



GAHC010228302024



2025:GAU-AS:17383

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

Case No. : WP(C)/5619/2024

HIMASHMI SAIKIA AND 23 ORS
C/O. PINKY BORAH SAIKIA, RESIDENT OF VILL. SILGHAT TOWN, P.O.
SILGHAT, P.S. KOLIABOR, DIST. NAGAON, ASSAM

2: LORENA PATIR
C/O- BENUDHAR PATIR
RESIDENT OF VILL. MIGOM DOLUNG
P.O. AND P.S. JONAI
DIST- DHEMAJI
ASSAM.

3: MALAYA DUTTA
C/O- DEEPAK DUTTA
RESIDENT OF VILL. NAKARI
WARD NO.3
P.O. AND P.S. NORTH LAKHIMPUR AND DIST. LAKHIMPUR
ASSAM

4: DEBASISH SAIKIA
S/O- ATUL SAIKIA
RESIDENT OF VILL. AND P.O. URIAGAON
P.S. SADAR
DIST- NAGAON
ASSAM.

5: MUNINDRA MOHAN GOGOI
S/O. GHANASHYAM GOGOI
R/O. VILLAGE- THURAMUKH BEBEJIA
PO. MORANGI
P.S. AND DIST. GOLAGHAT
ASSAM.

6: MITHU BORGOHAIN
C/O. PRANJAL BAILUNG



RESIDENT OF VILL. LACHIT NAGAR
P.O. KHUBALIA
P.S. AND DIST. DHEMAJI
ASSAM.

7: NAZMUL HOQUE
S/O- ISA HAQUE
RESIDENT OF VILL. AND P.O. ROWMARI
P.S. RUPAHIHAT
DIST- NAGAON
ASSAM.

8: KULDWIP NATH
S/O- TARUN CHANDRA NATH
RESIDENT OF VILL- BARUAPARA
P.O. AND P.S. BAGUAN
DIST- GOALPARA
ASSAM.

9: MUZAHARUL ISLAM MOLLAH
S/O- LATE ALTAB HUSSAIN MOLLAH
RESIDENT OF VILL. AND P.O. MANULLAPARA
P.S. SOUTH SALMARA
DIST. SOUTH SALMARA MANKACHAR
ASSAM.

10: CHANDRANI TAI
C/O- BHUBAN CHANDRA TAI
RESIDENT OF VILL- SANTAK BOR MICHING GAON
P.O. SANTAK
P.S. BIHUBAR
DIST- SIVASAGAR
ASSAM

11: JHARNA BARUAH
C/O. KUMUD BARUAH
RESIDENT OF VILL. GATANGA
P.O. B.P. TINIALI
P.S. BEBEJIA
DIST. SONITPUR
ASSAM.

12: ANCHIMA DAIMARI
C/O- PRAKASH DAIMARI
RESIDENT OF VILL. TOWN- KAHIBARI
P.O.
P.S. AND DIST- UDALGURI
ASSAM.



13: DEIJI TALUKDAR
C/O- NARKANTA TALUKDAR
RESIDENT OF VILL- BONBHAG SOLMARI
P.O. KHUKHUNDI
P.S. AND DIST- NALBARI
ASSAM.

14: SNEHASHREE NEOG
C/O. BIJOY MONGAL NEOG
RESIDENT OF VILL. NO.2 BAMUNGAON
JANPORIA
P.O. CHENGELI GAON
P.S. AND DIST. JORHAT
ASSAM.

15: HIMADRI DUTTA
C/O. SURESH KALITA
RESIDENT OF VILL. KAMRUP (M)
P.O. SILPUKHURI
P.S. CHANDMARI
DIST. KAMRUP (M)
ASSAM

16: JERIFA AHMED
C/O- SIRAJ UDDIN
RESIDENT OF VILL- SALONABORI
P.O. AMLOKHI
P.S. DHING
DIST- NAGAON
ASSAM

17: MAJIDUL NUR ALIM
S/O- ARFAN ALI
RESIDENT OF VILL. AND P.O. JOYBHUM
P.S.-LAKHIPUR
DIST- GOALPARA
ASSAM.

18: MEH JABIN SIDDIQUE
C/O. ABU BAKKAR SIDDIQUE
RESIDENT OF VILL. MANGALDAI TOWN
WARD NO.2
P.O. AND P.S. MANGALDAI
DIST. DARRANG
ASSAM

19: NEDAROIKI LAMARE



C/O. KYNMOO SUTONG
VILL. MADAN NANG KYLLA
JERIKINDENG
P.O. JERIKINDENG
WEST KARBI ANGLONG
ASSAM.

20: ANKITA PRIYAM DUTTA
C/O. PABITRA DUTTA
VILL. BURHAGAON
P.O. BARUAH BAMUN GAON
DIST. GOLAGHAT
ASSAM

21: JULFA AMIN
C/O. LATE RUHUL AMIN
VILL. KUKURMARA
P.O. RADHAMADHAB HAT
DIST. SOUTH SALMARA MANKACHAR
ASSAM

22: BABITA BASUMATARY
C/O. NABIN CHANDRA BASUMATARY
VILL. MAITHABARI
P.O. SUBANKHATA
DIST. BAKSA
ASSAM.

23: BIDISHA SAIKIA
C/O. ANANTA SAIKIA
VILL. JORHAT
P.O. CHENGALI
DIST. JORHAT
ASSAM.

24: DAISY SAIKIA
C/O. PRADIP KUMAR SAIKIA
VILL. SEUJPUR
PATH
NEW AMULAPOTTY
P.O. AND DIST. GOLAGHAT
ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY, HEALTH AND



FAMILY WELFARE DEPARTMENT, GOVT. OF ASSAM, DISPUR, GUWAHATI-06.

2:THE MISSION DIRECTOR
NATIONAL HEALTH MISSION
ASSAM
SAIKIA COMMERCIAL COMPLEX
G.S. ROAD
SRINAGAR PATH
CHRISTIANBASTI
GUWAHATI-05.

3:THE MANAGEMENT INFORMATION SYSTEM MANAGER
NHM
ASSAM
SAIKIA COMMERCIAL COMPLEX
G.S. ROAD
SRINAGAR PATH CHRISTIANBASTI
GUWAHATI-05

Advocate for the Petitioner : MR. M KHAN, MS J AKTAR,MR A K DAS

Advocate for the Respondent : SC, HEALTH AND F W, SC, NHM

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

JUDGMENT & ORDER (CAV)

Date : 16-12-2025

Heard Mr. M. Khan, learned counsel for the petitioners. Also heard Mr. B. Gogoi, learned Addl. AG, Assam appearing for the State/ respondent.

2. The petitioners by way of instituting the present proceeding have assailed a notice dated 13-10-2024 issued towards cancellation of the recruitment process initiated vide advertisement dated 30-07-2022 in respect of the posts against which the process of recruitment, was not taken to its logical conclusion.

3. The petitioners in pursuance to an advertisement dated 30-07-2022 issued by the



Mission Director, NHM, Assam, inviting applications for engagement on contractual basis against various posts, including the post of Rehabilitation Workers, having fulfilled the requisite eligibility criteria had submitted their respective candidature for consideration for such recruitment against the post of Rehabilitation Workers. The petitioners being found to be eligible for being considered for recruitment against the post of Rehabilitation Workers, they were permitted to appear in a selection process held for the matter. The petitioners participated in the interview held for the said position on 01-08-2023 and 02-08-2023. It is seen that the select list having been prepared, the same was processed and was approved by the competent authority on 12-03-2024. On conclusion of the selection process and approval of the select list, the authorities published the select list through a notice bearing No. NHM-31013(11)/7/20-23/HRD/NHM-National Health Mission dated 13-03-2024. The names of the petitioners, herein, finds place in the said select list. Thereafter, the matter was processed for appointing the selected candidates, including the petitioners, and a draft posting order was also prepared. However, during the processing of the said matter, the highest executive of the State on noticing that the recruitments in NHM were being carried out without providing for reservation to the reserved communities, proceeded vide communication dated 30-06-2024, to require the NHM authorities to cancel all recruitment made recently, as well as ongoing recruitments, where provision of reservation of posts were not made for the reserved communities. The NHM authorities were, thereafter, required to initiate fresh process of recruitment for the vacant posts.

It is in view of the said development that the impugned notice dated 13-03-2024



came to be issued cancelling the advertisements mentioned, therein, including the advertisement dated 30-07-2022, to the extent of the posts, involved, wherein the process of recruitment was not taken to its logical conclusion.

Being aggrieved the petitioners have instituted the present writ petition.

4. The learned counsel for the petitioners by referring to the advertisement dated 30-07-2022, has submitted that along with the post of Rehabilitation Workers, the process for engagement was also made for various other posts including the post of Dental Surgeon, Laboratory Technician, Counsellors, Hospital Administrator, District Media Expert etc. It is submitted by the learned counsel for the petitioners that in respect of the District Media Expert, the recruitment for which was also carried out along with that post of Rehabilitation Workers, a select list was published on the same date, i.e. on 13-03-2024, after the same was approved by the competent authority. He submits that the processing of the matter for issuance of posting orders to the selected candidates for the post of District Media Expert was processed by the respondent authorities and on approval being received from the competent authority the selected candidates came to be appointed as District Media Experts. He submits that although parallelly the select list was published for the post of Rehabilitation Workers and the process was initiated for issuance of posting orders and a draft in this connection was also put up on 01-07-2024, the recruitment to the post of Rehabilitation Workers was not taken to its logical conclusion and subsequently cancelled in view of the note dated 30-06-2024. He submits that in the event the recruitment to the post of Rehabilitation Workers initiated vide the advertisement dated 30-07-2022 was so cancelled in terms of the requirement as made of



the NHM authorities vide the note dated 30-06-2024, the said note having required cancellation of all engagements made recently as well as the ongoing recruitment process, the NHM authorities could not have been implemented the said directive selectively. The learned counsel for the petitioners has submitted that the authorities having already approved the select list and there being no allegation brought on record of the select list having not been prepared in the manner required could not have cancelled the recruitment exercise undertaken for the post of Rehabilitation Workers and that too on the basis of a development taking place subsequent to the issuance of the advertisement and the publication of the select list for the post of Rehabilitation Workers. The learned counsel for the petitioner in this connection has placed reliance on a decision of the Hon'ble Supreme Court in the case of ***Tej Prakash Pathak & Ors. Vs. Rajasthan High Court & Ors.*** reported in ***(Civil Appeal No. 2634/2013 dated 07-11-2024)***.

5. Per contra, Mr. B. Gogoi, learned Addl. AG, Assam by reiterating the facts as noticed hereinabove, has submitted that the petitioners, herein, who were only included in the select list would have no vested right for being appointed against the post they were selected. He submits that an issue touching upon the very root of the recruitment exercises carried out in NHM, having been brought to the notice of the NHM authorities, the authorities of NHM proceeded to cancel the recruitment which had not been taken to its logical conclusion, only to rectify the error involved in such recruitment processes carried out by the NHM authorities. It is submitted that the policy of the State, being to extend reservation to the reserved community in the matter of recruitment, the NHM



being also a part of the State, the recruitment carried out in the NHM would also have to comply with the policy of the State in this connection. Mr. Gogoi submits that the cancellation of the recruitment process while not causing any prejudice to the petitioners, the same would benefit candidate belonging to the reserved communities, who would now be extended with the benefit of reservation, to the extent as mandated. He submits that the petitioners, herein, would be granted relaxation of age in the event a fresh recruitment process is so initiated and there would be no bar for the petitioners to participate, therein. He reiterates that the select list having not been acted upon, no vested right can be found to exist with the petitioners to insist for their appointment in terms of their placement in the select list.

6. Mr. Gogoi further submitted that the decision of the NHM authorities to cancel the advertisements involved vide the notice dated 13-10-2024 to the extent of the posts against which the recruitment was not taken to its logical conclusion, had the approval of the competent authority. In view of the above, Mr. Gogoi submits that the prayers made in the present writ petition would not mandate acceptance by this Court and the respondent authorities be permitted to initiate a fresh process of recruitment against the post of Rehabilitation Workers, by vacating the interim direction passed by this Court vide order dated 13-11-2024.

7. I have heard the learned counsel for the parties and also perused the materials available on record.

8. The facts as noticed hereinabove are not in dispute. The petitioners had submitted their respective candidature for the post of Rehabilitation Workers in pursuance to the



advertisement dated 30-07-2022 and had thereafter participated in a selection process. On conclusion of the said selection process a draft merit list was prepared by the NHM authorities and the same was placed before the competent authority for approval. The materials brought on record reveals that the select list as prepared, was approved by the competent authority on 12-03-2024. Accordingly, the NHM authorities proceeded to publish the said merit list in its website on 13-03-2024. In the merit list, so published, the names of the petitioners are incorporated. The materials brought on record further reveals that the matter was processed further for issuance of posting order to the selected candidates and a draft engagement order was prepared by the authorities of NHM and placed for approval before the higher authorities on 01-07-2024. The matter was, thereafter, processed to be placed before the competent authority for his approval. It is at this stage that the respondent authority had received the note dated 30-06-2024 from the highest executive of the State, wherein, noticing that the recruitments made in the NHM, Assam were being so made without incorporating, therein, a provision of extending the benefit of reservation to the reserved community candidates, in terms of the policy of the State Government, in this connection, the NHM authorities were required to cancel all engagements made recently as well as to cancel the pending recruitment processes. It is in pursuance to the said note dated 30-06-2024 that the authorities of the NHM proceeded to issue the notice dated 30-10-2024, cancelling the advertisement issued for filling up of vacancies in various positions, wherein, recruitments were not taken to its logical conclusion. In respect of the post of Rehabilitation Workers, the select list having been published but appointments not been made, the said advertisement



insofar as the post of Rehabilitation Workers also came to be cancelled.

9. The note dated 30-06-2024, which was relied upon for issuance of the said notice dated 30-10-2024, required the NHM authorities to take immediate steps to cancel the engagements made recently as well as any ongoing recruitment process where reservation norms had not been adhered to. It is seen that against the posts which were put up for recruitment vide advertisement dated 30-07-2022, including the post of Rehabilitation Workers, reservation policy of the State was not applied. An implementation of the direction passed by the note dated 30-06-2024 would mandate that all the recruitments carried out in pursuance to the advertisement dated 30-07-2022 would be required to be cancelled, however, it is found that the NHM authorities had proceeded to effect the cancellation in a selective manner. It is also seen that vide advertisement dated 30-07-2022, the post of District Media Experts were also put up for recruitment. The select list for the said post was also published after approval of the competent authority, on the same very date as that of the post of the Rehabilitation Workers, i.e. on 30-03-2024. Insofar as, the post of District Media Expert is concerned, the matter was processed and with the approval of the competent authority, appointment orders came to be issued. Similar is the situation for many other posts put up for recruitment vide advertisement dated 30-07-2022, wherein, upon completion of the selection process, the selected candidates were issued with appointment orders and they are continuing as on date in their respective services. However, insofar as, the post of Rehabilitation Workers is concerned, although the select list was approved by the competent authority on 12-03-2024, there is an unexplained inaction on the part of the authorities in processing the

matter for issuance of posting orders till 01-07-2024. At this stage, it is to be noticed that prescription made in the note dated 30-06-2024, for implementing the policy of the State towards reservation in posts for reserved communities, came to be implemented in the NHM, only vide issuance of a communication dated 11-03-2025.

10. On the date when the advertisement dated 30-07-2022 was issued, the recruitment in NHM, Assam were being carried out in a particular manner which had the approval of the competent authority. The recruitment having been carried out and the select list, insofar as, the post of Rehabilitation Workers being published in the website, by complying with the procedure as existing for such recruitment in NHM, Assam, at the relevant point of time, it is to be seen as to whether the subsequent requirement made for conducting recruitments in NHM by providing reservation in posts for reserved community candidates, would have the effect of "Changing the Rules of the Game after the Game have Begun". It is settled position of law that the Rules of the Game cannot be changed after commencement of the recruitment process. The Hon'ble Supreme Court in the case of **Tej Prakash Pathak (Supra)** after examining its earlier decisions in the matter had drawn the following conclusions:-

"42. We, therefore, answer the reference in the following terms:

(1) Recruitment process commences from the issuance of the advertisement calling for applications and ends with filling up of vacancies;

(2) Eligibility criteria for being placed in the Select List, notified at the commencement of the recruitment process, cannot be changed midway through the recruitment process unless the extant Rules so permit, or the advertisement, which is not contrary to the extant Rules, so permit. Even if such change is permissible under the extant Rules or the advertisement, the change would have to meet the requirement of Article 14 of the Constitution and satisfy the test of non-arbitrariness;

(3) The decision in K. Manjusree (supra) lays down good law and is not in conflict with the decision in Subash Chander Marwaha (supra). Subash Chander Marwaha (supra) deals with the right to be appointed from the Select List whereas K. Manjusree (supra) deals with the right to be placed in the Select List. The two cases therefore deal with altogether different issues;

(4) Recruiting bodies, subject to the extant Rules, may devise appropriate procedure for bringing the recruitment process to its logical end provided the procedure so adopted is transparent, non-discriminatory/ non-arbitrary and has a rational nexus to the object sought to be achieved.

(5) Extant Rules having statutory force are binding on the recruiting body both in terms of procedure and eligibility. However, where the Rules are non-existent, or silent, administrative instructions may fill in the gaps;

(6) Placement in the select list gives no indefeasible right to appointment. The State or its instrumentality for bona fide reasons may choose not to fill up the vacancies. However, if vacancies exist, the State or its instrumentality cannot arbitrarily deny appointment to a person within the zone of consideration in the select list."

A perusal of the said conclusion drawn by the Hon'ble Supreme Court in the case of **Tej Prakash Pathak (Supra)**, it would be apparent that the recruitment process commences from the issuance of the advertisement calling for application and ends with the filling up of vacancies. Eligibility criteria as notified at the time of the recruitment cannot be changed unless the extent rules so permits or the advertisement was published contrary to extent rules.

11. In the present case there is no allegation of any unfair means being adopted by the selected candidates for having their names incorporated in the select list so published for the post of Rehabilitation Workers. It is also not averred by the respondents that the advertisement dated 30-07-2022 and for that matter of fact the selection process was carried out dehors the norms prescribed for the purpose. The cancellation being effected only on account of the requirement, subsequently, made of the NHM authorities to



implement the policy of reservation in the recruitments carried out by it, the said requirement being so made after the select list in the matter admittedly was published and engagement against several other posts, involved, put up for recruitment vide advertisement dated 30-07-2022 was effected, this Court is of the considered view that the subsequent requirement, as made by the communication dated 30-06-2024, cannot be projected to be the reason for cancelling the select list, as published in the matter and also cancelling the advertisement dated 30-07-2022 insofar as the post of Rehabilitation Worker is concerned. This Court having had the benefit of perusing the records and noticed the manner in which the recruitment process was carried out with regard to the post of Rehabilitation Worker and this Court having found that the select list was published after the same was approved by the competent authority and also a draft engagement order for posting of the selected candidates was also prepared on 01-07-2024, the subsequent instruction as coming on record could not have been utilized for the purpose of denying to the petitioners their due appointment in terms of their selection for the post in question. This Court while drawing the said conclusion is not oblivious of the fact that the mere inclusion in the select list would not vest upon the selected candidates any right to be appoint, however, the said aspect being noticed, this Court has drawn the above conclusion by examining the reasons advanced for cancellation of the recruitment process initiated against the post of Rehabilitation Workers and this Court had found that the reason assigned to be not reasonable. This Court is of the considered view that in the facts and circumstances, involved, the respondent authorities had changed the Rules of the Game, after the same had begun.



12. In view of the above conclusions drawn, the notice dated 13-10-2024 stands set aside, insofar as, the same has effect of cancelling the recruitment to the post of Rehabilitation Workers and directs the respondent authorities to appoint the selected candidates from the select list already published on 13-03-2024, strictly in accordance with the merit position obtained by the candidates, therein. The respondent authority shall issue posting orders to the selected candidates, including the petitioners, herein, in terms of their merit position as obtained in the select list dated 13-03-2024 against the vacant post of Rehabilitation Workers, as expeditiously as possible, but not later than 01 (one) month from the date of receipt of a certified copy of this order.

13. At this stage, this Court would also observe that the petitioners who are selected candidates against the post of Rehabilitation Workers having agitated their grievance with regard to cancellation of such recruitment process for the reasons cited, hereinabove, proximate to the time of issuance of the notice dated 13-10-2024, this Court has entertained the writ petition. It is however clarified that this decision, rendered in the facts and circumstances of the present case, shall not be treated as a precedent, in respect of other posts, put up for recruitment vide the advertisement dated 30-07-2022.

14. With the above observations and direction, this writ petition stands disposed of.

JUDGE

Comparing Assistant