

GAHC010064952020



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

**Case No. : WP(C) 2089/2020**

1: ARUNAV KAR AND 61 ORS.  
S/O- ASHIM KR KAR  
R/O- KP ROAD, P.O. AND P.S-DIBRUGARH.

2: DIPANKA KASHYAP BORTHAKUR  
S/O- SAMIRON BORTHAKUR  
R/O- BAMKUKURA CHOWA GAON  
KAKAJAN  
JORHAT. P.O- KAKAJAN. PIN-785107

3: PARTHA PRATIM SARMA  
S/O BHABENDRA CHANDRA SARMA  
R/O VILL. MOURA  
P.O- KALAG  
P.S. NALBARI  
PIN 781351

4: ABHINANDAN BORUAH  
S/O PULIN KUMAR BORUAH  
R/O BONAI DHANTULA GAON  
PO- ROBIGAON  
DIST-JORHAT  
PIN-785683.

5: SANJUKTA DEKA  
D/O NAVA DEKA  
R/O VILL AND PO- KAZIPARA  
DIST AND P.S- NALBARI  
PIN-781341.

6: LIMLEE BEZBARUAH  
D/O MUNIN BEZBARUAH  
R/O PARIJAT PALACE  
HAIBORGAON  
NAGAON

ASSAM  
PIN-782002.

7: MOHSINA AFROOZ  
D/O MOTIUR RAHMAN  
R/O VILLAGE SABAJPUR  
PO AND PS MURAJHAR  
DISTRICT HOJAI  
ASSAM  
782439.

8: BIKRAMJIT HAZORIKA  
S/O BIREN HAZORIKA  
R/O TELGARAM  
P.O - KANAIGHAT  
DIST- GOLAGHAT  
PIN-785699.

9: BHAGYASHREE MAHANTA  
D/O MUNIN MAHANTA  
R/O MADHABNAGAR  
KHANAPARA  
HOUSE 204  
GUWAHATI  
ASSAM.

10: PIYUSHA BORA  
D/O POWAL BORA  
R/O CHANDAN NAGAR  
R.K.B. ROAD  
GOLAGHAT-785621  
ASSAM.

11: SUKANYA BHUYAN  
D/O CHANDAN KUMAR BHUYAN  
R/O K.B. ROAD  
JORHAT  
ASSAM.

12: HIMASRI LAHKAR  
D/O PRAMOD CHANDRA LAHKAR  
R/O RANGIA  
WARD NUMBER 6  
NEAR RAILWAY OVERBRIDGE  
ASSAM  
PIN- 781354

13: NISHANTA KUMAR BASISTHA  
S/O LATE PRAMOD KUMAR SHARMA  
R/O PUB SHANTI NAGAR  
POWER HOUSE  
KAHILIPARA  
GUWAHATI 781019.

14: BARNALI SAIKIA  
D/O GOURI SANKAR SAIKIA  
R/O VILL- SIMLAGURI (UDAY NAGAR)  
P.O- SIMLAGURI  
PIN- 781313  
DIST- BAKSA  
STATE- ASSAM

15: SIMANTA CHOUDHURY  
S/O JATIN CHOUDHURY  
R/O BARBANGKHANDOPARA  
PO BARBANG  
DIST BARPETA  
STATE ASSAM  
PIN 781325.

16: MONOWAR HUSSAIN  
S/O ABUL KHAYER  
VILL -APRUPI  
P.O- CHANDMAMA  
P.S- KALGACHIA  
DIST-BARPETA  
ASSAM.

17: ABINASH KASHYAP  
S/O DEBA KUMAR SARMAH  
R/O MILAN NAGAR  
DIBRUGARH  
P.O. C.R. BUILDING PIN- 786003.

18: NABANITA ROY  
D/O HARENDRA CHANDRA ROY  
R/O RUPNAGAR  
PO INDRAPUR  
SANKARDEV PATH  
HOUSE NO.13  
GUWAHATI 781032.

19: PINAK JYOTI DEKA  
S/O DHIREN CH DEKA

R/O RAMKRISHNA NAGAR  
LICHUBARI  
P.O. CINNAMARA  
JORHAT -785008.

20: SADDAM HUSSAIN  
S/O PARESH ALI  
R/O VILLAGE AND PO- MERUATTARY PS-MUKALMUA DIST-NALBARI  
781126.

21: RITUPARNA MAZUMDAR  
S/O SUREN MAZUMDAR  
R/O VILL SINGIA PANIGAON  
PO SINGIA  
PIN 782140 NAGAON  
ASSAM.

22: DEBAHOTI KHOOND  
D/O DR. RAJENDRA NATH KHOOND  
R/O H.NO-6C  
SAMPRITTE PATH  
JATIA  
KAHILIPARA ROAD  
DISPUR-781006.

23: RISHAVI BORTHAKUR  
D/O AMAL BORTHAKUR  
R/O 4E  
PARLAY GREEN APARTMENT  
NANDANPUR PATH  
JAPORIGOG  
GUWAHATI  
ASSAM  
781005.

24: RITUPON SAIKIA  
S/O MR. KRISHNA SAIKIA  
R/O BONGALMORA  
ISLAMGAON  
BIHPURIA  
787054  
ASSAM.

25: HIMADRI KALITA  
S/O PRAMOD CHANDRA KALITA  
R/O NEW GUWAHATI RAILWAY COLONY  
BAMUNIMAIDAM. GUWAHATI-781021  
KAMRUP METRO, ASSAM.

26: PRANAMI DAS  
D/O SUBHASH CHANDRA DAS  
R/O BELTOLA SURVEY  
GUWAHATI-781028.

27: ANUSUYA SHARMA  
D/O NRIPENDRA NATH SHARMA BORTHAKUR  
R/O CHIRING CHAPORI ATEICOL LANE DIBRUGARH ASSAM PIN- 786001.

28: ARNABJYOTI SUTRADHAR  
S/O GUNAJIT SUTRADHAR  
R/O HOUSE NO.21  
SHANTI NAGAR PATH  
NO.2 MATHGHARIA  
NOONMATI  
GUWAHATI-781020.

29: LOVITA DEKA  
D/O JADAB CHANDRA DEKA  
R/O VILL- JAPARKUCHI  
P.O.-TERECHIA  
DIST- NALBARI  
PIN-781334  
STATE-ASSAM.

30: SAURAVJYOTI SENCHOWA  
S/O PRODIP SENCHOWA  
R/O VILL-POHUCHOWA GAON  
PO-MAHEEMA  
PIN- 785626  
DISTRICT-GOLAGHAT  
ASSAM.

31: DHANASREE SARMAH  
D/O SARAT SARMAH  
R/O SARBAIBONDHA  
BYPASS  
JORHAT  
P. O. - JORHAT  
PIN- 785001.

32: PARISHMITA GOGOI  
D/O DEEPAK GOGOI  
R/O ADISRIPUR VILLAGE  
TINGKHONG  
PO-TINGKHONG  
PIN-786612

DIBRUGARH  
ASSAM.

33: PRIYANKA TALUKDAR  
D/O HEMANTA TALUKDAR  
R/O BASISTHA  
GANESHNAGAR  
HOUSE NO. 30  
GUWAHATI-29.

34: GAYOTREE SARMA  
D/O PROBIN CHANDRA SARMA  
R/O HAMDOI POOL  
GOLAGHAT.

35: MRIGANKA SARMA  
S/O KARUNA KANTA SARMAH  
R/O HIRAPARA PUBLIC PLAYGROUND  
AZARA  
GHY-17  
KAMRUP (M).

36: KRISHNA KANTA GOGOI  
S/O GHANA KANTA GOGOI  
R/O KUSHAL PATH  
PO- DEMOW.

37: PARTHANA BORUAH  
D/O SURESH CHANDRA BORUAH  
R/O KOPOHUA GAON  
NAZIRA  
SIVASAGAR  
ASSAM.

38: YUGAL BARMAN  
S/O RATNESHWAR BARMAN  
R/O BIDYAPUR  
NALBARI

39: PANKAJ SARMAH  
S/O CHANDRA KANTA SHARMA  
R/O DHOKUAKHANA  
LAKHIMPUR  
PIN-787055

40: KANGKANA HAZARIKA  
D/O- TARUN HAZARIKA  
R/O- ADABARI

GUWAHATI  
KAMRUP (M)  
ASSAM.

41: JAYSHREE TALUKDAR  
D/O- KUMUD TALUKDAR  
R/O- HOUSE NO 6  
SOUTH SARANIA NEAR GANDHI MANDAP  
PO - ULUBARI  
PS-PALTANBAJAR  
GUWAHATI 781007  
ASSAM

42: ABINASH DAS  
S/O- JATINDRA NATH DAS  
R/O- C/O-MUKUL KR CHOUDHURY  
VILL-BHAWANIPUR  
DIST-BARPETA (ASSAM)  
PIN-781352.

43: NABEELA ZARQAA  
D/O- SHAHJADA SALEEM  
R/O- HOUSE NO. 515  
NEAR RLY. GATE 6  
A.T. ROAD  
KUMARPARA  
GUWAHATI 781009

44: NIKHIL SAIKIA  
S/O- NARENDRA SAIKIA  
R/O- VILL- DARANGIAL GAON  
P.O- ALIKUCHI  
PIN-782106  
NAGAON  
ASSAM

45: NAYAN JYOTI DAS  
S/O- DIBAKAR DAS  
R/O- VILL- BAHARI  
P. O.- NIZ BAHARI  
DIST- BARPETA  
ASSAM. PIN - 781302

46: BHASKAR BORTHAKUR  
S/O- PROBIN BORTHAKUR  
R/O- VILL- BANGALIGAON (GOJALI)  
PO- RAJMAI  
DIST- SIVASAGAR

ASSAM  
PIN- 785672

47: NIMISH JYOTI NEOG  
S/O- NAKUL CH NEOG  
R/O- KATHKOTIAGAON PO GANAKPUKHURI DIST- GOLAGHAT ASSAM  
785622

48: YASMINA AZIZ  
D/O- AZIZAR RAHMAN  
R/O- RAJNAGAR  
NEAR UNITED HOSPITAL  
CIRCUIT HOUSE ROAD  
NALBARI

49: RADHASHREE BORA  
D/O- PRASANTA BORA  
R/O- B.B ROAD  
EAST AMOLAPATTY  
NAGAON - 782001  
ASSAM

50: SHRUTI SHARMA  
D/O- LATE ARUN SHARMA  
R/O- GANDHIBASTI  
BYELANE-6  
GOBINDA ENCLAVE  
GHY-3

51: HIMAKSHI DAS  
D/O- JOYDEV CHANDRA DAS  
R/O-2 NO MATHGHARIA  
SANTINAGAR PATH  
HOUSE NO 7  
GUWAHATI

52: BHASKAR PRATIM BORTHAKUR  
S/O- LAKHESWAR BORTHAKUR  
R/O- KAMAKHYA GAON  
P.O-SILGHAT  
NAGAON  
ASSAM PIN-782143

53: DULIKA BURAGOHAIN  
D/O- LATE RUTU GOHAIN  
R/O- CLUB ROAD  
NEAR SAIKIA GAS AGENCY  
JORHAT, ASSAM



54: HIMANGSHU DEKA  
S/O- ANANTA DEKA  
R/O- VILL-KAUREHAGI  
PO-JALKHANA  
PS-TIHU  
DIST-NALBARI  
PIN CODE-781374

55: DIPOM BHARALI  
S/O- NIPU MONI BHARALI  
R/O- GHAR PORA CHUBURI  
TEZPUR  
ASSAM

56: BUBUMANI KALITA  
D/O- JYOTISH KALITA  
R/O- VILL-BARBANG  
KALITAPARA  
PO-BARBANG  
DIST-BARPETA  
PIN-781325

57: MONSUN MOUT  
S/O- BOLI MOUT  
R/O- NAMGHARIA ALI  
BAILUNG PATHAR VILLAGE  
SIVASAGAR  
ASSAM P.O.- ARJUNGURI PIN-785697

58: KABITA BORUAH  
D/O- NILA KANTA BORUAH  
R/O- KACHAMARI DUWARANI GAON  
P.O. KACHAMARI  
P.S. MERAPANI  
DIST. GOLAGHAT  
ASSAM  
PIN- 785705.

59: SIDDIKA IMANI  
D/O LT MAHBUB AHMED CHOUDHURY  
R/O HNO.  
HATIGAON  
GUWAHATI

60: SHAHENAZ SULTANA BEGUM  
D/O IDRISH ALI

R/O MORIGAON  
ASSAM

61: PONKUSMRITA PATHAK  
D/O DHIREN PATHAK  
R/O NANGAL GAON  
P.O. BORBHOLA  
DISTRICT JORHAT  
PIN 785631

62: BITUPAN KAKOTY  
S/O NAGEN KAKOTY  
R/O KHARZARA  
P.O. GOPALBAZAR

NALBARI  
ASSAM  
PIN-781353

VERSUS

1:THE STATE OF ASSAM AND 15 ORS.  
REP. BY THE ADDL. CHIEF SECY. TO THE GOVT. OF ASSAM, EDUCATION  
(HIGHER) DEPTT., DISPUR, GHY-6

2:THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM  
HIGHER EDUCATION (TECHNICAL) DEPTT.  
DISPUR  
GHY-6

3:THE COMM. AND SECY. TO THE GOVT. OF ASSAM  
EDUCATION (HIGHER) DEPTT.  
DISPUR  
GHY-6

4:DIRECTOR OF TECHNICAL EDUCATION  
ASSAM  
DIRECTORATE OF TECHNICAL EDUCATION  
KAHILIPARA  
GHY  
ASSAM  
PIN- 781019

5:ALL INDIA COUNCIL FOR TECHNICAL EDUCATION  
REP. BY ITS CHAIRMAN  
HAVING ITS H.O. AT NELSON MANDALA MARG  
VASANT KUNJ  
NEW DELHI- 110070

6:ASSAM PUBLIC SERVICE COMMISSION  
REP. BY ITS CHAIRMAN  
JAWAHAR NAGAR  
KHANAPARA  
GHY  
ASSAM  
PIN- 781022

7:THE DY. SECRETARY  
ASSAM PUBLIC SERVICE COMMISSION  
JAWAHAR NAGAR  
KHANAPARA  
GHY-22

8:THE PRINCIPAL  
DHEMAJI POLYTECHNIC  
SILAPATHAR  
SIMENCHAPORI  
DIST.- DHEMAJI  
ASSAM  
PIN- 787061

9:THE PRINCIPAL  
GOLAGHAT POLYTECHNIC  
FURKATING  
DIST.- GOLAGHAT  
PIN- 785610

10:THE PRINCIPAL  
SONITPUR POLYTECHNIC  
DHEKIAJULI  
DIST.- SONITPUR  
ASSAM  
PIN- 784110

11:THE PRINCIPAL  
LAKHIMPUR POLYTECHNIC  
BIHPURIA  
DIST.- LAKHIMPUR  
ASSAM  
PIN- 784161

12:THE PRINCIPAL  
BAKSA POLYTECHNIC  
BELGURIPATHAR  
DIST.- BAKSA (BTAD)

ASSAM  
PIN- 781377

13:THE PRINCIPAL  
NALBARI POLYTECHNIC  
DIST.- NALBARI  
ASSAM  
PIN- 781335

14:THE PRINCIPAL  
KAMRUP POLYTECHNIC  
BAIHATACHARIALI  
DIST.- KAMRUP (R)  
ASSAM  
PIN- 781381

15:THE PRINCIPAL  
BARPETA POLYTECHNIC  
BARPETA TOWN  
DIST.- BARPETA  
ASSAM  
PIN- 781301

16:THE PRINCIPAL  
SIVASAGAR POLYTECHNIC  
DIMOW  
DIST.- SIVASAGAR  
ASSAM  
PIN- 78705

**Advocate for the Petitioner** : MR. D DAS SR. ADV

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

**BEFORE**  
**HONOURABLE MR. JUSTICE N. KOTISWAR SINGH**

**ORDER**

**Date : 19-03-2020**

Heard Mr. D. Das, learned Senior counsel for the petitioners.

- 2.** Issue notice, returnable on 29.04.2020.
- 3.** Mr. K. Gogoi, learned Standing Counsel, Higher Secondary Education Department, accepts notice on behalf of respondent Nos.1 to 4 and 8 to 16 whereas Mr. S. Kakati, learned

counsel, appears for respondent No.5.

**4.** The petitioners are permitted to serve notice upon respondent Nos.6 and 7 through the Standing Counsel of APSC.

**5.** The petitioners have challenged the advertisement issued on 25.05.2017 by which a number of posts have been advertised for being filled up in the State Engineering Colleges and Polytechnics of Assam under Higher Education (Tech.) Department. The petitioners are concerned with 113 numbers of posts of Lecturers (Technical) in 11 different subjects in different Polytechnics of Assam as well as 86 numbers of Lecturers (Non-Technical) in Five different subjects in different Polytechnics of Assam.

**6.** As per the aforesaid advertisement, the last date of submission of form was 27.06.2017. The petitioners submit that at the relevant point of time, they were not eligible for appointment. However, subsequently in the year 2018, they became eligible and, in fact, when certain posts of Guest Faculties in the new Polytechnics under the Directorate of Technical Education, Assam were advertised vide advertisement dated 07.07.2018, they successfully appeared in the said recruitment process and were appointed as Guest Faculties in the new Polytechnics mentioned in the advertisement.

**7.** The petitioners submit that though the said advertisement dated 25.05.2017 for regular appointment was issued and the last date of application was fixed on 27.06.2017, the recruitment process did not proceed. In fact, only recently, the APSC on 03.03.2020 issued a notification notifying that Multiple Choice Objective Type Screening Test (OMR based) will be held on 26<sup>th</sup>, 27<sup>th</sup>, 28<sup>th</sup>, 29<sup>th</sup>, 30<sup>th</sup> and 31<sup>st</sup> March, 2020 for recruitment to the said posts advertised in the year 2017.

**8.** It has been submitted that the petitioners all this while were expecting that the aforesaid advertisement would be abandoned and a new advertisement for regular appointment to the aforesaid posts as well as new posts which have come into existence in the meantime would be advertised in which event the petitioners would have had an opportunity to take part in the recruitment process.

**9.** The petitioners submit that though the subsequent advertisement was issued on 25.02.2020, the said advertisement was meant for *ad hoc* appointments for a period of four

months as per Regulation 3(f) of the *Assam Public Service Commission (Limitation of Functions) Regulations, 1951*. In other words, the only advertisement for regular appointment to various posts including for appointment in Polytechnics under the Higher Education (Tech.) Department was issued on 25.05.2017 and thereafter, no advertisement has been issued.

**10.** Grievance of the petitioners is that had the said recruitment process initiated by the advertisement been concluded earlier, the matter would have, otherwise, been different. However, the authorities did not act upon the said advertisement for a long time and activated it recently by notifying the screening test vide notification dated 03.03.2020. In other words, about three years had been taken by the APSC to activate the recruitment process which was advertised on 25.05.2017. In the process, a large number of eligible candidates, including the petitioners, have been deprived of the opportunity to apply for regular appointment.

**11.** According to the petitioners, this amounts to denial to the right of equal opportunity as guaranteed under Article 16 of the Constitution of India.

**12.** Accordingly, it has been prayed that the aforesaid advertisement be abandoned and fresh advertisement be issued so that all those candidates, including the petitioners, who have become eligible by now should be allowed to take part in the said recruitment process for regular appointment and, accordingly, the petitioners have sought for quashing of the advertisement dated 25.05.2017 and stay of the notification dated 03.03.2020 by passing appropriate interim order.

**13.** Mr. Gogoi, learned Standing Counsel, submits that the petitioners themselves are to be blamed for the reason that at no point of time after the advertisement was issued on 25.05.2017, they had raised any objection challenging the said advertisement. If they claim that they have subsequently become eligible, they ought to have raised objection to the said advertisement immediately after they became eligible. However, they awaited till recently and, as such, it would not be appropriate for this Court to halt at this stage the recruitment process initiated by advertisement dated 25.05.2017.

**14.** This objection has been countered by Mr. Das, learned Senior counsel for the petitioners by contending that in fact the reason why they did not object earlier was that on

17.10.2019, the Director of Technical Education, Assam had written to the State Government stating that proof of permanent resident of Assam is now mandatory for applying for the posts of Assistant Engineers in the Water Resources Department and, as such, similar condition should also be made applicable for recruitment of Lecturers in Polytechnics and Assistant Professors of Engineering Colleges of Assam under the Directorate as mentioned in the communication dated 17.10.2019.

**15.** The petitioners were thus under the expectation that the authorities would review the advertisement issued on 25.05.2017 and, as such, they did not approach this Court earlier. However, now that the authorities have decided to continue with the aforesaid impugned advertisement, they have approached this Court challenging the same.

**16.** This Court is of the view that before passing any effective order, it would be more appropriate if the APSC is also heard relating to the interim relief sought for by the petitioners. Accordingly, the matter will be heard on 29.04.2020.

**17.** However, as an *ad interim* measure, this Court directs that the impugned notification dated 03.03.2020 may not be given effect to. This Court has passed this *ad interim* order primarily for the reason that the APSC had taken about three long years to act upon the advertisement issued on 25.05.2017 and, in the meantime, a large number of candidates must have become eligible for appointment to the posts advertised and since the advertisement had not been acted upon within a reasonable time but after a delay of about three years, this Court is of the *prima facie* view that it would disentitle the claim of many eligible candidates to take part in the recruitment process who have become eligible in the meantime, which would amount to violation of the fundamental rights of such eligible candidates as guaranteed under Article 16 of the Constitution of India, which reads as under:-

***“16. Equality of opportunity in matters of public employment***

*(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.*

*(2) \*\*\**

*\*\*\*\*\*”*

**18.** However, this being a purely tentative view without hearing the APSC, appropriate interim order will be passed after hearing the APSC as mentioned above. It is also made clear that the APSC may apply for modification /alteration/vacation of this *ad interim* order, if they so desire.

**19.** List on 29.04.2020.

**JUDGE**

**Comparing Assistant**