of the impugned order dated 13.12.2016, the petitioner has withdrawn the writ petition being WP(C) 4/2017 with a liberty to file a fresh. Hence, this present writ petition.

8. Facts pleaded, in brief, in the **WP(C) 5227/2017.**

9. The petitioner Dr. Doli Talukdar by filing this writ petition, has challenged the impugned speaking order vide Memo No. DHE/CE/AC/NET/SLET/486/2016/206 dated 03.12.2016, passed by the Director of Higher Education, Assam, wherein, it is observed that the petitioner is not eligible to apply for the post of Assistant Professor, Zoology Department for not having NET/SLET requirements and/or for having Ph.D degree after the last date of submission of application and suggested for consideration of the respondent no. 8 namely-Sri Monoj Roy, for appointment as Assistant Professor, Zoology in Cachar College, Silchar.

10. The petitioner is a holder of M.Sc in Zoology and M. Phil degree from

Assam University, certificate having been issued on 19.07.2016. The petitioner belongs to a Scheduled Caste (SC) community and a permanent resident of the State of Assam. Pursuant to the advertisement dated 23.12.2015 inviting application for the eligible candidates to fill up the 5 (five) vacant posts of Assistant Professor including Assistant Professor in Zoology, in Cachar College, Silchar, she applied for the said post by submitting all the required documents/certificates. As seen and mentioned above, in the advertisement, following requirements were clearly mentioned that the candidate must have UGC norms with NET/SLET/SET as mandatory requirement), Ph. D (in accordance with UGC regulations, 2009), M. Phil degree (obtained on or before 10.07.2009). The candidate must have Permanent Residential certificate (PRC) and must know the local language. The post of Assistant Professor, Zoology, is reserved for Scheduled Caste (SC) candidate.

11. The petitioner having been found eligible was called for interview which took place on 22.08.2016. In the selection process, the respondent no. 7 Dr. H. Sunita Devi (writ petitioner in WP(C) 158/2017) scored the highest marks i.e. 65.5 and the petitioner scored 61.8 marks and respondent no. 8, Sri Monoj Roy scored 58.5 marks. The Selection Committee recommended the name of the petitioner and the respondent no. 8, namely, Shri Monoj Roy. The respondent no. 7 Dr. H. Sunita Devi (petitioner in WP(C) 158/2017), though scored the highest marks her name was not recommended by the Selection Committee on the ground that she does not have proficiency in local language and she is a scheduled caste (SC) candidate from Manipur, which is not a recognized scheduled caste (SC) community in the State of Assam.

12. The recommendation of the Selection Committee was placed before the

Governing Body of the college and after approval, the Governing Body sent the names of the petitioner and the respondent no. 8 to the Director of Higher Education for its approval for appointment to the post of Assistant Professor, Zoology. The Director of Higher Education, Assam has passed the speaking order vide Memo No. DHE/CE/AC/NET/SLET/ 486/2016/206 dated 03.12.2016 while agreeing with the rejection of the selection of the respondent no. 7 (writ petition in 158/2017) on the ground that the respondent no. 7 is a scheduled caste (SC) community in the State of Manipur, which is not a recognized scheduled caste (SC) in the State of Assam and therefore, his candidature is not accepted for appointment of Assistant Professor, Zoology, which is reserved for Scheduled Caste (SC) candidate of Assam. It has been observed that the petitioner, Dr. Doli Talukdar, does not have NET/SLET and she has been allowed to participate on the strength of her Ph.D degree from Assam University notified on 19.07.2016. It also held that as per norms a candidate has to acquire eligibility on the last date of submission of the application. If anything contrary is not provided at relevant service rules, she acquired the Ph.D after 10.01.2016 just before the interview. As such, it is observed that the Selection Committee may consider the 3rd candidates, namely, Shri Monoj Roy (respondent no. 8 herein), if the selection committee think that re-advertisement will cause unnecessary delay. The petitioner challenges the said observation and decision on the ground that since she has scored 61.8 marks next to respondent no. 7, who has scored 65.5, she ought to have been considered for appointment as the respondent no. 7 who has scored highest marks of 65.5 has been rejected on justified grounds. The petitioner is also aggrieved by the factually wrong observation as the petitioner was eligible and qualified on the basis of her M.Phil degree and not for having NET/SLET, as the candidates having Ph.D and M.Phil

Degree is exempted from having the requirement of NET/SLET/SET. Hence, this petition.

13. Ms. S. B. Choudhury, learned counsel for the petitioner in writ petition WP(C) 158/2017, submits that the petitioner belongs to Lois Community, which is recognized as a scheduled caste under the Constitution of India. In the Constitution (Schedule Castes) Order, 1950, the name of the caste of the petitioner is mentioned in the serial No. 2 for which a caste certificate has been issued by the competent authority. The petitioner is not a migrant from Manipur as held by the Selection Committee. She submits that in the advertisement nowhere it is mentioned that the post of Assistant Professor, Zoology, is reserved for the candidates, who are resident of the State of Assam only. It only provides that the Assistant Professor, Zoology, is reserved for Scheduled Caste.

14. She submits that the petitioner applied in pursuant to the advertisement dated 22.12.2015 by giving full details including her permanent residential certificate. On having been considered eligible and qualified, she was called for interview and accordingly, she appeared and secured the highest marks scoring 65.5 marks among all the candidates. Therefore, the Selection Committee cannot turn around and make her ineligible on unsustainable grounds particularly that the petitioner is not a recognized Scheduled Caste in the State of Assam.

15. Ms. S.B. Choudhury, learned counsel for the petitioner submits that it is clear from the statement of marks that the respondent no. 7 was awarded Ph.D on 19.07.2016, whereas the advertisement was issued on 23.12.2015, yet she was given 7(seven) marks for Ph.D. It is also remarked that if the Ph.D. marks

of respondent no. 7 are not considered then her marks in the interview would come to 54.8. She further submits that the respondent no. 8 has scored only 58.5 marks who is 3rd in position. Even then, the Director of Higher Education, Assam has asked to consider the 3rd candidate i.e. respondent no. 8 for appointment to the post of Assistant Professor, Zoology. Therefore, she submits that the selection of the private respondent nos. 7 (petitioner in (WP(C) 5227/2017) and respondent 8 as first and second position for the post of Assistant Professor, Zoology, is absolutely illegal, arbitrary, unjust and in violation of the advertisement and the other professed norms and guidelines.

16. Ms. S.B. Choudhury, learned counsel submits that the impugned speaking order dated 13.12.2016 has been passed by the Director of Higher Education, Assam without providing any opportunity to the petitioner and has failed to appreciate that the advertisement was an open one and the post in question is under UGC norms and guidelines. Therefore, the entire action of rejecting the candidature of the petitioner and recommendation of the respondent nos. 7 and 8 for appointment to the post of Assistant Professor, Zoology, Cachar college, Silchar vide impugned speaking order dated 13.12.2016 by the Director of Higher Education, Assam, being illegal and arbitrary, be set aside and quashed and direction may be issued to the respondent authorities to appoint the petitioner to the post of Assistant Professor, Zoology, in Cachar college, Silchar, as the petitioner is first in merit having scored highest marks of 65.5 and belongs to Schedule Caste (SC) community as recognized under the Constitution of India.

17. Mr. S. Bhuyan, learned State counsel, referring to the affidavit-in-

opposition filed on behalf of respondent nos. 1 and 2, submits that the petitioner belongs to Lois Community of Manipur, which is recognized Scheduled Caste (SC) Community in the State of Manipur, which is not recognized as Scheduled Caste (SC) Community in the State of Assam, as such, her Scheduled Caste (SC) Certificate cannot be accepted and she being permanent resident of Manipur as per certificate produced by her while submitting application against a vacancy reserved for Scheduled Caste (SC) and is against clear set out norms. She cannot be considered for appointment, as her caste is not recognized as Scheduled Caste (SC) in the State of Assam.

18. Mr. Bhuyan submits that Manipuris including Manipuri Brahmins and Manipuri Muslims are recognized as Other Backward Classes (herein referred to as OBC) in the State of Assam. The Government of Assam vide letter No.TAD/BC/268/75/37 dated 27th November, 1975 published a list of Other Backward Classes (OBC) comprising 29 Communities wherein at Sl. No.13 the name of Manipuri including Manipuri Brahmins and Manipuri Muslims are included as Other Backward Classes (OBC). Hence, the petitioner cannot be recognized as Scheduled Caste (SC) Community in the State of Assam and cannot be considered for appointment. Learned State Counsel submits that the College Authority has published the advertisement for filling up the post of Assistant Professor, Zoology, which is reserved for Scheduled Caste (SC) candidate along with 4 (four) other posts in different Departments

19. Learned State Counsel further submits that the Selection Committee has rightly remarked that the petitioner is a migrant Scheduled Caste (SC) from Manipur and does not have proficiency in local language. It is provided in the Government O.M. No.AHE.262/2012/13 dated 25.06.2012 that candidate must

know local language and should have PRC. Therefore, the decision of the Selection Committee that the Lois Community is not recognized Scheduled Caste (SC) Community in the State of Assam cannot be faulted.

20. Mr. S. Bhuyan, learned State counsel, submits that as Respondent No.7 namely Dr. Doli Talukdar does not have NET/SLET, she has been allowed to participate on the strength of her Ph.D. from Assam University notified on 19.07.2016. But, it may be mentioned hear that as per norms, a candidate has to acquire eligibility on the last date of submission of application. As such, the Director of Higher Education, Assam rejected recommendation made in favour of the petitioner. The Respondent No.8, is eligible and qualified having SLET, hence the Director of Higher Education, Assam has given suggestion to the Selection Committee to consider the Respondent No.8, if they think that re-advertisement would cause unnecessary delay.

21. Mr. R.P. Katoki, learned Senior Counsel for the respondent no. 7 and the writ petitioner in WP(C) 5227/2017, submits that the writ petitioner in WP(C) 158/2017/ respondent no. 7 in WP(C) 5227/2017 is a permanent resident of State of Manipur and her caste is treated as Other Backward Caste (OBC) in the State of Assam and as such, she is not entitled to apply for the said post. The caste certificate itself is self explanatory to the fact that it is valid for benefit of reservation in public employment only in the State of Manipur. He submits that Office Memorandum dated 04.01.1984 issued by the Education Department, Government of Assam clearly shows that she belongs to OBC category. Since, the petitioner belongs to the OBC category and does not belongs to Scheduled Caste community as per the OM dated 04.01.1984, the Selection Committee has rightly held her ineligible to appear for the post, which is exclusively reserved

for Scheduled Caste candidates. Vide Gazette Notification dated 10.09.1993, Manipuri community has been included in the OBC category in the State of Assam, even if the person belongs to Scheduled Caste community in the State of Manipur. He further submits that the Government of India instruction issued way back on 02.05.1975 by the Ministry of Home Affairs, Government of India, clearly provides that where a person migrates from one State to another, he can claim to belong to a Scheduled Caste or a Scheduled Tribe only in relation to the State to which he originally belonged and not in respect of the State to which he has migrated. Therefore, the petitioner cannot claim benefit in the state of Assam and the Manipuri community, whether ST, SC or general, is included in the OBC category only in the State of Assam. Therefore, the recommendation of the Selection Committee and the resolution of Governing Body of Cachar College is in conformity with the Constitutional Scheduled Castes (Orders), 1950, and the law laid down by the Hon'ble Supreme Court of India.

22. Mr. R.P. Kakoti, learned Senior Counsel submits that the impugned speaking order dated 13.12.2016 passed by the Director of Higher Education, Assam so far as it relates to the observation that the petitioner's (in WP(C) 158/2017) caste is not recognized as Scheduled Caste community in the State of Assam and she being a permanent resident of Manipur, by virtue of being a Scheduled Caste of State of Manipur, cannot claim a benefit in the State of Assam is in consonance with the laws and guidelines/instructions issued from time to time.

23. Coming to the writ petition being WP(C) 5227/2017, learned Senior Counsel appearing for the petitioner (Dr. Doli Talukdar) while referring to the Notification dated 22.03.2017 submits that the exemption for having

NET/SLET/SET for appointment to the post of Assistant Professor, who obtained M.Phil degree on or before 10.07.2009 and Ph.D degree has been withdrawn w.e.f the date of issue of the said notification, meaning thereby till the issuance of the notification dated 22.03.2017, the exemption of having NET/SLET for appointment to the post of Assistant Professor, who obtained M.Phil/Ph.D degree was in force while the selection process was under taken. The petitioner having obtained her M.Phil degree on 16.02.2009, she was very much eligible and qualified for the post of Assistant Professor. Therefore, the observation and the conclusion by the Director of Higher Education, Assam vide speaking order dated 13.12.2016 that the Dr. Doli Talukdar does not have NET/SLET and she has been allowed to participate on her strength of Ph.D notified on 19.05.2016 is factually incorrect. The petitioner is eligible as she is having a M.Phil degree obtained on or before 10.07.2009 and the exemption of NET/SLET/SET was in force, which is clearly mentioned in the advertisement dated 23.12.2015.

24. Mr. R.P. Kakoti, learned Senior Counsel, by referring to the OM dated 25.06.2012, which is a guidelines for the selection of lecturer/Assistant Professor in the provincialised college of Assam as per UGC guidelines regulating the criteria of awarding marks, submits that the petitioner was awarded 7 (seven) marks as she obtained the Ph.D degree before the interview, which is fully justified. Alternatively, he submits, assuming while not accepting, the petitioner is not entitled for 7 (seven) marks still then she is entitled for 5 (five) marks as the petitioner has not been awarded 5 (five) marks for M.Phil degree. As remarked by the authority in the statement of marks, if the 7(seven) marks is deducted from the total marks obtained by the petitioner, it comes to 54.8 but if 5(five) marks is added for M.Phil degree, which the petitioner is entitled, it comes to 59.8, who is the second highest marks just below the respondent No.

7 (petitioner in WP(C) 158/2017) and above the respondent no. 8, who has scored 65.5 and 58.5 respectively. Since, the respondent no. 7 is not entitled to have the benefit of any reservation as the Scheduled Caste of the State of Manipur in the State of Assam, who has scored highest marks and the respondent no. 8 being 3rd in position, the petitioner has every right to be considered and appointed to the post of Assistant Professor, Zoology, in Cachar College, Silchar and such, he prays for setting aside the impugned speaking order dated 13.12.2016 in so far as, its relates to the observation against the petitioner of not having eligible to participate in the selection process and may be directed the respondent authorities to appoint the petitioner as Assistant Professor, Zoology in Cachar College, Silchar.

25. Mr. Kakoti, learned Senior Counsel, in support of his submissions, has placed reliance of the judgment of Hon'ble Supreme Court in the case of **Bir Singh Vs. Delhi Jal Board** reported in **(2018) 10 SCC 312**.

26. Mr. A.T. Sarkar, learned counsel has submitted that the petitioner Dr. H. Sunita Devi is not a recognized scheduled caste (SC) community in the State of Assam being the permanent and ordinarily resident of Manipur and she is not eligible and entitled for any reservation for the selection and appointment of Asstt. Professor, Zoology, in Cachar College, Silachar. He further submits that the writ petitioner, Dr. Doli Talukdar having been obtained her M.Phil degree on 04.09.2009 she is also not eligible inasmuch as a candidate has to obtain the M.Phil degree on or before 10.07.2009. While referring to the office Memorandum dated 25.06.2012 as well as the advertisement dated 23.12.2015, Mr. A.T. Sarkar submits that NET/SLET/SET is a mandatory requirement and M.Phil and Ph.D degree are in addition to it. Therefore, both the writ petitioners

having no NET/SLET/SET are not eligible at all. Therefore, since, the petitioners were not eligible, the respondent no. 8 having NET/SLET/SET and scored 58.5 marks is entitled to be appointed as an Asstt. Professor, Zoology, in Cachar College.

27. Due consideration has been extended to the competing pleadings and emulous submissions by the learned counsel for the parties based thereon and also have carefully examined the materials available on record.

28. To appropriately analyse the rival contentions bearing on the issues, a recall of the factual background is deemed indispensable, which I would refer herein below followed by analysis and conclusion.

29. Pursuant to the advertisement dated 23.12.2015, the interview was held on 22.08.2014 for the post of Assistant Professor in Zoology, Cachar College, Silchar. Altogether, 14 (fourteen) candidates applied for the said post and out of which 13 (thirteen) candidates were screened and called for an interview. However, 7 (seven) candidates appeared in the interview including both the petitioners and the private respondent no. 8.

30. The advertisement dated 23.12.2015 was issued inviting the applicants for eligible candidates having UGC norms with NET/SLET/SET (as mandatory requirement), Ph.D (in accordance with UGC regulation) 2009, M.Phil (obtained on or before 10.07.2009). It is also provided that the post of Assistant Professor, Zoology, is reserved for Scheduled Caste candidate. It further provides that the candidate must have permanent resident certificate and must know local language.

31. As per the individual Mark Statements dated 22.08.2016, it reflects that

the petitioner in WP(C) No. 158/2017, namely, Dr. H. Sunita Devi has recorded 65.5 marks and in WP(C) 5227/2017, the petitioner, namely Dr. Doli Talukdar obtained 61.8 marks and respondent no. 8, namely, Monoj Roy obtained 58.5 marks. In the remarks column, it is mentioned that Dr. H. Sunita Devi (petitioner in WP(C) 158/2017), is a migrant Scheduled Caste from Manipur having no proficiency in local language and the PRC is issued by the Govt. of Manipur. In the remarks column of Dr. Doli Talukdar (petitioner in WP(C) 5227/2017), it reflects that her Ph.D was awarded on 19.07.2016, if it is not considered her score would be 54.8.

32. The Selection Committee for selection of candidate for the post of Assistant Professor in Zoology, which is reserved for Scheduled Caste candidate vide its proceedings held on 22.08.2016 rejected Dr. H. Sunita Devi, on the ground that she belongs to the Scheduled Caste of the State of Manipur, which is not a recognized Scheduled Caste of Assam and she is recognized as OBC category and not Scheduled Caste (SC) category and also have found of having no proficiency in local language, although, she has scored highest i.e. 65.5 marks. The Selection Committee recommended Dr. Doli Talukdar and the respondent no. 8, namely, Monoj Roy with an observation in respect of Dr. Doli Talukdar that she has scored 61.8 marks if her certificate of award of Ph.D degree submitted after the last date of submission of application but before the interview date is considered and for the respondent no. 8 with a score of 58.5 marks for appointment.

33. The Governing Body, Cachar College, Silchar, held its proceedings on 05.10.2016 and has accepted the recommendation of the Selection Committee and recommended the names of Dr. Doli Talukdar and Mr. Monoj Roy for

appointment as Assistant Professor in Zoology for approval by the Director of Higher Education, Assam.

34. The Director of Higher Education, Assam vide the impugned speaking order dated 13.12.2016 has observed, which is reproduced herein below:-

Speaking Order

Seen the recommendation of Cachar College for the post of Assistant Professor, Zoology Seen report of Principal dated 17-11-2016 at 205/C of this file.

The College Principal has recommended three names as under for approval and appointment. These are:-

Sl No.	Name	Marks secured	
1.	Dr. H. Sunita Devi	65.5	SLET
2.	Smti. (Dr.) Doly Talukdar	61.8	Ph.D. Notification dated 19.07.2016 from Assam University, Silchar
3.	Sri Manoj Roy	58.5	SLET

The advertisement for the post was issued on 26-11-2015 and the last date for receipt of application was 15 days from date of advertisement that will be 10-01-2016.

The top scored candidate Dr. H.Sunita Devi- belongs to LOIS Caste which is recognized as "S.C." in Manipur. LOIS Caste is not recognized as S.C. Community in Assam, as such her S.C. Caste Certificate cannot be accepted and she being a permanent resident of Manipur as per Certificate produced by her to submit application against a vacancy reserved for S.C. was against clear set out norms. She cannot be considered for appointment.

Second is Smti. (Dr.) Doli Talukdar, She does not have NET/SLET. She has been allowed to anticipate on the strength of her Ph.D., from Assam University, Silchar notified on 19-07-2016.

As per norms a candidate has to acquire eligibility on the last date of submission of application. If anything contrary is not provided in relevant service Rules. She acquired Ph.D. r10-01-2016 just before interview.

As such the Selection Committee may consider the 3rd candidate Sri Manoj Roy if they think that re-advertisement will cause unnecessary delay.

The Selection Committee may take fresh resolution.

With this the recommendation of the Selection Committee is returned.

Director of Higher Education, Assam, Kahilipara,
Guwahati-19 Dated Kahilipara, the 03-12-2016

35. On bare reading of the above, it transpires that the Director of Higher Education, Assam has accepted the recommendation of the Selection Committee and the Governing Body, so far as it relates to Dr. H. Sunita Devi. As regards to Dr. Doli Talukdar, (petitioner in WP(C) 5227/2017), the Director of Higher Education, Assam has held that she does not have NET/SLET and she has been allowed to appear on the strength of her Ph.D notified on 19.05.2016 with an observation that as per the norms a candidate has to acquire eligibility on the last date of submission of application and if anything contrary is not provided in relevant service Rules. She acquired Ph.D. on 10-01-2016 just before the interview. Therefore, the Director of Higher Education, Assam suggested for consideration of the 3rd candidates, Shri Monoj Roy, if the Governing Body is of the view that re-advertisement will cause unnecessary delay.

36. Having considered the materials on record, it is seen that as per the advertisement dated 23.12.2015, the candidate having Ph.D degree in accordance with UGC requirements, 2009 and M.Phil degree on or before 10.07.2009 is exempted from having NET/SLET/SET to be eligible for selection for the post of Assistant Professor. Dr. Doli Talukdar having M.Phil degree would be exempted from the requirement of having NET/SLET/SET as she had obtained her M.Phil degree before 10.07.2009. Therefore, the question of obtaining the Ph.D. degree after the last date of submission of application may not have any bearing. In my considered view, the conclusion and findings of the Director of Higher Education, Assam in respect of Dr. Doli Talukdar of not having NET/SLET/SET and obtaining the Ph.D before the last date of submission of application is factually incorrect and erroneous.

37. Office Memorandum dated 25.06.2012 provides the guidelines for selection of Lecturer (Asstt. Professor/Librarian) in provincialised College of Assam as per the UGC guidelines, excluding the criteria of awarding oral marks. I deem it apposite to reproduce the same herein below:-

GOVERNMENT OF ASSAM
HIGHER EDUCATION DEPARTMENT
DISPUR::: GUWAHATI-

NO AHE 262/2012/13

Dated Dispur the 25, June, 2012

OFFICE MEMORANDUM

Subject: Guidelines for Selection of Lecturer (Assistant Professor)/Librarian in Provincialised College of Assam as per UGC guidelines, excluding the criteria of awarding oral marks

SELECTION PROCEDURE FOR THE POST OF ASSISTANT PROFESSOR

Qualifications for Direct Recruitment of Assistant Professor: (Reference-Clause 3.0.0/4.0.0//4.40/44: of the UGC Regulations, 30th June, 2010)
(Arts, Humanities, Science, Social Sciences, Commerce, Education, Languages, Law, Journalism and Mass Communication).

- i) Good Academic Record as defined by the concerned university with at least 55% marks (or an equivalent grade in a point scale whenever grading system is followed) at the Master's Degree level in a relevant subject from an Indian University, or an equivalent degree from an accredited foreign university,
- ii) Besides fulfilling the above qualifications, the candidate must have cleared the National Eligibility Test (NET) conducted by the UGC,CSIR or similar test accredited by the UGC like SLET/SET;
- iii) Notwithstanding anything contained in sub-clause (1) and (ii) to this Clause 4,401, candidates who are, or have been awarded a Ph.D Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulations, 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/College/Institutions;
- iv) NET/SLET/SET shall also not be required for such Masters Programmes in disciplines for which NET/SLET/SET is not conducted;
- v) A relaxation of 5% may be provided at the graduate and master's level for the Scheduled Caste/Scheduled Tribe/Differently-abled (Physically and visually differently-abled) categories for the purpose of eligibility and for assessing good academic record during direct recruitment to teaching positions. The eligibility marks of 55% marks (or an equivalent grade in a point scale wherever grading system is followed) and the relaxation of 5% to the categories mentioned above are permissible, based on only the qualifying marks without including any grace mark procedure (clause-3.4.1);
- vi) A relaxation of 5% may be provided, from 55% to 50% of the marks to the Ph. D Degree

holders, who have obtained their Master's Degree prior to 19th September, 1991 (Clause-3.5.0.);
 vii) vii) The period of time taken by candidates to acquire M.Phil. and/or Ph.D Degree shall not be considered as teaching/ research experience to be claimed for appointment to the positions (Clause-3.9.0.);

SELECTION COMMITTEE SPECIFICATION FOR ASSISTANT PROFESSOR IN COLLEGES INCLUDING PRIVATE COLLEGES: (Clause-5 1.0 and 5.1.4)

(a) The Selection Committee for the post of assistant Professor in College including Private Colleges shall have the following composition:

1. Chairperson of the Governing Body of the College or his/her nominee from among the members of the Governing Body to be the Chairperson of the selection committee;
2. The Principal of the college;
3. Head of the Department of the concerned subject in the college;
4. Twin nominees of the Vice Chancellor of the affiliating university of whom one should be a subject expert in case of College notified/declared as minority educational institutions, two nominees of the Chairperson of the College from out of panel of five names, preferably from minority communities, recommended by the Vice-Chancellor of the affiliating university from the list of experts suggested by the relevant statutory body of the College of whom one should be a subject expert;
5. Two subject experts not connected with the College to be nominated by the Chairperson of the governing body of the college out of a panel of five names recommended by the Vice- Chancellor from the list of subject experts approved by the relevant statutory body of the university concerned in case of Colleges notified/declared as minority educational institutions, two subject experts not connected with the University to be nominated by the Chairperson of the Governing Body of the college out of the panel of five names, preferably from minority communities, recommended by the Vice Chancellor from the list of subject experts approved by the relevant statutory body of the College.
6. An academician representing SC/ST/OBC/Minority/Women/Differently-abled categories, if any of candidates representing these categories is the applicant, to be nominated by the Vice-Chancellor, if any of the above members of the selection committee do not belong to that category.

(b) To constitute the quorum for the meeting five of which at least two must be from out of the three subject-experts shall be present.

Conversion of UGC's guidelines for standarized marking procedure of all counts in terms of concrete marks against each item is as below:

It is hereby clarified that where the University/College/Institution declares results in grade points which is on a scale of seven, the following mechanism shall be applied by the Selection Committee for conversion of grand points to equivalent percentage;

Grade	Grade Point	Percentage Equivalent
“O”- Outstanding	5.50-6.00	75-100
“A” -Very Good	4.50-5.49	65-74
“B”- Good	3.50-4.49	55-64
“C”-Average	2.50-3.49	45-54
“D”- Below Average	1.50-2.49	35-44
“E”-Poor	0.50-1.49	25-34

“F”-Fail	0-0.49	0-24
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Distribution of Marks:

1) Academic Record and Research Performances

a) Academic Record (70 marks)

i) H.S.L.C or equivalent examination (15% of the total percentage of marks)	10 Marks
11 H.S.S.L.C or equivalent examination (15% of the total percentage of marks)	15 marks
12 Degree a) 20 % of the total percentage of marks in Hons/Major subjects for Hons/Major students. b) 20% of the total percentage of marks in General course students without Hons/Major	20 marks
13 Master Degree(25%)	25 marks

c) Research Performance (25 Marks)

i) Ph.D from UGC recognized/and Govt. of Assam approved University (if the candidate has Ph.D Degree in addition to eligibility requirement of NET/SLET/SET. There will be no marks for the Ph.D Degree, if, it is counted in lieu of NET/SLET/SET.	7 Marks
(ii) M.Phil. Degree from UGC recognized and Govt. of Assam approved university	5 Marks
(iii) Research paper/article published with ISSN number and research based book with ISBN number. (2 marks for each publication subject to maximum 6 marks).	6 marks
iv) Chapter/article published in research/text book with ISBN number	5 marks
v) Presentation of papers in international/national Seminar,	5 marks

Workshop etc.

(2 marks for each paper subject to maximum 5 marks).

There shall be no marks only for attending seminar, workshop etc.

The Selection Committee may like to verify the Abstract volume to authenticate the presentation of paper.

2. Teaching experience (5 marks)

a) Teaching Experience

(1 mark for each completed year of service in an affiliated Govt. last Degree College subject to maximum 5 marks.)

5 marks

All Faculties must have a Permanent Residence Certificate (PRC) and must know local languages.

Memo NO AHE.262/2012/13-A

Sd/- (H.K.Sharma, IAS)
 Commissioner & Secretary to the Govt. of Assam
 Higher Education Department.
 Dated Dispur the 25th June, 2012.

38. It is evident from the aforesaid office memorandum, candidate possessing Ph.D from UGC recognized and the Government of Assam approved University would be entitled to allocation of 7 (seven) marks, if the Ph.D degree is in addition to eligibility requirement of NET/SLET/SET. There will be no marks for Ph.D degree, if, it is counted in lieu of NET/SLET/SET. It also provides candidate possessing M.Phil degree from UGC recognized and the Government of Assam approved university would be entitled for 5 (five) marks. In other words, a candidate would be entitled for 7(seven) marks, if he or she has Ph.D degree from UGC recognized and Government of Assam approved University in case the candidate Ph.D degree is in addition to eligibility requirement of NET/SLET/SET but shall not be entitled for marks for Ph.D. degree if it is counted in lieu of

NET/SLET/SET. The candidate having M.Phil degree from UGC recognized and Govt. of Assam approved University would be entitled for 5 (five) marks. But if M.Phil degree is in lieu of NET/SLET/SET, there is no attached like that of the Ph.D degree.

39. The Govt. of India concerning the Scheduled Caste and Scheduled Tribe including on issue of caste certificate dated 02.05.1975, inter-alia provides that where a person migrates from one State to another, he can claim to belong to a scheduled caste or scheduled tribe only in relation to the State to which he originally belong and not in respect of the State to which he has migrated.

40. The Government of Assam, Higher Education Department has issued notification vide Memo No. AHE. 311/2016/32 dated 22.03.2017, which is reproduced herein below:-

GOVERNMENT OF ASSAM
HIGHER EDUCATION DEPARTMENT

DISPUR: GUWAHATI-6

ORDERS BY THE GOVERNOR OF ASSAM

NOTIFICATION

Dated Dispur the 22 March, 2017.

No AHE 311/2016/32 Government of Assam in Higher Education Department issued notification vide No.AHE 394/2010/20 dated 01-01-2011 exempting from NET/SLET appointment to Assistant Professor/Librarian who obtained M.Phil Ph.D de SET for sin 2009 The Bald Notification was issued in pursuance of the resolution passed in 471 and 472 meeting of UGC held on 12-08-2010 and 27-09-2010 respectively regarding exemption to pre-2009 M.Phil degree holders for appointment to the post of Assistant Professor.

Whereas the above Issue has been clarified by UGC through a Public Notice issued vide No.F.9-3/2010 (PS) dated 12-10-2012 that those resolutions were not concurred by Ministry of Human Resource Development. Government of India, and were not given any force.

Whereas the notification No. AHE 394/2010/20 dated 01-01-2011 was not in conformity with the UGC Regulation in force at that time and even now.

Hence, the aforesaid notification is withdrawn with effect from the date of issue of this notification.

Sd/-(Ajay Tewari, IAS) Comunissioner & Secretary to the Govt.
of Assam, Higher Education Department

Memo No.A-HE.311/2016/32-A

Dated Dispur the 22nd March, 2017

41. The above notification provides that the Government notification issued vide dated 01.01.2011 exempting from NET/SLET for appointment to the post of Assistant Professor/Librarian, who obtained M.Phil/Ph.D degree on or before 10.07.2009 to the effect that the UGC vide dated 22.12.2012 clarified that such resolution were not concurred by the Ministry of Human Resource Department, Govt. of India and were not given any force and notification was not in conformity with the UGC regulation in force that time and even now, hence, the notification is withdrawn w.e.f. date of issue of notification i.e. dated 22.03.2017. In my considered view if the exemption was not concurred by the Ministry of Human Resources Development, Govt. of India and were not given any force and was not in conformity of the UGC guidelines in force at that time and even now, the exemption of requirement of NET/SLET stands obliterated by such notification. However, since the aforesaid notification is with effect from date of the issuance i.e. 22.03.2017, it can be construed that the aforesaid notification was in force at the time of selection process. Any exemption before the notification cannot be held to be invalid as no fault can be attributed to candidates on such exemption. Moreso, its effect is prospective.

42. Regard being had to the case of the writ petition in WP(C) 158/2017,

namely H. Sunita Devi, the ground on which the petitioner was rejected for being Scheduled Caste of Manipur for appointment to the post of Assistant Professor, Zoology, Cachar College, Silchar, though she scored highest marks of 65.5 amongst all the candidates, is no longer *res-integra* that a person belonging to ST/SC in relation to his or her original State of which he or she is permanent or ordinarily resident cannot be deemed to be so in relation to any other state on his migration to that state for the purpose of employment.

43. Undisputedly, the petitioner, namely, Dr. H. Sunita Devi, is a permanent resident of State of Manipur, who is a recognized Scheduled Caste in the State of Manipur. Since the post of Assistant Professor in Zoology, Cachar College, Silchar is reserved for scheduled caste candidate, although, she has scored highest marks and which merited her as number one position, her claim for selection and appointment for the said post, in my considered view has been rightly rejected by the Selection Committee and Governing Body as well as the Director of Higher Education, Assam.

44. In this regard, I would refer to the judgment of the Apex Court in the case of **Action Committee on issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another Vs. Union of India and Another** reported in **(1994) 5 SCC 244**, wherein, the Hon'ble Supreme Court has held, which is reproduced herein below:-

“3. On a plain reading of Clause (1) of Articles 341 and 342 it is a manifest that the power of the President is limited to specifying the castes or tribes which shall, for the purposes of the Constitution, be deemed to be Scheduled Castes or Scheduled Tribes in relation to a State or a Union Territory, as the case may be. Once a notification is issued under Clause (1) of Articles 341 and 342 of the Constitution, the Parliament can law include in or exclude from the list of Scheduled Castes or Scheduled Tribes, specified in the notification, any caste or tribe but save for that limited purpose the notification issued under Clause (1), shall not be

varied by any subsequent notification. What is important to notice is that the castes or tribes have to be specified in relation to a given State or Union Territory. That means a given caste or tribe can be a Scheduled Caste or a Scheduled Tribe in relation to the State or Union Territory for which it is specified. These are the relevant provisions with which we shall be concerned while dealing with the grievance made in this petition.

16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Scheduled Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non-existent in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State for the purposes of this Constitution. This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution. That is why in answer to a question by Mr. Jaipal Singh, Dr. Ambedkar answered as under :

"He asked me another question and it was this. Supposing a member of a Scheduled Tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local government, within whose jurisdiction he may be residing the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in his Constitution. But so far as the present Constitution stands, a member of a Scheduled Tribe going outside the Scheduled area or tribal area would certainly

not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practicably impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them...."

45. In the case of **Bhadar Ram (dead) through Legal Representatives Vs. Jassa Ram and Others** reported in **(2022) 4 SCC 259**, the Hon'ble Supreme Court has held which is reproduced herein below:-

"15. In the case of Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another (supra) after considering the decision of this Court in the case of Marri Chandra Shekar Rao (supra) the question arose, Whether a person belonging to caste or tribe specified for the purpose of Constitution to be Scheduled Caste or a Scheduled Tribe in relation to State A migrates to State B, where a caste or tribe with the same nomenclature is specified for the purposes of Constitution to be a Scheduled Caste or Scheduled Tribe in relation to that State B, will that person be entitled to claim the privileges and benefits admissible to persons belonging to Scheduled Caste and/or Scheduled Tribe in State B? Holding that a person belonging to Scheduled Caste/Scheduled Tribe in relation to his original State of which he is permanent or an ordinarily resident cannot be deemed to be so in relation to any other State on his migration to that State for the purpose of employment, education etc."

46. In the Case of **Bir Singh Vs. Delhi Jal Board and Others** reported in **(2018) 10 SCC 312**, wherein the Constitution Bench of Hon'ble Supreme Court, while considering the Article 16(4) 341(1) 342(2) 14, 15(4) and 15(4) has held which is reproduced herein below:-

"34. Unhesitatingly, therefore, it can be said that a person belonging to a Scheduled Caste in one State cannot be deemed to be a Scheduled Caste person in relation to any other State to which he migrates for the purpose of employment or education. The expressions "in relation to that State or Union Territory" and "for the purpose of this Constitution " used in Articles 341 and 342 of the Constitution of India would mean that the benefits of reservation

provided for by the Constitution would stand confined to the geographical territories of a State/Union Territory in respect of which the lists of Scheduled Castes/Scheduled Tribes have been notified by the Presidential Orders issued from time to time. A person notified as a Scheduled Caste in State 'A' cannot claim the same status in another State on the basis that he is declared as a Scheduled Caste in State 'A'."

47. In the light of the law laid down by the Hon'ble Supreme Court, I am of the firm view that the petitioner, namely, Dr. H. Sunita Devi, a Scheduled Caste belonging to State of Manipur and being an ordinarily and permanent resident of the State of Manipur cannot claim the benefit of reservation as Scheduled Caste community in the State of Assam for the purpose of employment in the present case for selection and appointment to the post of Assistant Professor, Zoology, Cachar College, Silchar, which is reserved for the Scheduled Caste candidate of State of Assam. Moreso, all the manipuris including the Scheduled Caste and the Scheduled Tribe are recognized as an OBC in the State of Assam.

48. Coming to the case of Dr. Doli Talukdar in writ petition No. 5227/2017, admittedly, the petitioner is not having NET or SLET/SET requirement. However, she claims to have obtained her M.Phil degree prior to 10.07.2009, which made her eligible for the post of Assistant Professor, Zoology, Cachar College, Silchar. On the perusal of the M.Phil certificate, it is seen that, though certificate was issued on 04.09.2009, degree was awarded in the 10th Convocation of the University held on 16.02.2009. As per the advertisement, the candidate having M.Phil Degree obtained on or before 10.07.2009 is exempted from having NET/SLET/SET requirement. If the date of issuance of certificate is taken, the petitioner can be said to be not eligible as the same was issued on 04.09.2009. The cutoff date is on or before 10.07.2009 for which the candidate has to obtain his or her M.Phil degree. However, the certificate itself clearly provided

that the degree is awarded on 16.02.2009. Thus, on careful consideration, I am of the view that the date of obtaining the degree should be the date of award of M.Phil degree i.e. 16.02.2009 and as such the petitioner is eligible as having obtained and awarded the M.Phil degree on 16.02.2009 before 10.07.2009 although, the certificate was issued on 04.09.2009.

49. Another aspect of the matter is that admittedly Dr. Doli Talukdar was awarded 7 (seven) marks for Ph.D degree as she obtained the Ph.D degree just before the interview. It is settled position of law that a person must have the qualification and eligibility on the last date of submission of the application and not thereafter. Since, the petitioner has obtained her Ph.D degree after the last date of submission of the application i.e. on 10.01.2016 though just before the interview, the petitioner could not have been awarded 7 (seven) marks for Ph.D. Moreso, admittedly she does not have the NET/SLET/SET requirement and Ph.D cannot be in addition of the NET/SLET/SET requirement. The consideration is as to whether the petitioner was eligible by virtue of having the M.Phil degree on or before 10.07.2009. As noted above, in my considered view though the certificate of M.Phil degree was issued on 04.09.2009, the degree was awarded on the 10th Convocation of the university held on 06.02.2009, which date it is considered and accepted to be the date of obtaining of the M.Phil degree. As per the Office Memorandum dated 25.06.2012 (supra), the candidate having M.Phil degree from UGC recognized and the Govt. of Assam approved university would be entitled to 5 (five) marks and it does not provide any condition as that of the Ph.D degree holder that if it is counted in lieu of the NET/SLET/SET no marks would be awarded. In the facts and circumstances of the present case, I am of the considered view that the petitioner is eligible being M.Phil degree holder from UGC recognized and the Govt. of Assam approved University for

selection and appointment for the post of Assistant Professor, Zoology, and is entitled to 5 (five) marks for her M.Phil degree. If the 7 (seven) marks is subtracted from the total marks of 61.8 it would come to 54.8 marks, however, if 5 (five) marks is added for her M.Phil degree, which she is entitled, her total marks would be 59.8, which is below Dr. H. Sunita Devi and above respondent no. 5, namely, Manoj Roy.

50. As noted above, the rejection of Dr. Doli Talukdar by the Director of Higher Education, Assam on the ground of having no NET/SLET/SET requirement is factually incorrect and erroneous. That apart awarding of 7 (seven) marks for Ph. D instead of 5 (five) marks for M.Phil. is also erroneous as the same has awarded without proper consideration of the requirement under the office Memorandum referred to above.

51. In view of the discussion made herein above, the impugned speaking order dated 13.12.2016 of the Director of Education, Assam holding that the petitioner, Dr. Doli Talukdar does not have NET/SLET and she has been allowed to participate on the strength of her Ph.D. notified on 19.07.2016 being factually incorrect is hereby interfered with.

52. The decision of the Director of Higher Education, Assam on the petitioner, Dr. Doli Talukdar, that she is not having NET/SLET and was allowed to participate on the strength of her Ph.D degree (being factually incorrect) and to consider the respondent no. 5, the 3rd candidate, namely, Manoj Roy, is also interfered with. Accordingly, the impugned speaking order dated 13.12.2016 in so far as it relates to the findings and the decision in respect of the petitioner Dr. Doli Talukdar and Manoj Roy is hereby set aside and quashed and so far as it relates to the decision and findings in respect of Dr. H. Sunita Devi is not

interfered with.

53. Consequently, writ petition No. 158/2017 filed by the Dr. H. Sunita Devi stands dismissed and the writ petition No. 5227/2017 filed by the Dr. Doli Talukdar is allowed with a direction to respondent authorities to reconsider the case of Dr. Doli Talukdar for allotment of marks for M.Phil degree as per relevant office Memorandum and pass consequential order within 30(thirty) days from the date of receipt of this certified copy of this order. No order as to costs.

JUDGE

Comparing Assistant