

GAHC010222212021



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

Case : WP(C)/28/2021

BONDITA BORAH
D/O GOBIN CHANDRA BORAH
RESIDENT OF VILLAGE CHETIAGAON
WARD NO/ 5
PO AND PS NORTH LAKHIMPUR
DIST LAKHIMPUR
ASSAM 787001

VERSUS

THE STATE OF ASSAM AND 16 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
DEPARTMENT OF PERSONNEL (B) DISPUR GUWAHATI 781006

2:THE ASSAM PUBLIC SERVICE COMMISSION
REPRESENTED BY THE CHAIRMAN
JAWAHARNAGAR
KHANAPARA
GUWAHATI 781022

3:THE CHAIRMAN
ASSAM PUBLIC SERVICE COMMISSION
JAWAHARNAGAR
KHANAPARA
GUWAHATI 781022

4:SRI AARON TERON
S/O- NAREN TERON
VILL.- RUKASEN
P.O. AND P.S.- DIPHU
DIST.- KARBI ANGLONG.

5:SRI BHOMKLARCHEN SINGNAR
S/O- SRI KANGBURA SINGNAR
VILL.- CHEPHONGSAJIR

P.O. AND P.S.- DIPHU
DIST.- KARBI ANGLONG.
6:SRI BARNEL BEY
S/O- SRI LONGKI BEY
VILL.- RONGKIMI
P.O. AND P.S.- DIPHU
DIST.- KARBI ANGLONG.
7:UJJAL NATH
S/O- LIPIKA NATH
R/O- BLOCK ROAD
CHOUDHURY VILLA
RAMKRISHNA NAGAR
DIST.- KARIMGANJ
ASSAM
PIN- 788166.
8:PRANAB DAS
S/O- PRADIP CHANDRA DAS
R/O- NEAR NETWORK COUNTER
P.O.- IRONGMARA
DIST.- CACHAR
ASSAM
PIN- 788011.
9:PARTHA JYOTI DAS
H/NO.- 47
LANE NO. 27
VIVEKANANDA ROAD
SILCHAR
DIST.- CACHAR
ASSAM
PIN- 788007.
10:PATHIKRIT AHMED
S/O- SAMSUDDIN AHMED
R/O- NEAR ELLAHI MASJID
ELLAHI MASJID ROAD
DEORAIL BADARPUR
DIST.- KARIMGANJ
ASSAM
PIN- 78886.
11:REBIKA MAIBANGSA
D/O- NRIPENDRA MAIBANGSA
R/O- DIRIK
HALFLONG
DIST.- DIMA HASAO
ASSAM.
12:DIVIDITA JOHARI
D/O- BONIL JOHARI
R/O- JOHAYA RAJEE
HALFLONG

DIST.- DIMA HASAO
ASSAM.
13:ABRINA HALFLONGBAR
D/O- AJIT HALFLONGBAR
R/O- SURAT NAGAR
HALFLONG
DIST.- DIMA HASAO
ASSAM.
14:THANGHOULIEN LIEUTHANG
S/O- PAWKHOLAL LIEUTHANG
CIRCUIT HOUSE ROAD
HALFLONG
DIST.- DIMA HASAO
ASSAM.
15:PHOJEN BATHARI
S/O- JAPAN BATHARI
R/O- MAHUR
DIST.- DIMA HASAO
ASSAM.
16:SATLUNSANG LUNKIM
S/O- LHUNHAO LUNKIM
R/O- MAHUR
DIST.- DIMA HASAO
ASSAM.
17:VISHAL THAPA
S/O- LT. PREM THAPA
R/O- KANA BASTI
HALFLONG
DIST.- DIMA HASAO
ASSAM.

Advocate for :
Advocate for : SC
PERSONNEL DEPT. appearing for THE STATE OF ASSAM AND 16 ORS

Linked Case : WP(C)/5248/2020

BONANI PRIYA RAJKONWAR
D/O- JAYANTA RAJKONWAR
PRESENT R/O- H.NO. 19
BYE LANE NO. 3
BISHNUJYOTI PATH
HATIGAON
KAMRUP (M)
ASSAM
PIN- 781038

PERMANENT R/O- H.NO. 91
VILL- RONGCHANGI
OPP. RONGCHANGI MINI PHC
DIBRUGARH
ASSAM
PIN- 786184

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
PERSONNEL (A)
DISPUR
GHY-6
DIST.- KAMRUP (M)
ASSAM

2:THE PRINCIPAL SECRETARY
GOVT. OF ASSAM
PERSONNEL (A)
DEPTT.
DISPUR
GHY-6
DIST.- KAMRUP (M)
ASSAM

3:THE ASSAM PUBLIC SERVICE COMMISSION
REP. BY ITS CHAIRMAN
JAWAHARNAGAR
KHANAPARA
GHY-22
DIST.- KAMRUP (M)
ASSAM

4:THE SECRETARY
ASSAM PUBLIC SERVICE COMMISSION
JAWAHARNAGAR
KHANAPARA
GHY-22
DIST.- KAMRUP (M)
ASSAM

5:THE JOINT SECRETARY
ASSAM PUBLIC SERVICE COMMISSION
JAWAHARNAGAR
KHANAPARA
GHY-22
DIST.- KAMRUP (M)
ASSAM

Advocate for : MR F KHAN
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 4 ORS

Linked Case : WP(C)/5169/2020

NAVIN KUMAR RAY
S/O RAM UDGAR RAY

VILLAGE AGBANDHA SAIDING
PO AGBANDHA BENGALI GAON
PS MARGHERITA

DIST TINSUKIA
ASSAM 786187

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR GUWAHATI 781006

2:THE ASSAM PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS CHAIRMAN JAWAHARNAGAR
KHANAPARA
GUWAHATI ASSAM 781022

3:THE SECRETARY
THE ASSAM PUBLIC SERVICE COMMISSION
KHANAPARA
GUWAHATI
ASSAM 781022

4:THE JOINT SECRETARY
THE ASSAM PUBLIC SERVICE COMMISSION
KHANAPARA
GUWAHATI
ASSAM 781022

5:THE PRINCIPAL CONTROLLER OF EXAMINATIONS

THE ASSAM PUBLIC SERVICE COMMISSION
KHANAPARA
GUWAHATI
ASSAM 781022

Advocate for : MR. S BANIK
Advocate for : SC
APSC appearing for THE STATE OF ASSAM AND 4 ORS.

Linked Case : I.A.(Civil)/2370/2021

THE ASSAM PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECY.
JAWAHARNAGAR
KHANAPARA
GUWAHATI 781022

VERSUS

BONDITA BORAH AND 17 ORS.
D/O GOBIN CHANDRA BORAH
R/O VILL. CHETIAGAON
WARD NO. 5
P.O. AND P.S. NORTH LAKHIMPUR
DIST. LAKHIMPUR (ASSAM)
PIN 787001

2:NAVIN KUMAR RAY

S/O RAM UDGAR RAY
VILL. AGBANDHA SAIDING
P.O. AGBANDHA BENGALIGAON
P.S. MARGHERITA
DIST. TINSUKIA
ASSAM
PIN 786187
3:BONANI PRIYA RAJKONWAR

D/O JAYANTA RAJKONWAR PRESENT R/O H. NO. 19
BYE LANE NO. 3
BISHNUJYOTI PATH
HATIGAON
KAMRUP (M)
ASSAM
PIN 781038
PERMANENT R/O H. NO. 91 VILL. RONGCHANGI
OPP. RONGCHANGI MINI PHC DIBRUGARH
ASSAM
PIN 786184
4:THE STATE OF ASSAM

REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM

DEPTT. OF PERSONNEL (A)
DISPUR
GUWAHATI 781006
5:AARON TERON

S/O NAREN TERON
VILL. RUKASEN
P.O. AND P.S. DIPHU
DIST. KARBI ANGLONG.
6:BHOMKLARCHEN SINGNAR

S/O SRI KANBURA SINGNAR
VILL. CHEPHONGSAJIR
VILL. CHEPHONGSAJIR
P.O. AND P.S. DIPHU
DIST. KARBI ANGLONG
7:BARNEL BEY

S/O SRI LONGKI BEY
VILL. RONGKIMI
P.O. AND P.S. DIPHU
DIST. KARBI ANGLONG
8:UJJAL NATH

S/O LIPIKA NATH
R/O BLOCK ROAD CHOUDHURY
VILL. RAMKRISHNA NAGAR
DIST. KARIMGANJ
ASSAM
PIN 788166
9:PRANAB DAS

S/O PRADIP CH. DAS
R/O NEAR NETWORK COUNTER
P.O. IRONGMARA
DIST. CACHAR
ASSAM
PIN 788011
10:PARTHA JYOTI DAS

H/NO 47
LANE NO. 27
VIVEKANANDA ROAD
SILCHAR
DIST. CACHAR

ASSAM
PIN 788007
11:PATHIKRIT AHMED

S/O SAMSUDDIN AHMED
R/O NEAR ELLAHI MASJID
ELLAHI MASJJID ROAD
DEORAIL BADARPUR
DIST. KARIMGANJ
ASSAM
PIN 788806
12:REBIKA MAIBANGSA

D/O NRIPENDRA MAIBANGSA
R/O DIRIK
HALFLONG
DIST. DIMA HASAO
ASSAM
13:DIVIDITA JOHARI

D/O BONIL JOHARI
R/O JOHAYARAJEE
HALFLONG
DIST. DIMA HASAO
ASSAM.
14:ABRINA HALFLONGBAR

D/O AJIT HALFLONGBAR
R/O SURAT NAGAR
HALFLONG
DIST. DIMA HASAO
ASSAM.
15:THANGHOULIEN LIEUTHANG

S/O PAWKHOLAL LIEUTHANG
CIRCUIT HOUSE ROAD
HALFLONG
DIST. DIMA HASAO
ASSAM.
16:PHOJEN BATHARI

S/O JAPAN BATHARI
R/O MAHUR
DIST. DIMA HASAO
ASSAM.
17:SATLUNSANG LUNKIM

S/O LHUNHAO LUNKIM

R/O MAHUR
DIST. DIMA HASAO
ASSAM.
18:VISHAL THAPA

S/O LT. PREM THAPA
R/O KANA BASTI
HALFLONG
DIST. DIMA HASAO
ASSAM.

Advocate for : MR. T J MAHANTA
Advocate for : MR. M K SARMA appearing for BONDITA BORAH AND 17 ORS.

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

24.01.2022

The matter is taken up through video conferencing.

Heard Mr. H. Gupta, Mr. R.M. Sarmah and Mr. F. Khan, learned counsel for the petitioners. Also heard Mr. D. Saikia, learned Advocate General, Assam, appearing for the State respondents; Mr. T.J. Mahanta, learned senior standing counsel, APSC and Mr. V. Rajkhowa, learned counsel appearing for the respondent Nos.11 to 17 in I.A. (Civil) No.2370/2021.

On 10.12.2021, we were told that the Cabinet has taken a decision on 24.11.2021, by which the requirement for qualifying in the language paper, i.e. Assamese, Bodo or Bengali, including English language, has been dispensed with.

The cabinet decision dated 24.11.2021 has also been placed before us by Mr. D. Saikia, learned Advocate General, Assam.

The notes of the Cabinet decision dated 24.11.2021 placed before us reads as

under:-

“Extract of the minutes of the cabinet meeting held on 24/11/2021 at 11-00 AM in the conference room of deputy commissioner’s office at Bongaigaon, Assam

Circulated during the Cabinet Meeting

Additional Item No.2 *File No.AAP.219/2018/Pt.I*
Personnel Department

Sub: Section II (B) under Schedule II of Assam Public Services Combined Competitive Examination Rules 1989 was amended in 2019 and 2020 allowing exemption from appearing in Qualifying Language Paper (Assamese, Bengali and Bodo) for candidates belonging to the Hills Districts of Dima Hasao, Karbi Anglong and West Karbi Anglong and the three Districts of Barak Valley namely Cachar, Karimganj and Hailakandi who did not have any of these languages in High School Leaving Certificate Examination. An amendment to this provision is sought to be made by removing the provision.

The Cabinet approved the proposal along with dispensing with the requirement for English language paper in the ongoing examination. For future examinations for recruitment to ACS etc. the following pattern will be followed-

- (1) That persons appearing in the APSC examinations should be able to speak Assamese or other official languages or associate official languages of the State or any of the tribal languages of the State.*
- (2) The Cabinet also decided that English language paper and other language papers may be dropped from the scheme of examination.*
- (3) The candidates should be registered in the District Employment Office to apply for appearing in the APSC Examination and must be original inhabitants of Assam.*

The above (1), (2) & (3) new provisions will not be part of the ongoing Mains Examination.

Also henceforth, APSC will also set question paper in Assamese along with English, Bodo will be one of the optional MIL.”

In our order dated 10.12.2021, the above Cabinet note was not placed before us. Our order dated 10.12.2021 reads as under:-

“The matter is taken up through video conferencing.

Heard Mr. M.K. Sharma, learned counsel for the petitioner in WP(C) No.28/2021; Mr. S. Banik, learned counsel for the petitioner in WP(C) No.5169/2020 and Mr. F. Khan, learned counsel for the petitioner in WP(C) No.5248/2020. Also heard Mr. D. Saikia, learned Advocate General, Assam; Mr. T.J. Mahanta, learned senior standing counsel, APSC; Ms. S. Kemprai and Mr. V. Rajkhowa, learned counsel, appearing for the newly impleaded private respondents.

The Assam Public Service Commission (APSC) had initiated a selection process for the posts of State Civil Servants in Assam vide its advertisement dated 08.09.2020. As per the advertisement, the candidates had to first qualify a preliminary examination and then had to appear in the main written examination and viva-voce. For those who qualify in the preliminary examination, apart from the other subjects, it was also mandatory to qualify in any of the three languages, i.e. Assamese, Bodo and Bengali.

We must note at this juncture that Assamese is the official language in Assam but by law certain concessions have also been given to other languages, such as Bodo and Bengali, which are also spoken in parts of Assam. This qualifying paper in language was initially exempted for the candidates belonging to three Districts, i.e. Dima Hasao, Karbi Anglong and West Karbi Anglong, and thereafter it was extended to three more Districts of Barak Valley, which are Karimganj, Cachar and Hailakandi.

These writ petitions were filed before this Court challenging the exemption given to candidates of other Districts on the ground that this is violative of Articles 14 and 16 of the Constitution of India and on other grounds as well.

During the pendency of these writ petitions, the preliminary examinations were held and some of the petitioners before this Court did not qualify that examination. Nevertheless, the issue raised by them was alive and required attention of this Court.

On previous dates, we were told by Mr. D. Saikia, learned Advocate General, Assam that the State Government is re-looking at the entire aspect of the matter and he hopes that a solution would be brought very soon. Today, we have been also informed by Mr. D. Saikia, learned Advocate General, Assam today that a Cabinet meeting held on 24.11.2021 has already taken a decision, which has also been conveyed to the APSC, that in the written examination, which is tentatively scheduled for January or February, 2022, the requirement for qualifying in the language paper, i.e. Assamese, Bodo or Bengali, is removed.

The learned counsel for the petitioners, who have appeared before this Court today, have also expressed their satisfaction in the matter but have prayed that in the light of the statement made by Mr. D. Saikia, learned Advocate General, Assam, the matter may be only adjourned as there are other legal aspects, which need a consideration of this Court.

In view of the above, we adjourn the matter.

List again on 14th February, 2022.

In the light of above and in order to remove any confusion, we direct that the APSC shall hold the written examination without the language paper.”

Mr. D. Saikia, learned Advocate General, Assam has informed this Court that in the present ongoing examination, the language paper, which is only of qualifying nature, has been dispensed with. The newly impleaded respondent, however, has serious objections to this fact. It must, however, be noted that the newly impleaded respondent represented by senior counsel Mr. K.N. Choudhury is neither a candidate in the ongoing examination nor had appeared for the same.

The issue, nevertheless, is extremely important. So far we refrained from interfering in the matter as before us were the petitioners who were wanting exemption from appearing in the qualifying paper of languages (Assamese, Bodo or Bangla), like their counterparts in Dima Hasao, Karbi Anglong and three districts of Barak Valley. Since the Government, apparently to have a level playing field exempted this for the entire Assam, there was no occasion for our interference, till the filing of the PIL (i.e. PIL No.83/2021), in which we have passed a separate order today.

We are conscious of both the importance of the matter and its delicate nature. We shall examine the issue whether language as a qualifying paper must remain or whether exemption can be granted and, if so, to whom?

The learned Advocate General has already brought to our notice the Rules, namely, Rules for the Conduct of Departmental Examinations, 1963, which are presently applicable in Assam, which mandate that an officer who has qualified in the competitive examination conducted by the APSC has to pass departmental examination in language, very soon in order to get the next higher

grade before being confirmed in service, otherwise he will remain in probation. In other words, showing proficiency in language, which is either in Assamese, Bengali or Bodo, or any one of the tribal languages, is an absolute necessity. Whether this is sufficient compliance of the language issue needs to be examined.

This is a multilayered and complicated issue, which needs to be examined in detail by this Court. In fact, this issue has been raised by the petitioner in PIL No.83/2021, who has been newly impleaded as a respondent in the writ petition and is being represented by Mr. K.N. Choudhury, learned senior counsel.

Meanwhile, we direct the Assam Public Service Commission to go ahead with the Combined Competitive (Mains) Examinations with the exemptions granted by the Government. After the Mains examination, the Commission may conduct the *viva voce* of the successful candidates, but the final result shall not be declared without leave of this Court.

List again on **2nd March, 2022.**

JUDGE

CHIEF JUSTICE

Comparing Assistant