

GAHC010009042016



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

**Case No. : WP(C)/990/2016**

RANTU SAIKIA  
S/O SRI TULASHI SAIKIA, R/O NANGAL GAON, P.O. and P.S. BORHOLLA,  
DIST- JORHAT, ASSAM, PIN-785631

VERSUS

THE STATE OF ASSAM AND 4 ORS  
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM, DEPTT.  
OF ENVIRONMENT AND FORESTS, DISPUR, GUWAHATI, ASSAM

2:PRINCIPAL CHIEF CONSERVATOR OF FOREST AND HEAD OF FOREST  
FORCE  
ASSAM  
REHABARI  
GUWAHATI  
DIST- KAMRUP METRO  
ASSAM  
PIN-781008

3:ADDL. PRINCIPAL CHIEF CONSERVATOR OF FOREST ADMN. and VIG.  
O/O THE PRINCIPAL CHIEF CONSERVATOR OF FOREST AND HEAD OF  
FOREST FORCE  
ASSAM

4:CONSERVATOR OF FOREST PLANNING OFFICER-I  
O/O THE P.C.C.F. and H.O.F.F.  
ASSAM  
REHABARI  
GUWAHATI-8  
DIST- KAMRUP METRO  
ASSAM

5:DIVISIONAL FOREST OFFICER  
FRS DIVISION  
GUWAHATI CUM MEMBER SECY.  
CENTRAL SELECTION COMMITTEE FOR AFPF CONSTABL

**Advocate for the Petitioner** : MR.A BHATTACHARYA, MR.M DUTTA,MR.P P DUTTA,MR.A BARUA

**Advocate for the Respondent** : , „SC, FOREST

**WP(C)/557/2016**

BISWAJIT BORAH  
S/O- MR. HAREN BORAH  
R/O VILL.- PANCHNOI NEPALI  
P.O.- HUGRAJULI  
DIST.- SONITPUR  
PIN- 784507  
ASSAM.

VERSUS

THE STATE OF ASSAM and 2 ORS.  
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM  
FOREST DEPTT.  
DISPUR  
GHY- 6  
ASSAM.

2:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST and HEAD OF FOREST  
FORCE  
REHABARI  
GHY- 8.

3:THE CONSERVATOR OF FOREST  
PLANNING OFFICER- I  
O/O- P.C.C.F. and H.O.F.F.  
ASSAM  
REHABARI  
GHY- 8.

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Advocate for : MS.N DAIMARI  
Advocate for : SC  
FOREST appearing for THE STATE OF ASSAM and 2 ORS.

**BEFORE**  
**HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**

For the Petitioner : Shri M Dutta, Advocate and  
Ms. S Shankar, Advocate.

For the Respondents : Shri RR Gogoi, SC, Forest Deptt.,  
Assam.

Date of Hearing : 13.08.2024.

Date of Judgment : 13.08.2024.

**JUDGMENT & ORDER**

Heard Shri M Dutta, learned counsel for the petitioner in WP(C)/990/2016 and Ms. S Shankar, learned counsel appearing on instructions of Shri PN Sarmah, learned counsel for the petitioner in WP(C)/557/2016. Also heard Shri RR Gogoi, learned Standing Counsel, Forest Department, Assam.

**2.** Both these writ petitions being on the same subject, those are taken up for an analogous hearing and are disposed of by this common judgment and order.

**3.** A recruitment process was initiated for the post of Assam Forest Police Force (AFPF) Constable vide an advertisement dated 23.04.2015. It is the case of the petitioners that they were found to be qualified in the elimination race, physical efficiency test consists of 100 metres race, high jump and long jump. However, they were not short listed in the *viva-voce* and accordingly, in the select list published on

24.01.2016, their names did not figure.

**4.** Shri Dutta, learned counsel for the petitioner in WP(C)/990/2016 has submitted that his client belongs to the MOBC category and had completed the elimination race of 1.6 kilometer within the prescribed time of 7 minutes. He had also qualified the physical efficiency test consisting of 100 metre race, high jump and long jump. It is the principal grievance of the petitioner that there was no prescription in the advertisement of short listing of candidates for *viva-voce*. He accordingly submits that necessary interference be made and the candidature of the petitioner be duly considered.

**5.** Ms. Shankar, learned counsel for the petitioner in WP(C)/557/2016 while endorsing the submissions of Shri Dutta, learned counsel, has also submitted that having found qualified in the physical efficiency test, there was no reason not to include the petitioner for the *viva-voce*. She has also submitted that on 24.01.2016, a select list was published for candidates to appear for *viva-voce* to be held from 08.02.2016.

**6.** *Per contra*, Shri Gogoi, learned Standing Counsel has submitted that the writ petitions have been structured on erroneous presumption. It is submitted that short listing of candidates to face the *viva-voce* is a part of the recruitment and is not required to be specifically mentioned in the advertisement. He submits that unless a process adopted is grossly unreasonable or *mala fide*, such process does not call for any interference, more particularly when the same is adopted for the sake of convenience and to efficiently conclude the recruitment process.

**7.** By referring to the affidavit-in-opposition filed in both the cases, the learned Standing Counsel has dealt with the aspect as to why the petitioners' names did not

figure in the short listed candidates. It is stated that while the cut off mark for the category of OBC/MOBC is 24, the petitioners got 21.5 and 12.5, respectively. It is submitted that the cut off mark has been calculated by taking into account the number of candidates and the total marks which was stipulated as 35. He has also submitted that here is no *mala fide* alleged. The learned Standing Counsel has also highlighted the aspect that while the short listing of selected candidates has been challenged, none of those candidates have been made party.

**8.** Shri Dutta, learned counsel for the petitioner, in his rejoinder has, however, submitted that in a subsequent writ petition, being WP(C)/4532/2016 in which though there was a direction to fill up the 105 numbers of vacant posts, the same was to be done after carrying out necessary rectification. The learned counsel has, however, submitted that he is not aware of the development which had taken place thereafter.

**9.** The rival submissions have been duly considered and the materials on records have been carefully examined.

**10.** The entire fulcrum on which the petitioners have based their cases is their success in the physical efficiency test which consisted of completion of 1.6 kilometer race within a stipulated time of 7 minutes, high jump and long jump and 100 metre race. Though it is claimed that the petitioners had qualified, it appears that marks were allotted and out of total marks of 35, cut off marks were also prescribed for various categories. From the affidavit-in-opposition filed in these cases, it reveals that so far as the OBC and MOBCs are concerned, the cut off mark was 24. It is also revealed, as observed above that while the cut off mark was 24, the petitioners had secured 21.5 and 12.5 marks, respectively. Short listing of candidates to be called for *viva voce*, *per se* cannot be held to be illegal or improper rather, in the opinion of this

Court, such short listing would be necessary for the exigency of completion of the recruitment process in a smooth and fair manner by taking into account the number of vacancies and the total number of candidates who had applied for the said post. The matter would have been different if the marks secured by the petitioners were above the cut off marks in the concerned category which is not the case. The aspect that the selected candidates whose names figured amongst the short listed candidates have not been made parties is also a relevant consideration.

**10.** The aspect of the order passed in WP(C)/4532/2016 has also been taken into consideration. Though it is submitted that the recruitment was directed to be completed by filling up the post by undertaking necessary rectification, a bare look in the order which has been placed before this Court would show that the petition has been held to be devoid of merit apart from being not maintainable for not impleading the selected candidates. In the considered opinion of this Court, the said order would not come to any aid of the petitioners in these cases.

**11.** In view of the aforesaid discussion, both the writ petitions stand dismissed.

**JUDGE**

**Comparing Assistant**