

GAHC010177702023



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

Case No. : WP(C)/4992/2023

MAINUL HAQUE AND 24 ORS
SON OF LATE MAZIBUDDIN AHMED, ASSISTANT FISHERY OFFICER,
OFFICE OF THE DFDO, DISTRICT - DARRANG, ASSAM, PIN NO. 784125

2: PARAG KUMAR NATH
SON OF LATE UMESH CHANDRA BORA
ASSISTANT FISHERY OFFICER
OFFICE OF THE DFDO
DISTRICT - GOLAGHAT
ASSAM
PIN NO. 785621

3: BHABEN RABHA
SON OF LATE MAHENDRA RABHA
ASSISTANT FISHERY OFFICER
OFFICE OF THE DFDO
DISTRICT - KAMRUP
ASSAM
PIN NO.781016

4: GOPAL CHANDRA PATOWARY
SON OF LATE GOBINDA RAM PATOWARY ASSISTANT FISHERY OFFICER
OFFICE OF THE DFDO DISTRICT - MORIGAON
ASSAM
PIN NO.782105

5: DEBESWAR SONOWAL
SON OF LATE NITESWAR SONOWAL
ASSISTANT FISHERY OFFICER
OFFICE OF THE DFDO DISTRICT - LAKHIMPUR
ASSAM
PIN NO.

6: MUSHADDIK AHMED

SON OF LATE HAFZUDDIN AHMED
ASSISTANT FISHERY OFFICER
OFFICE OF THE FISHERY INFORMATION OFFICER DISTRICT - GUWAHATI
ASSAM
PIN NO.781016

7: AMAR NATH THAKUR
SON OF LATE RAJENDRA THAKUR
ASSISTANT FISHERY OFFICER
OFFICE OF THE DFDO
DISTRICT - BISWANATH
ASSAM
PIN NO.784176

8: ACHAD ALI
SON OF LATE SAH ALAM ALI
ASSISTANT FISHERY OFFICER
OFFICE OF THE DFDO
RANGIA DISTRICT - KAMRUP
ASSAM
PIN NO.781554

9: RAJEN DAS
SON OF GOURI KANTA DAS
ASSISTANT FISHERY OFFICER
OFFICE OF THE DFDO
DISTRICT - NAGAON
ASSAM
PIN NO.782001

10: BUBUL DAS
SON OF LATE MANESWAR DAS
ASSISTANT FISHERY OFFICER
OFFICE OF THE DFDO
DISTRICT - NAGAON
ASSAM
PIN NO.782001

11: JOGENDRA CHANDRA SAHARIA
SON OF LATE BHABI RAM SAHARIA
ASSISTANT FISHERY OFFICER
OFFICE OF THE DFDO
DISTRICT - DARRANG
ASSAM
PIN NO.784125

12: PANKAJ DAS
SON OF LATE HAREN DAS

ASSISTANT FISHERY OFFICER
OFFICE OF THE DFDO
JONAI
ASSAM
PIN NO.787060

13: BINOD MAZUMDAR
SON OF LATE GOLOK MAZUMDAR
ASSISTANT FISHERY OFFICER
OFFICE OF THE DFDO
DISTRICT - NALBARI
ASSAM
PIN NO.781337

14: MD. ABDUL BARIK
SON OF LATE JUBAN ALI
ASSISTANT FISHERY OFFICER
OFFICE OF THE DFDO
DISTRICT - NAGAON
ASSAM
PIN NO.782001

15: DHANJIT KUMAR DAS
SON OF LATE PARASHUTTAM DAS
ASSISTANT FISHERY OFFICER
OFFICE OF THE DFDO
HAILAKANDI
ASSAM
PIN NO.788151

16: PROMOD SABHA PONDIT
SON OF LATE MANESWAR DAS
ASSISTANT FISHERY OFFICER
OFFICE OF THE DFDO
SADIA
ASSAM
PIN NO.786157

17: KAMAL HUSSAIN
SON OF LATE SADULLA ALI
ASSISTANT FISHERY OFFICER (RETIRED)
OFFICE OF THE DFDO
DARRANG
ASSAM
PIN NO.784125

18: MD. JAHIDUL ISLAM
SON OF ANOWAR HUSSAIN

ASSISTANT FISHERY OFFICER
OFFICE OF THE DFDO
BARPETA
ASSAM
PIN NO.781301

19: PRAKASH SARMA
SON OF LATE LAKHESWAR DEV SARMA
ASSISTANT FISHERY OFFICER
OFFICE OF THE DFDO
TINSUKIA
ASSAM
PIN NO.786125

20: SUBHASH CHANDRA DUTTA
SON OF LATE SACHINDRA DUTTA
ASSISTANT FISHERY OFFICER
OFFICE OF THE DFDO
KAMRUP
ASSAM
PIN NO.784125

21: SUNSHY TERON
SON OF DAGI RAM TERON
ASSISTANT FISHERY OFFICER
OFFICE OF THE DFDO
KARBI ANGLONG
DIPHU
ASSAM
PIN NO.782441

22: MON SINGH LEKTHE
SON OF LATE HABE LEKHTHE
ASSISTANT FISHERY OFFICER
OFFICE OF THE DFDO
KARBI ANGLONG
DIPHU
ASSAM
PIN NO.782441

23: LONGI RAM KRO
SON OF JENGREN KRO
ASSISTANT FISHERY OFFICER
OFFICE OF THE DFDO
KARBI ANGLONG
DIPHU
ASSAM
PIN NO.782441

24: PRASANTA KUMAR BHUYAN
SON OF LATE KAMAL CHANDRA BHUYAN
ASSISTANT FISHERY OFFICER
OFFICE OF THE DFDO
JORHAT
ASSAM
PIN NO.785001

25: TILOK CHANDRA GOGOI
SON OF LATE PANIRAM GOGOI
ASSISTANT FISHERY OFFICER
OFFICE OF THE SUPDT. OF FISHERY TRAINING INSTITUTE
JOYSAGAR
ASSAM
PIN NO.78566

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
FISHERY DEPARTMENT, DISPUR, GUWAHATI-6

2:THE DIRECTOR OF FISHERIES
ASSAM
MEEN BHAWAN
GUWAHATI-16

3:ASSAM PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS CHAIRMAN
JAWAHARNAGAR
KHANAPARA
GUWAHATI-22

4:COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GUWAHATI-6

5:COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PERSONAL (B) DEPTT.
DISPUR
GUWAHATI-

Advocate for the Petitioner : MR. S K DAS

Advocate for the Respondent : GA, ASSAM

Linked Case : WP(C)/1492/2018

ALL ASSAM FISHERY OFFICIALS' TECHNICAL ASSOCIATION AND 2 ORS.
REP. BY IT'S GENERAL SECRETARY
HEMANTA KUMAR KALITA
OFFICE OF THE DISTRICT FISHERY DEVELOPMENT OFFICER
GOPINATH NAGAR
BIRUBARI
GUWAHATI-16

2: BAPU RAM TERON
ASSISTANT FISHERY OFFICER
DISTRICT FISHERY DEVELOPMENT OFFICER
KARBI ANGLONG (DIPHU)
PIN-782460

3: RAJENDRA PATOWARY
ASSISTANT FISHERY OFFICER
SUB-DIVISIONAL FISHERY DEVELOPMENT OFFICER
RANGIA
VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
FISHERY DEPARTMENT
DISPUR
GUWAHATI-6

2:THE DIRECTOR OF FISHERIES
ASSAM
GUWAHATI-16.
3:ASSAM PUBLIC SERVICE COMMISSION
REPRESENTED BY IT'S CHAIRMAN
JAWAHARNAGAR
KHANAPARA
GUWAHATI-22

Advocate for : MR. S K DAS
Advocate for : MR. D NATH (ADDL. SR. GA
ASSAM) appearing for THE STATE OF ASSAM AND 2 ORS.

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

05.02.2024

Heard Mr. S. K. Das, learned counsel for the petitioners in both these proceedings. I have also heard Mr. D. Nath, learned Senior Government Advocate, Assam appearing for the State. Ms. P. Sharma, learned Standing Counsel, APSC is present on behalf of the Commission.

2. The core issue involved in both these writ petitions are one and the same and therefore, both these matters are being taken up for disposal by this common order.

3. The 25 writ petitioners in WP(C) No.4992/2023 are presently working as Assistant Fishery Officer. As per the Assam Fishery Service (Recruitment and Promotion) Orders, 1989, 25% posts in the next higher rank of Fishery Development Officer are required to be filled up by way of promotion from the eligible departmental candidates. The post of Assistant Fishery Officer is the feeder cadre for promotion to the post of Fishery Development Officer. However, due to non-availability of adequate vacancies in the rank of Fishery Development Officer, the petitioners have been deprived of promotion. Hence, this writ petition.

4. Mr. Das, learned counsel for the petitioners, has submitted that many of the officers in the rank of Assistant Fishery Officer have already retired from service without getting the benefit of promotion although, as per Gradation List, they come within the zone of consideration for promotion.

5. By inviting the attention of this Court to the stand of the respondent No.2 in the affidavit filed in WP(C) No.4992/2023, Mr. Das submits that the

Government has decided to create 8 (eight) posts of Fishery Inspector so as to accommodate departmental candidates such as the petitioners by way of promotion. However, the process of creation of posts is taking a long time thus causing serious prejudice to the interest of the petitioners, some of whom are on the verge of retirement.

6. The writ petitioner Association in WP(C) No.1492/2018 also represents the interest of similarly situated Assistant Fishery Officers ventilating similar nature of grievance.

7. It is not in dispute that due to want of vacancies in the next higher grade of Fishery Development Officer, many of the Assistant Fishery Officers, who have rendered long years of service and are otherwise eligible for promotion under the Service Orders of 1989, have been deprived of promotion. The aforesaid lacunae is sought to be remedied by creating as many as 8 (eight) posts of Fishery Inspectors which bears higher pay scale. However, it appears that the process of creation of the posts has not reached its logical conclusion. The statements made in paragraph 24 of the counter-affidavit filed by the respondent No.2 would be relevant and therefore, is being reproduced herein below for ready reference :-

“24. That with regard to the statements made in paragraph no.26 to 29 of the writ petition the deponent begs to submit that the matter of promotion to the members of the All Assam Fishery Officials' Technical Association in the 25% of Posts of FDO reserved for AFO and Allied cadre vide Sl. No.14 of Schedule I of Assam Fishery Service (Recruitment & Promotion) Order, 1989 has already been challenged before the Hon'ble Gauhati High Court vide WP(C) No.1492/2028 and the Hon'ble Court

vide order dated 15.12.2022 directed the Government to create intermediary posts with higher scale of pay for members of the All Assam Fishery Officials Technical Association in lieu of promotion as FDO against the 25% quota reserved for them as per 1989 Order. As regards consideration of Notional promotion of such members of the All Assam Fishery Officials Technical Association who are on the verge of retirement from service, they may not be in service till the intermediary promotional post come into force, thus, the Government will comply with any order/direction for grant of Notional Promotion to such members of the petitioners association of the Hon'ble Court in the instant writ petition. Furthermore, the alternative proposal of Government Authority to create intermediary posts of Fishery Inspector/Fishery Field Supervisor with higher scale of pay at par with similarly situated persons in other Government Departments like Agriculture is already under process and the Government Authority is expected to complete it at the earliest after completion of required formalities including inter-Departmental concurrence/ approval where necessary, which will benefit the serving members of the Society as per seniority in service."

8. Mr. Nath, learned Senior Government Advocate, Assam has produced a copy of the written instruction dated 03.02.2024 to submit that the proposal for creation of new posts is in an advanced stage and is awaiting the approval of the Cabinet. Under the circumstances, 3 to 4 months would be required to complete the whole process.

9. Mr. Das, learned counsel for the petitioners has responded to the said argument by submitting that his clients would be satisfied if the process of

creation of the 8 (eight) posts is expedited and the exercise is brought to its logical end in a time bound manner.

10. Ms. P. Sharma, learned Standing Counsel, APSC submits that she does not have any further submission to make in this case.

11. In view of the consensus reached at the Bar, this Court is of the opinion that both these writ petitions can be disposed of by providing that the process of creation of 8(eight) posts of Fishery Inspector be expedited and completed within a reasonable time frame. Taking note of the assurance given by Mr. Nath, the department to complete the process within four months, with effect from today, after fulfilling all procedural formalities. It is, however, made clear that this order would not come in the way of the departmental authorities in considering the cases of those Assistant Fishery Officers, who have retired in the meantime, for the grant of notional benefit under the Service Order of 1989, if so advised.

A copy of this order be produced before the competent authority so as to do the needful.

The writ petitions stand disposed of.

JUDGE

Comparing Assistant