

GAHC010015552024



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

Case No. : WP(C)/530/2024

MINTU SONAR AND 2 ORS.
S/O- LATE MADHU SUDAN SONAR, VILL.- PUTHIKHAL, P.O.
ATHAROTILLA, P.S. DHOLAI, DIST. CACHAR, ASSAM, PIN- 788115.

2: BISHAL KAIRI
S/O- RAMPIRITH KAIRI
VILL.- PUTHIKHAL
P.O. ATHAROTILLA
P.S. DHOLAI
DIST. CACHAR
ASSAM
PIN- 788115.

3: BIKASH KAIRI
S/O- BIKRAM KAIRI
VILL.- PUTHIKHAL
P.O. ATHAROTILLA
P.S. DHOLAI
DIST. CACHAR
ASSAM
PIN- 788115

VERSUS

THE UNION OF INDIA AND 8 ORS
REPRESENTED BY THE SECRETARY, HOME MINISTRY OF HOME AFFAIRS,
NEW DELHI-110001.

2:THE STAFF SELECTION COMMISSION
REPRESENTED BY ITS CHAIRMAN
BLOCK NO. 12
CGO COMPLEX
LODHI ROAD
NEW DELHI-110003.

3:THE UNDER SECRETARY
STAFF SELECTION COMMISSION
BLOCK NO.12
CGO COMPLEX
LODHI ROAD
NEAR JLN STADIUM
NEW DELHI-110091.

4:THE REGIONAL DIRECTOR

STAFF SELECTION COMMISSION
NORTH EASTERN REGION
HOUSEFED COMPLEX
WEST END BLOCK
BASISTHA ROAD
P.O. ASSAM SACHIVALAYA
GUWAHATI-781006.

5:THE DIRECTOR GENERAL

SAHAstra SENA BAL
5-6
VIVEKANAND MARG EAST BLOCK
R.K. PURAM
NEW DELHI-22.

6:THE DIRECTOR GENERAL

CENTRAL RESERVE POLICE FORCE
CGO COMPLEX
LODHI ROAD
NEW DELHI-110003.

7:THE DIRECTOR GENERAL

INDO TIBETAN BORDER POLICE
BLOCK NO. IV
CGO COMPLEX
LODHI ROAD
NEW DELHI-110003.

8:THE DIRECTOR GENERAL

CENTRAL INDUSTRIAL SECURITY FORCE
BLOCK NO.13
CGO COMPLEX
LODHI ROAD

NEW DELHI-110003.

9:THE DIRECTOR GENERAL
ASSAM RIFLES
NONGRIMMAW
LAITUMUKHRAH
GORALINE
SHILLONG-793003

Advocate for the Petitioner : MR. S CHAUHAN

Advocate for the Respondent : DY.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 05/02/2024

Heard Mr. S. Chauhan, learned counsel for the writ petitioners. Also heard Ms. B. Sarma, learned CGC appearing for the respondents.

The writ petitioners herein belong to OBC category. In response to the advertisement notice dated 21-07-2018, issued for the purpose of filling up the posts of Constable (GD) in the Central Armed Police Force (CAPF), the petitioners had submitted their candidature and had also taken part in the selection process. However, upon completion of the selection process the names of the petitioners did not find place in the select list although they had secured more marks than the last selected/appointed as unreserved category candidate.

According to the petitioners' counsel the benefit of reservation was not extended to the petitioners on the ground that relaxation was earlier granted to him on account of measurements of height and chest. Mr. Chauhan submits that the said relaxation was given to all the candidates belonging to the Northeastern region of India and therefore, the same could not have been substituted for the benefit of reservation which was statutorily available to the petitioners as OBC

candidate. Mr. Chauhan has also invited the attention of this Court to the decision of this Court rendered in the case **of Manoranjan Roy & Anr. Vs. UoI & Ors. [W.P.(C) No. 3468/2023]** and series of other similar writ petitions wherein, similar grievance of the writ petitioners were redressed and a direction was issued upon the respondents to issue orders of appointment to such reserved category candidates as expeditiously as possible. Mr. Chauhan, therefore, submits that similar order be passed in the present case as well.

Ms. B. Sarma, learned CGC has submitted, in her usual fairness, that the case of the petitioners would come within the ambit of earlier orders passed by this Court in the case of **Manoranjan Roy (Supra)** and to that extent, he does not resist the prayer made by the petitioner. However, at this point of time, vacancies may not be available so as to accommodate the petitioner and therefore, a writ of mandamus, directing appointment of the petitioners, may not be issued in the facts of this case.

The said submission of the learned CGC has been countered by Mr. Chauhan by placing reliance on a decision of the Supreme Court rendered in the case of **Gaurav Pradhan & Ors. Vs. State of Rajasthan & Ors.** reported in **(2018) 11 SCC 352**, wherein the Hon'ble Apex Court had held that if the appointment orders to the unreserved category candidates were denied without any valid basis, they should be appointed, if necessary by creating supernumerary posts.

In the case of **Gaurav Pradhan (Supra)**, the Supreme Court had taken note of the fact that the candidates who were found to have been selected and were entitled to be appointed on the basis of merit were sought to be denied their orders of appointment by taking the plea that vacancies were not available. I find that that was a case where the petitioners, who were part of the merit list, were entitled to be appointed against unreserved vacancies but the vacancies were filled up by migration of SC/ ST/ BC who had availed relaxation of age. Having found that the petitioners could establish their right, the Supreme Court has made the following observation and direction:-

“51. We, thus, for adjusting the equity between the parties, issue the following directions:

51.1 The appellant-writ petitioners who as per their merit were entitled to be appointed against unreserved vacancies which vacancies were filled up by migration of SC/ST/BC candidates, who had taken relaxation of age, should be given appointment on the posts. The State is directed to work out and issue appropriate orders for appointment of such candidates who were as per their merit belonging to general category candidates entitled for appointment, which exercise shall be completed within three months from the date, copy of this order is produced.

51.2 The State shall make appointments against the existing vacancies, if available, and in the event there are no vacancies available for the above candidates, the supernumerary posts may be created for adjustment of the appellants which supernumerary posts may be terminated as and when vacancies come into existence.

52. All the appeals are allowed accordingly.”

In view of the above, this writ petition stands disposed of by providing that subject to fulfillment of other eligibility conditions, as per the advertisement notice, the respondents may issue order of appointment to the writ petitioner, appointing them as Constable (GD) in any division of the Central Armed Police Forces, as expeditiously as possible, preferably within 06 (six) months from the date of receipt of a certified copy of this order. However, if vacancies are not available, then in that event, supernumerary post, in the light and observation made in the case of **Gaurav Pradhan (Supra)**, be created for accommodating the petitioners.

With the above observation, this writ petition stands disposed of.

JUDGE

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Comparing Assistant