

GAHC010116542020



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

**Case No. : WP(C) 3433/2020**

1:KUNAL KASHYAP THAKURIA AND 10 ORS.  
S/O HIENDRA NATH THAKURIA, R/O HOUSE NO. 7,  
BATHOUTHANCHALIPATH, NEAR M.P. ACCADEMY, KHERAIKUSHI,  
CHANDAN NAGAR, GHORAMARA, BELTOLA, PIN-781040, DIST. KAMRUP  
(M), ASSAM

2: HELINA NARZARY  
D/O JOTISH KUMAR NARZARY  
R/O UZAN BAZAR  
BAROWARI  
RLY. CLN. QTR. NO. L/124 B  
GUWAHATI-781004  
DIST. KAMRUP (M)  
ASSAM

3: GAYATRI CHOUDHURY  
D/O AJIT CHOUDHURY  
R/O TOWN-BORPARA  
BONGAIGAON  
WARD NO. 23  
PIN-783380  
DIST. BONGAIGAON  
ASSAM

4: DAVID BORKAKOTI  
S/O TARULATA BORKAKOTI  
R/O HOUSE NO. 172  
G.N.P. ROAD  
CHANDMARI COLONY  
NEAR SHEPHERD SCHOOL  
DIST. KAMRUP (M)  
ASSAM  
PIN-781003

5: KARAM VIR ISLARY  
S/O ABHINASH ISARY  
R/O H. NO. 109  
HATHIMATHA ROAD  
KOKRAJHAR  
P.O. AND DIST. KOKRAJHAR  
ASSAM  
PIN-783370

6: DEEBAJEET BARMAN  
S/O KAMALISWAR BARMAN  
R/O A.I.D.C. NABIN NAGAR  
TRIBANI PATH  
HOUSE NO. 31  
NANAKVILLA  
DIST. KAMRUP (M)  
ASSAM  
PIN-781024

7: KISHORE KUMAR CHOUDHURY  
S/O DINO BANDHU CHOUDHURY  
R/O VILL. KALLIYAPARA  
P.O. MONIARI TINIALI  
PIN-781125  
DIST. KAMRUP  
ASSAM

8: KAMRUZ ZAMAN  
S/O NURUZ ZAMAN  
R/O NEAR TARA JAN HIGH SCHOOL JORHAT  
P.O. P.S AND DIST. JORHAT  
ASSAM  
PIN-785001

9: RITUPOBAN DOUL BARUAH  
S/O RAJEN DOUL BARUAH  
R/O MILAN NAGAR  
JORHAT  
P.O. P.S AND DIST. JORHAT  
ASSAM  
PIN-785001

10: MOON MOON TISSOPI  
D/O ROBIRAM TISSO  
R/O VILL. TUMPRENG TISSO GAON  
P.O. TUMPRENG  
PIN-782485  
DITS. WEST KARBI ANMGLONG

11: PRIYANUJ MAHANTA  
S/O ANIL MAHANTA  
R/O BARMUKH CHUTIYA GAON  
P.O. JOYRAPAR  
PIN-785697  
DIST. SIVASAGAR  
ASSA

VERSUS

1:THE STATE OF ASSAM AND 3 ORS.  
REP. BY THE CHIEF SECRETARY GOVT. OF ASSAM

2:SECRETARY  
TO THE GOVT. OF ASSAM PUBLIC HEALTH ENGINEERING DEPTT.

3:ASSAM PUBLIC SERVICE COMMISSION  
REP. BY THE SECRETARY TO THE COMMISSION JOYANAGAR  
KHANAPARA  
GHY-22

4:CHIEF ENGINEER PUBLIC HEALTH ENGINEERING  
PUBLIC HEALTH ENGINEERING DEPTT. BAMUNIMAIDAN  
GHY-78102

**Advocate for the Petitioner** : MR. D P CHALIHA

**Advocate for the Respondent** : GA, ASSAM

**BEFORE**  
**HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

**ORDER**

**Date : 16-09-2020**

Heard Mr. DP Chaliha, learned senior counsel for the petitioners. Also heard Mr. PN Goswami, learned counsel for the PHE Department and Mr. B Sarma, learned counsel for the APSC.

2. List the matter again on 23.09.2020 as prayed for, *inasmuch as*, some other writ petitions on the similar issues are ordered to be listed on the said date.

3. The petitioners are all working as Junior Engineer in the Assam Subordinate Engineering Service in the PHE Department. It is stated that they had acquired the academic qualification which is otherwise prescribed for a direct recruitment to the cadre of Assistant Engineer. The petitioners rely upon Sub-Rule 5 of Rule 11 of the Assam Public Service Engineering Service Rules 1996 (for short, the Rules of 1996), which is extracted as below:

*“9. Notwithstanding anything contained herein before in this Rule on suitability. Junior Engineer of the Assam Subordinate Engineering Service (PHC) on his acquiring the academic qualification as prescribed for a direct recruit Assistant Engineer shall be promoted as Assistant Engineer in consultation with the Commission, as provided in Rule-14, against the next available vacancy in the cadre and such promotion shall be treated as direct recruitment to the cadre of Assistant Engineer for the purpose of these rules”.*

4. It is stated that in the PHE Department there are 62 numbers of post of Assistant Engineer (Civil) which are lying vacant and are to be filled up by recruitment and accordingly an advertisement dated 19.08.2020 was issued by the Assam Public Service Commissioner inviting applications for, amongst others, 62 numbers of Assistant Engineer (Civil).

5. The petitioners have raised an issue that as they have acquired the academic qualification prescribed for direct recruitment as Assistant Engineer, their claim would now be covered by Sub-Rule 5 of Rule 11 of the Rules of 1996 which is extracted hereinabove. A reading of the Sub-Rule 5 shows that it begins with a non-obstante clause that notwithstanding anything contained in other provisions of Rules of 1996, if a Junior Engineer acquires the academic qualification prescribed for a direct recruit Assistant Engineer, he shall be promoted as Assistant Engineer in consultation with the Assam Public Service Commission against the next available vacancy in the cadre and such promotion if granted shall be treated as direct recruitment to the cadre of Assistant Engineer.

6. Sub-Rule 5 of Rule 11 clearly provides that there must be an assessment of their suitability and there must be a consultation with the Assam Public Service Commissioner and if a given Junior Engineer is found suitable after going through the said process, he shall be promoted as Assistant Engineer against the next available vacancy.

7. In the circumstance, this writ petition has been instituted assailing the advertisement of 62 numbers of posts on the ground that in the event, the said 62 numbers of post are filled up by direct recruitment the claim of the petitioners under Sub-Rule 5 of Rule 11 of the Rules of 1996 would be frustrated.

8. Mr. PN Goswami, learned counsel for the PHE Department raises an objection by referring to Sub-Rule 3 of Rule 11 of the Rules of 1996 which provides that promoted Engineers shall not exceed 30% of the total corresponding cadre strength. The said submission would have some merit but taking note of Sub-Rule 5 which begins with the provision that notwithstanding anything contained herein, i.e., a non-obstante clause, therefore, the provision of 11(3) cannot prevail over or frustrate the provisions of Sub-Rule 5 of Rule 11.

9. In view of the above, we find a strong prima facie case being made out by the petitioners. Secondly, balance of convenience is in favour of the petitioners *inasmuch as*, if the advertisement for 62 numbers of posts of Assistant Engineer (Civil) is allowed to proceed, any kind of third party right would accrue to others which may complicate the matter.

10. Mr. PN Goswami, learned counsel for the PHE Department submits that the selection process is yet to start. However, a selection process begins with the issuance of the advertisement and not when the applications are actually been considered by the Commission. Further the petitioners having a substantive right under Sub-Rule 5 of Rule 11, they may suffer irreparable loss if any other claimant comes forward for the post against which they are entitled to under Sub-Rule 5.

11. Another aspect of the matter would be that Sub-Rule 5 of Rule 11 clearly provides that upon such persons being promoted under Sub-Rule 5 they shall be treated as direct recruits meaning thereby that it cannot have any bearing on Sub-Rule 3 of Rule 11 which has upper limit of 30% recruitment by promotion.

12. Considering the matter in its entirety, we are of the view that an interim order would be justified in the present case, for restraining the respondent authorities from proceeding further with

the selection process pursuant to the advertisement dated 19.08.2020 in respect of 11 numbers of posts of Assistant Engineer (Civil) in the PHE Department.

13. It is made clear that the interim order shall not preclude the respondent authorities from considering the claim of the petitioners under Sub-Rule 5 of Rule 11 meaning thereby that their suitability may be determined and thereupon their cases be sent to the APSC for consultation, as provided in Sub-Rule 5 and thereafter bring the process to its logical end.

14. In the event, the aforesaid process is being carried out and the petitioners are found either unsuitable or being rejected by the APSC, the respondents would be at liberty to approach the Court to modify the interim order.

15. List on 23.09.2020.

**JUDGE**

**Comparing Assistant**