



GAHC010015392023



IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)
PRINCIPAL SEAT
W.P(C) No. 363/2023

Radheswar Langthasa,

S/O- SRI B LANGTHASA, PRESENT WORKING IN THE POST OF SUPERINTENDING ENGINEER, WATER RESOURCES DEPTT, SILCHAR, R/O- MASCOT RESIDENCY, JATIA, KAHILIPARA ROAD, N K HOTEL, P RABHA PATH, DISPUR, GHY- 781006

VERSUS

1. THE STATE OF ASSAM REP BY THE CHIEF SECRETARY TO THE GOVT OF ASSAM, DISPUR, GHY- 781006, ASSAM

2:THE PRINCIPAL SECRETARY TO THE GOVT OF ASSAM
PERSONNEL (B) DEPTT, SECRETARIAT, DISPUR, GHY- 781006, ASSAM

3:THE ADDITIONAL CHIEF SECRETARY TO THE GOVT OF ASSAM
DEPTT OF WELFARE OF PLAIN TRIBES AND BACKWARD CLASSES
DISPUR, GHY- 781006, ASSAM

4:THE SECRETARY TO THE GOVT OF ASSAM
PERSONNEL (B) DEPTT, SECRETARIAT DISPUR, GHY- 781006

5:THE ADDITIONAL CHIEF SECRETARY TO THE GOVT OF ASSAM
WATER RESOURCES DEPTT, DISPUR, GUWAHATI- 781006, ASSAM

6:SECRETARY TO THE GOVT OF ASSAM
WATER RESOURCES DEPTT, DISPUR, GUWAHATI- 781006, ASSAM



W.P(C) No. 665/2023

RADHESWAR LANGTHASA
SON OF SRI B LANGTHASA
PRESENTLY WORKING IN THE POST OF - SUPERINTENDING ENGINEER
WATER RESOURCES DEPARTMENT, SILCHAR , RESIDENT OF - MASCOT
RESIDENCY, JATIA, KAHILIPARA ROAD, N K HOTEL, P RABHA PATH
DISPUR, GUWAHATI-781006

VERSUS

1. THE STATE OF ASSAM

REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM, DISPUR, GUWAHATI-781006 (ASSAM)

2:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
PERSONNEL (B) DEPARTMENT, SECRETARIAT, DISPUR, GUWAHATI -
781006 (ASSAM)

3:THE ADDITIONAL CHIEF SECRETARY TO THE GOVERNMENT OF ASSAM,
DEPARTMENT FOR THE WELFARE OF PLAIN TRIBES AND BACKWARD
CLASSES (WPT AND BC), DISPUR, GUWAHATI - 781006 (ASSAM).

4:THE SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (B) DEPARTMENT SECRETARIAT, DISPUR, GUWAHATI-
781006

5:THE ADDITIONAL CHIEF SECRETARY TO THE GOVERNMENT OF ASSAM,
WATER RESOURCES DEPARTMENT, DISPUR, GUWAHATI-781006 (ASSAM)

6:SECRETARY TO THE GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT, DISPUR
GUWAHATI-781006 (ASSAM)

7:THE CHIEF ENGINEER
WATER RESOURCES DEPARTMENT, GOVT. OF ASSAM, CHANDMARI
GUWAHATI -781003

8:THE CHAIRMAN AND MEMBERS OF THE DPC COMMITTEE MEETING
HELD ON 06.2.2023 HELD FOR PROMOTING INCUMBENTS FROM THE
RANK OF SUPERINTENDING ENGINEER TO THE RANK OF ADDITIONAL
CHIEF ENGINEER

9:THE CHIEF ENGINEER
WATER RESOURCES DEPARTMENT, CHANDMARI, GUWAHATI-781003

10:PRABIN BHUYAN THROUGH THE O/O THE CHIEF ENGINEER
WATER RESOURCES DEPARTMENT, CHANDMARI, GUWAHATI-781003

11:SMTI MANDIRA SARMAH THROUGH THE O/O THE CHIEF ENGINEER
WATER RESOURCES DEPARTMENT, CHANDMARI, GUWAHATI-781003

12:BHASKAR JYOTI SARMAH THROUGH THE O/O THE CHIEF ENGINEER,
WATER RESOURCES DEPARTMENT, CHANDMARI. GUWAHATI-781003

13:RAJIB KUMAR GOSWAMI THROUGH THE O/O THE CHIEF ENGINEER
WATER RESOURCES DEPARTMENT, CHANDMARI, GUWAHATI-781003

14:NAGENDRA KARMAKAR THROUGH THE O/O THE CHIEF ENGINEER
WATER RESOURCES DEPARTMENT, CHANDMARI, GUWAHATI-781003



15:NAYAN KUMAR SAIKIA THROUGH THE O/O THE CHIEF ENGINEER
WATER RESOURCES DEPARTMENT, CHANDMARI, GUWAHATI-781003
16:SAMIRAN DEKA THROUGH THE O/O THE CHIEF ENGINEER
WATER RESOURCES DEPARTMENT, CHANDMARI, GUWAHATI-781003
17:SUBRATA NATH THROUGH THE O/O THE CHIEF ENGINEER
WATER RESOURCES DEPARTMENT, CHANDMARI, GUWAHATI-781003
18:ABDUL MUNIM MAZUMDAR THROUGH THE O/O THE CHIEF ENGINEER,
WATER RESOURCES DEPARTMENT, CHANDMARI
GUWAHATI-781003
19:DEBA PRASAD BORA, O/O THE CHIEF ENGINEER, WATER RESOURCES
DEPARTMENT, CHANDMARI, GUWAHATI-781003
20:JAGADIPAN DEY, O/O THE CHIEF ENGINEER
WATER RESOURCES DEPARTMENT, CHANDMARI, GUWAHATI-781003
21:BIPUL BHATTACHARYYA, O/O THE CHIEF ENGINEER
WATER RESOURCES DEPARTMENT, CHANDMARI
GUWAHATI-781003
22:BHASKAR JYOTI DAS, O/O THE CHIEF ENGINEER
WATER RESOURCES DEPARTMENT, CHANDMARI, GUWAHATI-781003
23:PULAK CHOUDHURY, O/O THE CHIEF ENGINEER
WATER RESOURCES DEPARTMENT, CHANDMARI, GUWAHATI-781003
24:PRATUL PATOWARY, O/O THE CHIEF ENGINEER, WATER RESOURCES
DEPARTMENT, CHANDMARI, GUWAHATI-781003

W.P(C) No. 1819/2023

SUBRATA KUMAR DAS
S/O SRI SAMIRAN CHANDRA DAS
ASSISTANT EXECUTIVE ENGINEER
DHEMAJI W.R. SUB-DIVISION, DHEMAJI
ASSAM, R/O SUBACHANI ROAD, NEAR BANK COLONY
P.O. AND DIST-TINSUKIA, PIN-786125, ASSAM

VERSUS

1. THE STATE OF ASSAM
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM, DISPUR, GUWAHATI-781006 (ASSAM)

2:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
PERSONNEL (B) DEPARTMENT
SECRETARIAT
DISPUR
GUWAHATI-781006 (ASSAM)

3:THE ADDL CHIEF SECY TO THE GOVT OF ASSAM
DEPTT OF WELFARE OF PLAIN TRIBES AND BACKWARD CLASSES
(WPT AND BC)
DISPUR



GUWAHATI-781006 (ASSAM)
4:THE SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (B) DEPARTMENT
SECRETARIAT
DISPUR
GUWAHATI-781006
5:THE SECRETARY TO THE GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
DISPUR
GUWAHATI-781006 (ASSAM)
6:THE COMMISSIONER AND SPECIAL SECRETARY TO THE GOVERNMENT
OF ASSAM
WATER RESOURCES DEPARTMENT
DISPUR
GUWAHATI-781006 (ASSAM)
7:THE DEPUTY SECRETARY TO THE GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
DISPUR
GUWAHATI-781006 (ASSAM)
8:NIKUNJA KUMAR SARMA
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
9:RAJESH BARUAH (OBC)
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
10:PRANJIT KUMAR NATH (OBC)
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
11:PRATIM GOGOI (OBC)
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
12:PRANJIT BORAH (OBC)
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
13:DAYANANDA BAISHNAB (OBC)
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
14:KHUMAN KALITA (OBC)
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
15:DINESH BURAGOHAIN (OBC)
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM



WATER RESOURCES DEPARTMENT
16:PRANAB JYOTI CHETIA (OBC)
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
17:TILOK CH GOGOI (OBC)
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
18:MD. IFTIKAR HUSSAIN
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
19:MIRJUMLA AHMED
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
20:SHAMIM AKHTAR LASKAR
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
21:NAYANJYOTI GOSWAMI
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
22:SHAHEEDUZ ZAMAN
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
23:SANTANU KUMAR SARMA
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
24:KAMAL SARMA
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
25:RAMESH CHANDRA KALITA
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
26:SYED SAJID AHMED
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
27:CHANDAN KUMAR NATH (OBC)
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
28:HIMANGSHU DEKA (OBC)



TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
29:JIBAN BEZ BARUAH
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
30:SURAJIT BHARALI (MOBC)
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
31:DIGANTA SAIKA (MOBC)
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
32:RAHMAT ALI AHMED
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
33:KAMALA DUTTA (OBC)
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
34:MUKUL BORA
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
35:SANJOY BURAGOHAIN (OBC)
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
36:MONOJ BHATTACHARYAA
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
37:BHARAT BHUSAN SARMA
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
38:BABUL RAJBONGSHI (OBC)
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
39:JAYANTA KUMAR BORPUJARI
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
40:BAHARUL ISLAM LASKAR
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM



WATER RESOURCES DEPARTMENT
41: PURNENDU CHANDA
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
42: MD. ARPHANUR RAHMAN
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
43: KHANINDRA KALITA
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
44: JAHUR UDDIN AHMED (MOBC)
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
45: BAHARUL ISLAM CHOUDHURY
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
46: PARBIN KUMAR SAIKIA
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
47: HARISH CH. BORUAH (MOBC)
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
48: ABANEE GOGOI (OBC)
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
49: GANESH KALITA
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
50: ABHOY KUMAR DEKA (OBC)
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
51: UTPAL HAZARIKA (OBC)
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
52: SANTANU KUMAR BORAH
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
53: MD. ASAD HUSSAIN



TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT
54:MD. NURUL ISLAM (OBC)
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT

W.P(C) No. 828/2023

DIPA DAS
D/O- SRI PRABHAT CH. DAS
R/O- AMBIKAGIRI NAGAR
1ST BYE LANE
HOUSE NO.1
GUWAHATI- 781024
ASSAM

VERSUS

THE STATE OF ASSAM AND 22 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GHY-06 (ASSAM)

2:THE PRINCIPAL SECRETARY
TO THE GOVT. OF ASSAM PERSONNEL (B) DEPTT.
SECRETARIAT
DISPUR
GHY-06 (ASSAM)

3:TH ADDL. CHIEF SECRETARY
TO THE GOVT. OF ASSAM DEPTT. FOR THE WELFARE OF PLAIN TRIBES
AND BACKWARD CLASSES (WPT AND BC)
DISPUR
GHY-06 (ASSAM)

4:THE SECRETARY
GOVT. OF ASSAM PERSONNEL (A) DEPTT.
SECRETARIAT
DISPUR
GHY-06

5:PRANAB KUMAR SHARMA
PRESENTLY POSTED AS ADDL. SECRETARY
WOMEN AND CHILD DEVELOPMENT DEPTT.
SECRETARIAT
DISPUR- 781006
ASSAM

6:MONDIPA SHARMA BORKATAKY
PRESENTLY POSTED AS ADDL. SECRETARY



CULTURAL AFFAIRS DEPTT. AND MD
ASSAM STATE FILM FINANCE AND DEVELOPMENT CORPORATION
SECRETARIAT
DISPUR- 781006
ASSAM
7:GITIMONI PHUKAN
PRESENTLY POSTED AS DY. COMMISSIONER
DC COURT COMPLEX
NALBARI MAIN ROAD
NALBARI- 781335
ASSAM
8:FARIDA SAMSUL
PRESENTLY POSTED AS DIRECTOR
CHAR AREAS DEV AND DIRECTOR
MINORITIES DEVELOPMENT BOARD
SECRETARIAT
DISPUR- 781006
ASSAM
9:JURI GOGOI
PRESENTLY POSTED AS ADDL. SECRETARY
PENSION AND PUBLIC GRIEVANCE DEPTT.
SECRETARIAT
DISPUR- 781006
ASSAM
10:TEJ PRASAD BHUSAL
PRESENTLY POSTED AS ADDL. SECRETARY
AGRICULTURE
SECRETARIAT
DISPUR- 781006
ASSAM
11:MANAS NATH
PRESENTLY POSTED AS ADDL. SECRETARY
MEDICAL EDUCATION AND RESEARCH
SECRETARIAT
DISPUR- 781006
ASSAM
12:ASHIM KUMAR BHATTACHARYA
PRESENTLY POSTED AS ADDL. SECRETARY
HOME AND POLITICAL DEPTT.
SECRETARIAT
DISPUR- 781006
ASSAM
13:DEBESWAR BORA
PRESENTLY POSTED AS COMMISSIONER FOR PERSON WITH
DISABILITIES
SECRETARIAT
DISPUR- 781006
ASSAM
14:PALLABI PHUKAN
PRESENTLY POSTED AS DY. COMMISSIONER



OFFICE OF THE DY. COMMISSIONER RAM NAGAR
DHEMAJI- 787057

ASSAM

15:MAYURI CHETIA

PRESENTLY POSTED AS ADDL. SECRETARY
FINANCE DEPTT.

SECRETARIAT

DISPUR- 781006

ASSAM

16:PALASH RANJAN GHARPHALIA

PRESENTLY POSTED AS ADDL. SECRETARY
PERSONNEL

AR AND TRAINING DEPTT.

SECRETARIAT

DISPUR- 781006

ASSAM

17:SANTANA CHETIA

PRESENTLY POSTED AS ADDL. SECRETARY
PARLIAMENTARY AND SECONDARY EDUCATION DEPTT.

SECRETARIAT

DISPUR- 781006

ASSAM

18:DIPSHIKHA DEY

PRESENTLY POSTED AS ADDL. SECRETARY
AGRICULTURE DEPTT.

SECRETARIAT

DISPUR- 781006

ASSAM

19:PAUL BARUA

PRESENTLY POSTED AS DY. COMMISSIONER
D C OFFICE

COURT ROAD

SONARI

ASSAM- 785690

20:PRAJNYA SAHARIA

PRESENTLY POSTED AS ADDL. SECRETARY
ELEMENTARY EDUCATION DEPTT.

SECRETARIAT

DISPUR- 781006

ASSAM

21:MANABENDRA MEDHI

PRESENTLY POSTED AS ADDL. SECRETARY
SOCIAL JUSTICE AND EMPOWERMENT DEPTT.

SECRETARIAT

DISPUR- 781006

ASSAM

22:MADHU SUDAN NATH

PRESENTLY POSTED AS ADDL. SECRETARY
HIGHER EDUCATION DEPTT.

SECRETARIAT



DISPUR- 781006
ASSAM
23:BISHNU KAMAL BORAH
PRESENTLY POSTED AS ADDL. SECRETARY AND DIRECTOR
INFORMATION AND PUBLIC RELATIONS DEPTT.
SECRETARIAT
DISPUR- 781006
ASSAM

W.P(C) No. 1165/2023

PRANAB KUMAR RABHA
S/O- LATE PABITRA KUMAR RABHA
EXECUTIVE ENGINEER
PWD
DISPUR TERRITORIAL ROAD DIVISION
GUWAHATI-781021
R/O- NABURUN PATH
JATIA
DISPUR
PIN- 781006
ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-781006
ASSAM

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (B) DEPARTMENT
SECRETARIAT
DISPUR
GUWAHATI-781006
ASSAM

3:THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT FOR THE WELFARE OF PLAIN TRIBES AND BACKWARD
CLASSES (WPT AND BC)
DISPUR
GUWAHATI-781006
ASSAM

4:THE SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (B) DEPARTMENT
SECRETARIAT
DISPUR
GUWAHATI-781006.



5:THE SECRETARY TO THE GOVT. OF ASSAM
PUBLIC ROADS DEPARTMENT
DISPUR
GUWAHATI-781006
ASSAM

6:THE COMMISSIONER AND SPECIAL SECRETARY TO THE GOVT. OF
ASSAM
PUBLIC WORKS DEPARTMENT
DISPUR
GUWAHATI-781006
ASSAM

7:THE DEPUTY SECRETARY TO THE GOVT. OF ASSAM
PUBLIC WORKS ROADS DEPARTMENT
CONFIDENTIAL CELL
DISPUR
GUWAHATI-781006
ASSAM

W.P(C) No. 3094/2021

BIKASH CH PANGGING
S/O NOMAL CH PANGGING
EXECUTIVE ENGINEER
PWD
DIBRUGARH LAHOWAL MORAN AND TINGKHONG TERRITORIAL ROAD
DIVISION
DIBRUGARH
RESIDENT OF CHOWKIDINGHEE
DIBRUGARH
786003
ASSAM

VERSUS

THE STATE OF ASSAM AND 21 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI 781006
ASSAM

2:THE COMMISSIONER AND SPECIAL SECRETRAY TO THE GOVT. OF
ASSAM
PWD(R)M DISPUR
GUWAHATI 06
3:THE SECRETARY
PWD
GOVT. OF ASSAM
DISPUR GUWAHATI 06



4:THE COMMISSIONER AND SPECIAL SECRETARY TO THE GOVT. OF ASSAM

PUBLIC WORKS (BUILDING AND NH) DEPT. DISPUR
GUWAHATI 06

5:THE DEPUTY SECRETARY TO THE GOVT. OF ASSAM

PUBLIC WORKS ROAD DEPARTMENT
DISPUR

GUWAHATI 781006

6:THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF ASSAM

DEPARTMENT OF WELFARE OF PLAIN TRIBES AND BACKWARD CLASSES
(WPT AND BC)

DISPUR

GUWAHATI 781006

7:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (B) DEPARTMENT

DISPUR

GUWAHATI 781006

8:THE CHAIRPERSON AND MEMBERS

OF THE DPC MEETING HELD ON 29.05.2021 FOR PROMOTION TO THE
RANK OF SUPT.ENGINEER

UNDER THE PWD

GOVT. OF ASSAM TO BE SERVED UPON THE SECRETARY TO THE GOVT.
OF ASSAM

PWD (ROADS

BUILDING AND NH)

DISPUR

GUWAHATI 781006

9:SRI JEWEL TIMUNG (STH)

DIPHU CIRCLE I

PWDR DIPHU

10:SRI AJIT SINAR (ST(H)

HAMREN CIRCLE

HAMREN

11:SRI DILIP KUMAR SARMA - I

DIBRUGARH ROAD CIRCLE

PWRD

12:SRI NAGENDRA KALITA

SILCHAR BUILDING CIRCLE

PWD (B AND NH)

13:SRI DHANESH CH. DAS

TINSUKIA ROAD CIRCLE

PWRD

TINSUKIA

14:SRI INDRAJIT GOGOI

DIBRUGARH NH CIRCLE

PWD (B AND NH)

DIBRUGARH



15:SRI PRANAB TAHBILDER
TEZPUR NH CIRCLE
PWD (B AND NH) TEZPUR
16:SRI RATUL KR. BEZ
GUWAHATI NEC CIRCLE
PWDR GUWAHATI
17:SRI PRAHLAD CH KAKATI
ARIASP CIRCLE
PWRD
GUWAHATI
18:SRI BIPUL DUTTA
JORHAT ROAD CIRCLE
PWRD
19:SRI ATUL CH BAISHYA
BARPETA ROAD CIRCLE
PWRD BARPETA

20:SRI SANTOSH TAMULY
HAFLONG NEC CIRCLE
HAFLONG
21:SRI BHUDEB SARMA
O/O THE CHIEF ENGINEER (EAP) PWRD
22:SRI ARUN KR. PHUKAN
O/O THE CHIEF ENGINEER
BUILDING
PWD (B AND NH) RES. 9 TO 22 ARE PRIVATE RES. UNDER THE PUBLIC
WORKS ROAD DEPARTMENT AND MAY BE SERVED THROUGH
RESPONDENT NO. 5

W.P(C) No. 677/2023

BIDUR BORGoyARI
S/O- LT. MANIK CHAND BORGoyARI

EXECUTIVE ENGINEER
PWD NAGAON

BARHAMPUR AND RUPOHIHUT DIVISION

NAGAON

R/O- BIPUNIDHI NIWAS
BORBARI

ALOKPUR PATH
VIP ROAD

GUWAHATI- 781036
(ASSAM).



VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM

DISPUR
GUWAHATI- 781006 (ASSAM).

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (B) DEPARTMENT
SECRETARIAT
DISPUR

GUWAHATI- 781006 (ASSAM).
3:THE ADDL. CHIEF SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT FOR THE WELFARE OF PLAIN TRIBES AND B.C
(WPT AND BC)
DISPUR

GUWAHATI- 781006 (ASSAM).
4:THE SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (B) DEPARTMENT
SECRETARIAT
DISPUR

GUWAHATI- 781006
(ASSAM).
5:THE SECRETARY TO THE GOVT. OF ASSAM
PUBLIC WORKS ROADS DEPARTMENT
DISPUR

GUWAHATI- 781006 (ASSAM).
6:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PUBLIC WORKS ROADS DEPARTMENT
DISPUR

GUWAHATI- 781006 (ASSAM).
7:THE DY. SECRETARY TO THE GOVT. OF ASSAM
PUBLIC WORKS ROADS DEPARTMENT
CONFIDENTIAL CELL
DISPUR

GUWAHATI- 781006 (ASSAM).

W.P(C) No. 3096/2021

BIDUR BORGAYAR
S/O LATE MANIK CH. BORGAYARI



EXECUTIVE ENGINEER
PWD
HOJAI DISTRICT TERRITORIAL ROAD DIVISION
HOJAI
RESIDENT OF ALOKPUR PATH
BORBARI
VIP ROAD
DISPUR
781036. ASSAM

VERSUS

THE STATE OF ASSAM AND 22 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI 781006
ASSAM

2:THE COMMISSIONER AND SPECIAL SECRETRAY TO THE GOVT. OF
ASSAM

PWD(R)M DISPUR
GUWAHATI 06

3:THE SECRETARY
PWD

GOVT. OF ASSAM
DISPUR GUWAHATI 06

4:THE COMMISSIONER AND SPECIAL SECRETARY TO THE GOVT. OF
ASSAM

PUBLIC WORKS (BUILDING AND NH) DEPT. DISPUR
GUWAHATI 06

5:THE DEPUTY SECRETARY TO THE GOVT. OF ASSAM

PUBLIC WORKS ROAD DEPARTMENT
DISPUR

GUWAHATI 781006

6:THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF ASSAM

DEPARTMENT OF WELFARE OF PLAIN TRIBES AND BACKWARD CLASSES
(WPT AND BC)

DISPUR
GUWAHATI 781006

7:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (B) DEPARTMENT

DISPUR
GUWAHATI 781006

8:THE CHAIRPERSON AND MEMBERS
OF THE DPC MEETING HELD ON 29.05.2021 FOR PROMOTION TO THE
RANK OF SUPT.ENGINEER



UNDER THE PWD
GOVT. OF ASSAM TO BE SERVED UPON THE SECRETARY TO THE GOVT.
OF ASSAM
PWD (ROADS
BUILDING AND NH)
DISPUR
GUWAHATI 781006
9:SRI JEWEL TIMUNG (STH)
DIPHU CIRCLE I
PWDR DIPHU
10:SRI AJIT SINAR (ST(H)
HAMREN CIRCLE
HAMREN
11:SRI DILIP KUMAR SARMA - I
DIBRUGARH ROAD CIRCLE
PWRD
12:SRI NAGENDRA KALITA
SILCHAR BUILDING CIRCLE
PWD (B AND NH)
13:SRI DHANESH CH. DAS
TINSUKIA ROAD CIRCLE
PWRD
TINSUKIA
14:SRI INDRAJIT GOGOI
DIBRUGARH NH CIRCLE
PWD (B AND NH)
DIBRUGARH
15:SRI PRANAB TAHBILDER
TEZPUR NH CIRCLE
PWD (B AND NH) TEZPUR
16:SRI RATUL KR. BEZ
GUWAHATI NEC CIRCLE
PWDR GUWAHATI
17:SRI PRAHLAD CH KAKATI
ARIASP CIRCLE
PWRD
GUWAHATI
18:SRI BIPUL DUTTA
JORHAT ROAD CIRCLE
PWRD
19:SRI ATUL CH BAISHYA
BARPETA ROAD CIRCLE
PWRD BARPETA

20:SRI SANTOSH TAMULY
HAFLONG NEC CIRCLE
HAFLONG
21:SRI BHUDEB SARMA
O/O THE CHIEF ENGINEER (EAP) PWRD
22:SRI ARUN KR. PHUKAN



O/O THE CHIEF ENGINEER
BUILDING

PWD (B AND NH) RES. 9 TO 22 ARE PRIVATE RES. UNDER THE PUBLIC
WORKS ROAD DEPARTMENT AND MAY BE SERVED THROUGH
RESPONDENT NO. 5

W.P(C) No. 3482/2020

TABURAM PEGU AND 2 ORS.
S/O LT. KHAGESWAR PEGU
ADDITIONAL SUPERINTENDENT OF POLICE
2
I/C 6 ABNN KATHAL
SILCHAR
DIST. CACHAR
PIN-788005
ASSAM

2: AMITABH BASUMATARAY
APS
S/O LT. AMRITLAL BASUMATARY
R/O GOSSAIGAON
WARD NO. 4
DIST. KOKRAJHAR
PIN-783360
BTAD
ASSAM

3: PANKAJ KUMAR KAKATI
APS
S/O SATYA NATH KAKATI
R/O TOWN RAHA
WARD NO. 2
DIST. NAGAON
ASSAM-782103
VERSUS

THE STATE OF ASSAM AND 8 ORS.
REP .BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-781006

2:THE ADDITIONAL CHIEF SECRETARY
TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPTT. GOVT. OF ASSAM
DISPUR
GUWAHATI-781006
ASSAM
3:THE PRINCIPAL SECRETARY



TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPTT. DISPUR
GUWAHATI-781006

ASSAM

4:THE SECRETARY

TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPTT. DISPUR
GUWAHATI-781006

ASSAM

5:THE DIRECTOR GENERAL OF POLICE

ASSAM

ASSAM POLICE HEAD QUARTERS

ULUBARI

GUWAHATI-781001

ASSAM

6:THE ADDITIONAL DIRECTOR GENERAL OF POLICE ADMINISTRATION

ASSAM POLICE HEAD QUARTERS

ULUBARI

GUWAHATI-781001

ASSAM

7:THE ADDITIONAL CHIEF SECRETARY

TO THE GOVT. OF ASSAM

DEPTT. FOR WELFARE OF PLAIN TRIBES AND BACKWARD CLASSES (WPT
AND BC)

DISPUR

GUWAHATI-781006

ASSAM

8:THE COMMISSIONER AND SECRETARY

TO THE GOVT. OF ASSAM

PERSONNEL (B) DEPTT. DISPUR

GUWAHATI-781006

9:THE JUDICIAL REMEMBRANCER AND SECRETARY

TO THE GOVT. OF ASSAM

JUDICIAL DEPTT. JUDICIAL BRANCH

DISPUR

GUWAHATI-781006

W.P(C) No. 1309/2022

PRANAB KUMAR RABHA
SON OF LT. PABITRA KUMAR RABHA

EXECUTIVE ENGINEER

PWD

DISPUR TERRITORIAL ROAD DIVISION

GUWAHATI -781021.

RESIDENT OF NABARUN PATH

JATIA

DISPURPIN- 781006



ASSAM.

VERSUS

THE STATE OF ASSAM AND 32 ORS.
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM
DISPUR
GUWAHATI-781006 (ASSAM).

2:THE COMMISSIONER AND SPECIAL SECRETARY
TO THE GOVERNMENT OF ASSAM
PUBLIC WORK ROADS DEPARTMENT
DISPUR
GUWAHATI - 781006 (ASSAM).

3:THE SECRETARY
PUBLIC WORKS DEPARTMENT
GOVERNMENT OF ASSAM
DISPUR
GUWAHATI-781006.

4:THE COMMISSIONER AND SPECIAL SECRETARY
TO THE GOVERNMENT OF ASSAM
PUBLIC WORKS (BUILDING AND NH) DEPARTMENT
DISPUR
GUWAHATI 6.

5:THE DEPUTY SECRETARY
TO THE GOVERNMENT OF ASSAM
PUBLIC WORKS ROADS DEPARTMENT
DISPUR
GUWAHATI - 781006.

6:THE ADDITIONAL CHIEF SECRETARY
TO THE GOVERNMENT OF ASSAM
DEPARTMENT FOR THE WELFARE OF PLAIN TRIBES AND BACKWARD
CLASSES (WPT AND BC)
DISPUR
GUWAHATI-781006 (ASSAM).

7:THE COMMISSIONER AND SECRETARY
TO THE GOVERNMENT OF ASSAM
PERSONNEL (B) DEPARTMENT
DISPUR
GUWAHATI-781006.

8:THE CHAIRPERSON AND MEMBERS
OF THE DPC MEETING HELD ON 29.5.2021 FOR PROMOTION TO THE
RANK OF SUPERINTENDING ENGINEER UNDER THE PUBLIC WORKS
DEPARTMENT
GOVT. OF ASSAM
TO BE SERVED UPON THE COMMISSIONER AND SPECIAL SECRETARY TO
THE GOVERNMENT OF ASSAM
PUBLIC WORKS (ROADS



BUILDING AND NH) DEPARTMENT
DISPUR

GUWAHATI 781006.

9:SAILADIP DAS

SUPERINTENDING ENGINEER (C)

PWD (BANDNH)

GUWAHATI BUILDING CIRCLE-II

CHANDMARI

GUWAHATI - 781003.

10:ARUN CH GOSWAMI

SUPERINTENDING ENGINEER (C)

PWD (BANDNH)

JORHAT BUILDING CIRCLE

JORHAT 785007.

11:JEWEL TIMUNG (STH)

SUPERINTENDING ENGINEER (C)

PWRD

DIPHU CIRCLE-I

DIPHU

KARBI-ANGLONG 782462.

12:SALEH AHMED CHOUDHURY

SUPERINTENDING ENGINEER (C)

PWD (BANDNH)

GUWAHATI BUILDING CIRCLE-I

PANBAZAR

GUWAHATI - 781001.

13:ROMIZUDDIN AHMED

SUPERINTENDING ENGINEER (C)

HAFLONG (RANDB) CIRCLE

HAFLONG

DIMA HASAO 788819.

14:PRADIP SARMA

DEPUTY SECRETARY (ESTABLISHMENT) PWD (BANDNH)

TO THE GOVT. OF ASSAM

DISPUR

GUWAHATI - 781006.

15:MAHENDRA KUMAR SAIKIA

SUPERINTENDING ENGINEER (C)

PWRD

GOLAGHAT ROAD CIRCLE

C/O - OFFICE OF THE EXECUTIVE ENGINEER

PWD

GOLAGHAT AND KHOMTAI TERRITORIAL ROAD DIVISION

GOLAGHAT - 785621.

16:KISHOR KR. TALUKDAR

SUPERINTENDING ENGINEER (C)

PWD (BANDNH)

NALBARI NH CIRCLE

NALBARI - 781335.

17:BALWANT SINGH



DEPUTY SECRETARY (MATERIALS) PWRD
TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI 781006.
18:DILIP KR. SAIKIA
SUPERINTENDING ENGINEER (C)
PWRD
IBRC
O/O THE CHIEF ENGINEER
PWRD (ROADS)
CHANDMARI
GUWAHATI 781003.
19:AJIT SINAR (STH)
SUPERINTENDING ENGINEER (C)
PWRD
HAMREN CIRCLE
HAMREN
KARBI-ANGLONG 782462.
20:KAJAL BAYAN
SUPERINTENDING ENGINEER (C)
PWRD
PLANNING
O/O THE CHIEF ENGINEER
PWRD (ROADS)
CHANDMARI
GUWAHATI 781003
21:BIJOY BHUSHAN SAIKIA
SUPERINTENDING ENGINEER (C)
PWRD
MANGOLDOI ROAD CIRCLE
MANGOLDOI 784125
22:MRIDUL TALUKDAR
SUPERINTENDING ENGINEER (C)
PWRD
MANGOLDOI ROAD CIRCLE
MANGOLDOI 784125.
23:DEBA KUMAR LAHKAR
DEPUTY SECRETARY (BUDGET) PWD (BANDNH)
TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI - 781006.
24:DILIP KUMAR SARMA- 1
SUPERINTENDING ENGINEER (C)
PWRD
DIBRUGARH ROAD CIRCLE
DIBRUGARH 786001.
25:NAGENDRA KALITA
SUPERINTENDING ENGINEER (C)
PWD (BANDNH)
SILCHAR BUILDING CIRCLE



SILCHAR 788001
26:DHANESH CH. DAS
SUPERINTENDING ENGINEER (C)
PWRD
TINSUKIA ROAD CIRCLE
C/O OFFICE OF THE EXECUTIVE ENGINEER
PWRD
TINSUKIA
DOOMDOOMA AND SADIYA TERRITORIAL ROAD DIVISION
TINSUKIA - 786192.
27:INDRAJIT GOGOI
SUPERINTENDING ENGINEER (C)
PWD (BANDNH)
DIBRUGARH NH CIRCLE
DIBRUGARH 786001
28:PRANAB TAHBILDER
SUPERINTENDING ENGINEER (C)
PWD (BANDNH)
TEZPUR NH CIRCLE
TEZPUR - 784001
29:RATUL KR. BEZ
SUPERINTENDING ENGINEER (C)
PWRD (ROADS)
GUWAHATI NEC CIRCLE
PANBAZAR
GUWAHATI 781001.
30:BIPUL DUTTA
JORHAT ROAD CIRCLE
PWRD. SUPERINTENDING ENGINEER (C)
PWRD
JORHAT ROAD CIRCLE
JORHAT - 785007
31:ATUL CH. BAISHYA
SUPERINTENDING ENGINEER (C)
PWRD
BARPETA ROAD CIRCLE
C/O OFFICE OF THE BARPETA
BHAGHBAR AND CHENGA TERRITORIAL ROAD DIVISION
BARPETA - 781310
32:SANTOSH TAMULY
SUPERINTENDING ENGINEER (C)
PWRD
HAFLONG NEC CIRCLE
HAFLONG - 788819.
33:BHUDEB SARMA
SUPERINTENDING ENGINEER (C)
PWRD
GUWAHATI RIDF-II CIRCLE
O/O THE CHIEF ENGINEER
PWRD (ROADS)



CHANDMARI
GUWAHATI 781003.

W.P(C) No. 1121/2023

BIKASH C. PANGGING
S/O NOMAL CH. PANGGING EXECUTIVE ENGINEER PWD DIBRUGARH
LAHOWAL MORAN AND TINGKONG TERRITORIAL ROAD DIVISION
DIBRUGARH R/O CHOWKIDINGHEE DIBRUGARH PIN 786003 ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. BY THECHIEF SECRETARY TO THE GOVT. OF ASSAM DISPUR
GUWAHATI 6 ASSAM

2:THE PRINCIPAL SECRETARY
TO THE GOVT. OF ASSAM PERSONNEL (B) DEPTT. SECRETARIAT DISPUR
GUWAHAI 6 ASSAM

3:THE ADDITIONAL CHIEF SECRETARY
TO THE GOVT. OF ASSAM DEPTT. FOR THE WELFARE OF PLAIN TRIBES
AND BACKWARD CLASSES (WPT AND BC) DISPUR GUWAHATI 781006
ASSAM

4:THE SECRETARY
TO THE GOVT. OF ASSAM PERSONNEL (B) DEPTT. SECRETARIAT DISPUR
GUWAHATI 6

5:THE SECRETARY
TO THE GOVT OF ASSAM PUBLIC WORKS ROAD DEPTT. DISPUR
GUWAHATI 6 ASSAM

6:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
PUBLIC WORKS DEPTT. DISPUR GUWAHATI 6 ASSAM

7:THE DEPUTY SECRETARY
TO THE GOVT. OF ASSAM
PUBLIC WORKS DEPTT. DISPUR GUWAHATI 6 ASSAM

W.P(C) No. 3095/2021

PRANAB KUMAR RABHA
S/O LATE PABITRA KUMAR RABHA
EXECUTIVE ENGINEER
PWD
DISPUR TERRITORIAL ROAD DIVISION
GUWAHATI 781021
RESIDENT OF NABARUN PATH
JATIA
DISPUR
ASSAM 781006



VERSUS

THE STATE OF ASSAM AND 35 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI 781006
ASSAM

2:THE COMMISSIONER AND SPECIAL SECRETRAY TO THE GOVT. OF
ASSAM

PWD(R)M DISPUR
GUWAHATI 06

3:THE SECRETARY
PWD

GOVT. OF ASSAM
DISPUR GUWAHATI 06

4:THE COMMISSIONER AND SPECIAL SECRETARY TO THE GOVT. OF
ASSAM

PUBLIC WORKS (BUILDING AND NH) DEPT. DISPUR
GUWAHATI 06

5:THE DEPUTY SECRETARY TO THE GOVT. OF ASSAM

PUBLIC WORKS ROAD DEPARTMENT
DISPUR

GUWAHATI 781006

6:THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF ASSAM

DEPARTMENT OF WELFARE OF PLAIN TRIBES AND BACKWARD CLASSES
(WPT AND BC)

DISPUR

GUWAHATI 781006

7:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (B) DEPARTMENT

DISPUR

GUWAHATI 781006

8:THE CHAIRPERSON AND MEMBERS

OF THE DPC MEETING HELD ON 29.05.2021 FOR PROMOTION TO THE
RANK OF SUPT.ENGINEER

UNDER THE PWD

GOVT. OF ASSAM TO BE SERVED UPON THE SECRETARY TO THE GOVT.
OF ASSAM

PWD (ROADS

BUILDING AND NH)

DISPUR

GUWAHATI 781006

9:SRI SAILADIP DAS

GUWAHATI BUILDING CIRLCE II



PWD (B AND NH) GUWAHATI
10:SRI ARUN CH GOSWAMI
JORHAT BUILDING CIRCLE
PWD (B AND NH) JORHAT
11:SRI JEWEL TIMUNG (ST(H)
DIPHU CIRCLE I
PWDR DIPHU
12:SRI SALEH AHMED CHOUDHURY
GUWAHATI BUILDING CIRCLE I
PWD PWD (B AND NH)
GUWAHATI
13:SRI ROMIZUDDIN AHMED
HAFLONG R AND B CIRCLE DIMA HASAO
14:SRI PRADIP SARMA
DEPUTY SECRETARY (ESTABLISHMENT)
PWD (B AND NH)
15:SRI NEKIBUR RAHMAN SAIKIA
NEC ROAD CELL
PWRD
16:SRI MAHENDRA KUMAR SAIKIA
GOLAGHAT ROAD CIRCLE
PWDR
GOLAGHAT
17:SRI KISHOR KR. TALUKDAR
NALBARI NH CIRCLE
PWD (B AND NH)
18:SRI BALWANT SINGH
DEPUTY SECRETARY MATERIALS PWRD
19:SRI DILIP KR. SAIKIA
IBRC

O/O THE CHIEF ENGINEER (ROAD) PWDR
20:SRI AJIT SINAR (ST(H)
HAMREN CIRCLE
HAMREN
21:SRI KAJAL BAYAN
O/O THE CHIEF ENGINEER (ROADS) PWRD
22:SRI BIJOY BHUSHAN SAIKIA
MANGALDAI ROAD
CIRCLE
PWRD
23:SRI MRIDUL TALUKDAR
NORMAL O/O THE CHIEF ENGINEER (BUILDING) PWD (B AND NH)
24:SRI DEBA KUMAR LAHKAR
DEPUTY SECRETARY (BUDGET) PWRD
25:SRI DILIP KUMAR SARMA - I
DIBRUGARH ROAD CIRCLE
PWRD
26:SRI NAGENDRA KALITA
SILCHAR BUILDING CIRCLE



PWD (B AND NH)
27:SRI DHANESH CH. DAS

TINSUKIA ROAD CIRCLE
PWRD
TINSUKIA
28:SRI INDRAJIT GOGOI
DIBRUGARH NH CIRCLE
PWD (B AND NH)
DIBRUGARH
29:SRI PRANAB TAHBILDER
TEZPUR NH CIRCLE
PWD (B AND NH) TEZPUR
30:SRI RATUL KR. BEZ
GUWAHATI NEC CIRCLE
PWDR GUWAHATI
31:SRI PRAHLAD CH KAKATI
ARIASP CIRCLE
PWRD
GUWAHATI
32:SRI BIPUL DUTTA
JORHAT ROAD CIRCLE
PWRD
33:SRI ATUL CH BAISHYA
BARPETA ROAD CIRCLE
PWRD BARPETA

34:SRI SANTOSH TAMULY
HAFLONG NEC CIRCLE
HAFLONG
35:SRI BHUDEB SARMA
O/O THE CHIEF ENGINEER (EAP) PWRD
36:SRI ARUN KR. PHUKAN
O/O THE CHIEF ENGINEER
BUILDING
PWD (B AND NH)
RES. 9 TO 36 ARE PRIVATE RES. UNDER THE PUBLIC WORKS ROAD
DEPARTMENT AND MAY BE SERVED THROUGH RESPONDENT NO. 5

W.P(C) No. 1804/2023

BHAGAWAN PATAR
S/O- LATE AMAL CH. PATAR
ASSISTANT EXECUTIVE ENGINEER
TEZPUR W.R. SUB-DIVISION TEZPUR
R/O- ANGEMAN ADAGIO
3C
KONAKLATA PATH
SURVEY



GUWAHATI-781006
KAMRUP(M)
ASSAM

VERSUS

THE STATE OF ASSAM AND 27 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM
DISPUR
GUWAHATI-781006
ASSAM

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (B) DEPARTMENT
SECRETARIAT
DISPUR
GUWAHATI-781006
ASSAM

3:THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT FOR THE WELFARE OF PLAIN TRIBES AND BACKWARD
CLASSES (WPT AND BC)
DISPUR
GUWAHATI-781006
ASSAM

4:THE SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (B) DEPARTMENT
SECRETARIAT
DISPUR
GUWAHATI-781006.

5:THE SECRETARY TO THE GOVT. OF ASSAM
WATER RESOURCES DEPARTMENT
DISPUR
GUWAHATI-781006
ASSAM

6:THE COMMISSIONER AND SPECIAL SECRETARY TO THE GOVT. OF
ASSAM
WATER RESOURCES DEPARTMENT
DISPUR
GUWAHATI-781006
ASSAM

7:THE DEPUTY SECRETARY TO THE GOVT. OF ASSAM
WATER RESOURCES DEPARTMENT
DISPUR
GUWAHATI-781006
ASSAM

8:JAYANTA KUMAR BORPUJARI
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM



WATER RESOURCES DEPARTMENT.
9:BAHARUL ISLAM LASKAR
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT.
10:PUERNENDU CHANDA
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT.
11:MD. ARPHANUR RAHMAN
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT.
12:KHANINDRA KALITA
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT.
13:JAHUR UDDIN AHMED
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT.
14:BAHARUL ISLAM CHOUDHURY
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT.
15:PRABIN KUMAR SAIKIA
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT.
16:HARISH CH. BARMAN
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT.
17:ABANEE GOGOI
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT.
18:GANESH KALITA
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT.
19:ABHOY KUMAR DEKA
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT.
20:UTPAL HAZARIKA
TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT.
21:SHANTANU KUMAR BORAH



TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT.

22:MD. ASAD HUSSAIN

TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT.

23:MD. NURUL ISLAM

TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT.

24:MD. JURAN ALI AHMED

TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT.

25:BISWAJIT SINHA

TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT.

26:ANJALI CHOUDHURY

TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT.

27:RAJEEVANANDA BORGOHAIN

TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT.

28:JIBAN KANTA CHANDA

TO BE SERVED THROUGH THE DEPUTY SECRETARY TO THE
GOVERNMENT OF ASSAM
WATER RESOURCES DEPARTMENT.

W.P(C) No. 1567/2022

BIKASH CH. PANGGING

S/O NOMAL CH PANGGING

EXECUTIVE ENGINEER

PWD

DIBRUGARH LAHOWAL MORAN AND TINGKHONG TERRITORIAL ROAD
DIVISION

DIBRUGARH

R/O CHOWKIDINGHEE

DIBRUGARH

PIN-786003

ASSAM

VERSUS



THE STATE OF ASSAM AND 28 ORS.
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM
DISPUR
GUWAHATI-781006 (ASSAM)

2:THE COMMISSIONER AND SPECIAL SECRETARY TO THE GOVERNMENT
OF ASSAM
PUBLIC WORKS ROADS DEPARTMENT
DISPUR
GUWAHATI-781006 (ASSAM)

3:THE SECRETARY
PUBLIC WORKS DEPARTMENT
GOVERNMENT OF ASSAM
DISPUR
GUWAHATI-781006

4:THE COMMISSIONER AND SPECIAL SECRETARY TO THE GOVT OF
ASSAM
PUBLIC WORKS (BUILDING AND NH) DEPTT.
DISPUR
GUWAHATI-781006

5:THE DEPUTY SECRETARY TO THE GOVT. OF ASSAM
PUBLIC WORKS ROADS DEPTT.
DISPUR
GUWAHATI-781006

6:THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT FOR THE WELFARE OF PLAIN TRIBES AND BACKWARD
CLASSES (WPT AND BC)
DISPUR
GUWAHATI-781006 (ASSAM)

7:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (B) DEPTT
DISPUR
GUWAHATI-781006

8:THE CHAIRPERSON AND MEMBERS OF THE DPC MEETING
HELD ON 28.9.2021 FOR PROMOTION TO THE RANK OF
SUPERINTENDING ENGINEER UNDER THE PUBLIC WORKS DEPARTMENT
GOVT. OF ASSAM
TO BE SERVED UPON THE COMMISSIONER AND SPECIAL SECRETARY TO
THE GOVERNMENT OF ASSAM
PUBLIC WORKS (ROADS
BUILDING AND NH) DEPARTMENT
DISPUR
GUWAHATI-781006

9:SANTOSH KUMAR ROY
UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED
THROUGH NO. 4 ABOVE

10:WAZID HUSSAIN
UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED
THROUGH NO. 4 ABOVE



11:NIRUPAM BORTHAKUR

UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED THROUGH NO. 4 ABOVE

12:SAIFUL ISLAM

UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED THROUGH NO. 4 ABOVE

13:SANJIB KR. BHATTACHARJEE

UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED THROUGH NO. 4 ABOVE

14:BIKASH SINGHA

UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED THROUGH NO. 4 ABOVE

15:DILIP KR DAS

UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED THROUGH NO. 4 ABOVE

16:MISS MADHUMITA DEY

UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED THROUGH NO. 4 ABOVE

17:SMTI MITALI CHOUDHURY

UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED THROUGH NO. 4 ABOVE

18:AKLASUR RAHMAN BORBHUYAN

UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED THROUGH NO. 4 ABOVE

19:PRATIM BARUA

UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED THROUGH NO. 4 ABOVE

20:ANAND PRASAD SARMA

UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED THROUGH NO. 4 ABOVE

21:JOGENDRA DAS

UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED THROUGH NO. 4 ABOVE

22:MD. NURUL ISLAM

UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED THROUGH NO. 4 ABOVE

23:DWIJEN PATGIRI

UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED THROUGH NO. 4 ABOVE

24:RATHINDRA BIJOY CHAKRABORTY

UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED THROUGH NO. 4 ABOVE

25:ANUPAM KHARGHARIA

UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED THROUGH NO. 4 ABOVE

26:KALYAN KR SARMA

UNDER THE PUBLIC WORKS ROADS DEPARTMENT AND MAY BE SERVED THROUGH NO. 4 ABOVE

27:JAGAMOHAN BASUMATARY

S/O LT. RUPENDRA BASUMATARY



EXECUTIVE ENGINEER
SOUTH SALMARA DISTRICT TERRITORIAL ROAD DIVISION
MANKACHAR
DIST- SOUH SALMARA
ASSAM- 783131.
28: BIDUR BORGAYARI
S/O LATE MANIK CHANDRA BORGAYARI
R/O BIPUNIDHI NIWAS
ALOKPUR PATH
BORBARI
VIP ROAD
GHY- 781036.
29: HEMANTA DEWRI BHARALI
S/O LATE BISWAKANTA DEWRI BHARALI
R/O HOUSE NO. 6
NAVODAY NAGAR PATH
GHY- 781028.

W.P(C) No. 545/2023

PRAVIR KAKATI
S/O- LATE SIBA CHANDRA KAKATI

R/O- SAGARIKA PATH

P.O- ZOO ROAD
P.S- GITANAGAR
GUWAHATI-24
DIST- KAMRUP (M)
ASSAM

VERSUS

THE STATE OF ASSAM AND ORS.
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM
DISPUR
GUWAHATI-781006
ASSAM

2: THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
PERSONNEL (B) DEPARTMENT
SECRETARIAT DISPUR
GUWAHATI-781006
ASSAM

3: THE ADDL. CHIEF SECRETARY TO THE GOVERNMENT OF ASSAM
DEPARTMENT FOR THE WELFARE OF PLAIN TRIBES AND BACKWARD
CLASSES (WPT AND BC)



DISPUR
GUWAHATI-781006
ASSAM
4:THE SELECTION BOARD
REP BY ITS CHAIRMAN THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM FOR DPC SELECTION AND PROMOTION TO POST OF
COMMISSIONER AND SECRETARY GOVERNMENT OF ASSAM

5:THE SECRETARY
TO THE GOVERNMENT OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI-781006
6:KAMAL KUMAR BAISHYA
ACS
COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
EXCISE DEPARTMENT
AND SECRETARY
ASSAM HUMAN RIGHTS COMMISSION

DISPUR
GUWAHATI-6.
7:FAROUK ALAM
ACS
COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
SPORTS AND YOUTH WELFARE DEPARTMENT

DISPUR
GUWAHATI-6.
8:DHRUBAJYOTI DAS
ACS
COMMISSIONER AND SECRETARY (ACS CADRE)
TO THE GOVT. OF ASSAM
MEDICAL EDUCATION AND RESEARCH DEPARTMENT

DISPUR
GUWAHATI-6.
9:SRI RANJAN SARMA
AGED ABOUT 58 YEARS
SON OF LATE PRATUL SARMA
RESIDENT OF MATHURA NAGAR
DISPUR
GUWAHATI-781006



- B E F O R E -
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

<u>Advocate for the petitioners</u>	: Mr. D.K. Das, Mr. H. Betala Advocates
<u>Advocate for the respondents</u>	: Mr. D. Mazumder, Sr. Advocate and Addl. A.G assisted by Mr. R. Dhar, Addl. Sr. Government Advocate Mr. K.N. Choudhury, Sr. Counsel assisted by Mr. N. Gautam, Advocate Mr. P. Nayak, Standing Counsel, PWD Mr. I Chowdhury, Sr. Advocate assisted by Mr. S. Biswakarma, Advocate
Dates of Hearing	: 19.12.2023, 09.01.2024, 11.01.2024, 23.01.2024, 01.02.2024, 20.02.2024, 27.02.2024 & 05.03.2024
Date of Judgment & Order:	: 04.06.2024

JUDGMENT AND ORDER (CAV)

This bunch of writ petitions revolve around the same question of law with minor variations in individual facts. Accordingly, as agreed to by the learned counsel for the parties, these writ petitions were clubbed to be heard and disposed of together. These matters were heard on 19.12.2023, 09.01.2024, 11.01.2024, 23.01.2024, 01.02.2024, 20.02.2024, 27.02.2024 & 05.03.2024 and accordingly, are disposed of by this common Judgment and Order.

2. In all these writ petitions, the Office Memorandum dated 18.01.2023 issued has been put to challenge. The writ petitioners along with the various reserved categories namely ST(H) and ST(P) urged that clauses (iii) & (iv) of the impugned OM dated



18.01.2023 are contrary to law as the same are violative of and runs counter to the Judgment and Order dated 06.06.2022 passed by a Co-ordinate Bench in Bhagawan Pator Vs. State of Assam & Ors [W.P.(C) No. 5005/2016] as well as Ivy Gohain Dasgupta Vs. Bhagawan Pator & Ors. (W.A. No. 46/2023).

3. Mr. D.K. Das, learned counsel for the writ petitioners would address this Court as a counsel for the writ petitioners that the questions of law and the issues raised are similar in all these bunch of writ petitions barring certain factual details. Mr. Das has submitted that W.P.(C) No. 363/2023 would be the case on which he would like to base his arguments upon. Accordingly, W.P(C) No. 363/2023 is taken up as a lead case.

4. Before the detailed arguments are referred to, it is necessary to state that the dispute between the parties arise as the writ petitioners claim that their rights which flow out of Article 16 (4A) of the Constitution of India have been denied to them. Under the said Article, the State is empowered to make any provisions for reservations in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and Scheduled Tribes, which are in the opinion of the State, not adequately represented in any services under the



State and therefore by way of the amendment, Article 16 (4A) was brought in to the Constitution power to deal with such matters was conferred on the State for making adequate provisions for reservation in promotion with consequential seniority.

5. The State Legislature had enacted the Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1978 (*in short 'the Act of 1978'*) with the purpose to provide for reservation of vacancies in services and posts for the members of Scheduled Casts and Scheduled Tribes. Section 5 of the Act of 1978 specifies the percentage for reservation for members of the ST and SC community. The Judgment of the Apex Court in *Indra Sawhany Vs. Union of India & Ors*, reported in *1992 Supp (3) SCC 217* laid down the law the reservation is permissible at the stage of initial recruitment and not in the stage of promotion. Consequent upon the Judgment of the Apex Court in *Indra Sawhany (Supra)*, the Parliament brought about the Constitutional Amendment by incorporating Article 16 (4A) which empowers the State to make any provisions for reservation in matters of promotion in any class or classes or posts in the services under the State in favour of Scheduled Castes and



Scheduled Tribes which in the opinion of the State are not adequately represented the services under the State. The Apex Court by its judgment rendered in *R.K. Sabarwal Vs. State of Punjab*, reported in *AIR 1995 SC 1371* held that the reservation is to be determined on the basis of the number of posts in the cadre and not on the basis of the vacancies and further those reserved category candidates who are promoted or appointed on merit should be adjusted against unreserved posts and not against posts meant for the reserved category. Consequent to the said Judgment, an amendment was brought about in the Assam Act of 1978. Section 5-A was inserted by which maintenance of post based roster register was brought in to give effect to the reservation of SC and ST communities. Section 5-A(iii) of the Act of 1978 provides that the roster is to be operated as a replacement and not as a running account. Further Section 5A(xiii) provides that the promotions are to be on the post based roster and the policy of replacement by filling up vacant post for eligible persons from the respective category by special drive so that the prescribed percentage of reservation is maintainable. Pursuant to the Constitutional Amendment of Article 16 (4A), by Office Memorandum bearing No. ABP.59/96/163 dated 12.03.2002 brought in by the State of Assam, the principle of fixation of



seniority of reserved candidates vis-à-vis General candidates in promotional posts- in other words, the benefit of consequential seniority of reserved category candidates over General category candidates in the promotional posts was notified. The Constitutional Amendment of Article 16 (4A) came to be assailed in the Apex Court and by Judgment rendered in *M. Nagraj & Ors. Vs. union of India & Ors*, reported in (2006) 8 SCC 212, it was held that (i) this Amendment does not affect the right of equality which is a basic structure of the Constitution of India; (ii) The right of the State to provide for reservations in promotion and consequential seniority was upheld and also held that the consequential seniority is a concept purely of service jurisprudence. The incorporation of consequential seniority would not violate the mandate of equality; (iii) The Apex Court, however, held that before providing such reservation in promotion, the State will need to have quantifiable data to show backwardness, inadequacy of representations of these classes in service and balancing the maintenance of efficiency in services as mandated under Article 335 of the Constitution of India. The unit and procedure the collection of the quantifiable data was left the domain of the executive.



6. Pursuant to the Judgment of *M. Nagaraj (Supra)*, the State of Assam constituted a one-man Commission to study the need for reservation by collecting quantifiable data and render its recommendation. The one-man Commission submitted its report which was accepted by the State Government. Based on the approval, the State Government proscribed a procedure carry out reservation and promotion by way of issuing the Office Memorandum bearing No. TAD/BC/68/2011/Pt-I/146 dated 29.12.2014.

7. This Office Memorandum dated 29.12.2014 came to be challenged in W.P.(C) No. 1560/2015 (Equality Forum Vs. The State of Assam & Ors.). By Judgment and Order dated 23.12.2015, the One-Man-Commission was set aside holding that the said report would be of no legal consequence and would not enable the State to give effect to the provisions of the Act of 1978. It was held that reservation in promotion would remain in a dormant state till the exercise of collection of quantifiable data relating to the three constitutional requirements as mandated in *M Nagaraj (supra)* and *UP Power Corporation Ltd-Vs- Rajesh Kumar*, reported in (2012) 7 SCC 1 are complied with by the State while seeking to inform the provisions of Article 16 (4A).



8. The Government of Assam in pursuance to the Judgment and Order dated 23.12.2015 passed in W.P(C) No. 1560/2015 (Equality Forum Vs. The State of Assam & Ors.) brought out the Office Memorandum dated 03.08.2016. By the said Office Memorandum, the Government again laid down the guidelines to be followed for consideration of promotion in any cadre in any establishments including those are the reserved categories. Amongst the various conditions laid down in the Office Memorandum dated 03.08.2016 under Clause (iv), it was provided that during promotional process where the stipulated percentage in respect of any reserved category is met, but in the gradation list/seniority list, there are candidates of reserved category who on merit are entitled to the promotion then his/her case would be considered for promotion on merit if such candidate has not gained the seniority by way of any accelerated promotion earlier.

9. It is the said clause (iv) in the Office Memorandum dated 03.08.2016 which came to be assailed in W.P.(C) No. 5005/2016 (Bhawagan Pator Vs. State of Assam & Ors) and Anr. vide Judgment and Order dated 06.06.2022 to be violative of the Section 5 of the 1978 Act and therefore is liable to be struck down. While holding that Article 16 (4A) and Article 16 (4B) being



enabling provisions, the State is at liberty to implement its policy of giving reservations in promotion with consequential seniority and it at liberty to provide for reservation in promotion with or without consequential seniority. However, while implementing/adopting/changing such policy, due process of law needs to be followed including the dicta in *M Nagran(Supra)* clarified in Jarnail Singh. The learned Single Judge held that since the Office Memorandum dated 12.03.2002 would hold the field until such policy is expressly repealed by the State, the State is not within its competence and jurisdiction to deprive the benefit of reservation in promotion with consequential seniority to meritorious reserved category candidates without expressly bringing any policy by superseding the benefit granted under Office Memorandum dated 12.03.2002.

10. This Judgment and Order came to subsequently assailed in the W.A. No. 46/2023 (Ivy Gohain Dasgupta Vs. Bhagwan Pator & Ors); W.A No. 239/2022 (Equality Forum Vs. The State of Assam & Ors) and W.A. No. 162/2023 (Sanjai Kumar Mahanta Vs. The State of Assam & Ors). The Division Bench upon deciding this issue in its entirety held that the decision rendered in the writ appeal would prevail over all such provisions of the learned Single



Judge in the Judgment and Order dated 06.06.2022 in W.P.(C) No. 5005/2016 but in respect of any other provision which may not be contrary or inconsistent with the provisions of the Judgment, the same may prevail. The Division Bench did not uphold the findings of the learned Single Judge in so far as the interpretation of Clause (iv) of the Office Memorandum dated 03.08.2016 is concerned. The Division Bench further provided that the decisions rendered in the said Judgment of Division Bench in WA No. 46/2023, WA No. 162/2023 and WA No. 239/2022 would prevail over all such provisions of the learned Single Judge in the judgment dated 06.06.2022 rendered in WP(C) No. 5005/2016 and 5026/2016 but in respect of any other provisions which may not be contrary or inconsistent with the provisions of this judgment the same may prevail, but with a further clarification that if any such provisions of the judgment of the learned Single Judge is in conflict or contradictory to any of the provisions in the present judgment, such provisions and the judgment of the learned Single Judge stands modified accordingly. In the said Division Bench Judgment, it was observed by the Division Bench that Office Memorandum dated 18.01.2023 had in the meantime been issued whereby the consequential seniority was withdrawn and the catch up principle has been reintroduced. The Division

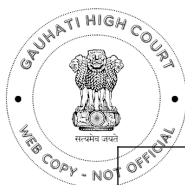


Bench declined to observe anything on merit as the said Office Memorandum is under challenge before by way of separate writ petitions.

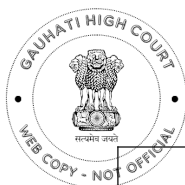
11. It is this Office Memorandum dated 18.01.2023 which is under challenge in the present proceedings which requires consideration by this Court in the present writ petition.

12. In the above confluence of the litigation history, the facts relevant in each of the writ petitions are summarized below:

Name of the Petitioner	Present cadre of posting	Prayer in the writ petitions
W.P. (C) 363/2023 Sri Radheswar Langthasa	Superintending Engineer, Water Resources Deptt.	Petitioner was working in the rank of Superintending Engineer. Position in the provisional gradation list dated 30.11.2022 (Pg.110 at ANNEXURE-H) as per entry in the cadre of the petitioner was at Sl. No.11 in the cadre of Superintending Engineer which was subsequently brought down to Sl.17 as per the impugned gradation list dated 18.1.2023 (Pg.116 at Annexure-K) which was issued in adherence to the impugned O.M dated 18.1.2023, bringing in the redundant catch-up principle.
W.P. (C) 665/2023 Sri Radheswar Langthasa	Superintending Engineer, Water Resources Deptt.	The petitioner challenged the DPC meeting dated 6.2.2023 for promotion of private respondent No. 10 to 24 to the rank of Additional Chief Engineer from the cadre of Superintending Engineer and downgraded the petitioner through Violation of Rules while adhering to impugned O.M dated 18.1.2023.
W.P. (C) 828/2023 Smt. Dipa Das	Addl. Secretary to the Govt. of	Petitioner is presently serving in the selection grade of Assam Civil Services as Additional Secretary to the



	Assam. (ACS)	Govt. of Assam, Cooperation Deptt..Petitioner had been deprived of her Promotion to the post of - Secretary to the Govt. of Assam, (ACS), Grade – 2,whereas, she was downgraded in violation of Rules while adhering to impugned O.M dated 18.1.2023. In the gradation list of 29.12.2022, the petitioner finds place at Sl. No.38, whereas, she was downgraded to Sl. No.55 vide impugned final list dated 09.1.2023 (Pg.60 at ANNEXURE-C).
W.P. (C) 545/2023 Sri Prabir Chandra Kakati	Secretary to the Govt. of Assam, (ACS).	Petitioner is presently serving in the rank of Secretary to the Govt. of Assam . The petitioner was placed at Sl. No.1 under Grade 2. The petitioner was deprived of being considered for promotion to the post of - Commissioner and Secretary to the Govt. of Assam, (ACS), Grade – 1. Now, vide impugned notification dated 30.1.2023, the petitioner has been denied promotion and incumbents (Respondent No.6 to 9) junior to the petitioner has been considered for promotion in violation of Rules.
W.P. (C) 1804/2023 Sri Bhagwan Pator	Assistant Executive Engineer, Water Resources, Govt. of Assam.	Petitioner is serving in the rank of Assistant Executive Engineer. Position in the provisional gradation list dated 7.9.2022 in the rank of Assistant Executive Engineer was at sl. No.38, but in the final gradation list dated 22.2.2023, the petitioner was brought down at Serial No.58 and the private respondent Nos 8 to 28 had superseded the petitioner.
W.P.(C) 1819/2023 Sri Subrata Kumar Das	Assistant Executive Engineer, Water Resources, Govt. of Assam.	Petitioner is serving in the rank of Assistant Executive Engineer. Position in the provisional gradation list dated 7.9.2022 in the rank of Assistant Executive Engineer was at sl. No.4, but in the final gradation list dated 22.2.2023, the petitioner was brought down at Serial No.51 and the private respondent Nos 8 to 54 had superseded the petitioner.
W.P. (C) 3095/2021 Sri Pranab Rabha	Superintending Engineer, Public Works Department	The petitioner had challenged clause (iv) of the O.M. dated 3.8.2016, on the basis of which the Respondent had conducted DPC meeting dated 25.5.2021 for



	(Roads).	promotion from the rank of Executive Engineer to Superintending Engineer and their actions on the ground of Violation of Rule 13 (4) of The Assam Engineering (PWD) Service Rules, 1978 with a prayer to restore the inter-se seniority of the petitioner above the Private Respondent Nos. 9 to 36 who has superseded the petitioner as per seniority list dated 5.5.2021. The Petitioner also prayed to direct the secretary PWD, to prepare the Final Gradation list as per Rule 13 (4) of The Assam Engineering (PWD) Service Rules, 1978.
W.P. (C) 1309/2022 Sri Pranab Rabha	Superintending Engineer, Public Works Department (Roads).	The petitioner has challenged the actions on the ground of Violation of Rule 13 (4) of The Assam Engineering (PWD) Service Rules, 1978 to restore the inter-se seniority of the petitioner above the Private Respondent Nos. 9 to 33 as per seniority list dated 5.5.2021. The Petitioner also prayed to direct the secretary PWD, to prepare the Final Gradation list as per Rule 13 (4) o of The Assam Engineering (PWD) Service Rules 1978.
W.P. (C) 3094/2021 Sri Bikash Ch Pangging	Executive Engineer, Public Works Department (Roads).	The petitioner had challenged clause (iv) of the O.M. dated 3.8.2016, on the basis of which the Respondent had conducted DPC meeting dated 25.5.2021 for promotion from the rank of Executive Engineer to Superintending Engineer and consequential notification dated 28.5.2021 promoting the Private Respondent Nos. 9 to 22 who has superseded the petitioner as per seniority list dated 5.5.2021. The petitioner had also challenged their actions on the ground of Violation of Rule 13 (4) of The Assam Engineering (PWD) Service Rules, 1978 with a prayer to restore the inter-se seniority of the petitioner above The Petitioner also prayed to direct the secretary PWD, to prepare the Final Gradation list as per Rule 13 (4) of The Assam Engineering (PWD) Service Rules, 1978.
W.P. (C) 1567/2022 Sri	Executive Engineer,	The petitioner had challenged clause (iv) of the O.M.



Bikash Ch Pangging	Public Works Department (Roads).	dated 3.8.2016, on the basis of which the Respondent had conducted DPC meeting dated 28.2.2022 for promotion from the rank of Executive Engineer to Superintending Engineer and consequential notification dated 28.5.2021 promoting the Private Respondent Nos. 9 to 26 who has superseded the petitioner as per seniority list dated 5.5.2021. The petitioner had also challenged their actions on the ground of Violation of Rule 13 (4) of The Assam Engineering (PWD) Service Rules, 1978 with a prayer to restore the inter-se seniority of the petitioner above The Petitioner also prayed to direct the secretary PWD, to prepare the Final Gradation list as per Rule 13 (4) of The Assam Engineering (PWD) Service Rules, 1978.
W.P. (C) 3482/2020 Sri Taburam Pegu	APS, Senior Grade-II	The petitioner had challenged the gradation list dated 17.7.2019, name of petitioners appear at Sl. No. 87, 88 and 92 respectively. Inter-se seniority list of APS Officers as per notification dated 11.12.2014, name of petitioners appear at Sl. No. 120, 119 and 123 respectively.
W.P. (C) 1165/2023 Sri Pranab Rabha	Superintending Engineer, Public Works Department (Roads).	Petitioner was working in the rank of Superintending Engineer. The petitioner prays to set aside and quash Clause (iii), (iv)(a), (v) of the O.M. dated 18.01.2023 and prepare cadre wise seniority list in terms of Rule 13, 22 & 24 of The Assam Engineering (PWD) Service Rules 1978 also to consider the case of petitioner in terms of judgment passed in BhagwanPator –Vs- The State of Assam &Ors. (W.P.(C) 5005/2016) basing which the petitioner is entitled for consequential seniority cadre-wise.
W.P. (C) 3096/2021 Sri Bidur Borgayari	Executive Engineer, Public Works Department (Roads).	The petitioner had challenged clause (iv) of the O.M. dated 3.8.2016, on the basis of which the Respondent had conducted DPC meeting dated 25.5.2021 for promotion from the rank of Executive Engineer to Superintending Engineer and consequential notification dated 28.5.2021 promoting the Private Respondent



		Nos. 9 to 22 who has superseded the petitioner as per seniority list dated 5.5.2021. The petitioner had also challenged their actions on the ground of Violation of Rule 13 (4) of The Assam Engineering (PWD) Service Rules, 1978 with a prayer to restore the inter-se seniority of the petitioner above The Petitioner also prayed to direct the secretary PWD, to prepare the Final Gradation list as per Rule 13 (4) of The Assam Engineering (PWD) Service Rules, 1978.
W.P(C) No. 677/2023 Bidur Borgayari	Executive Engineer (C), PWRD	Petitioner was working in the rank of Executive Engineer. The petitioner prays to set aside and quash Clause (iii), (iv)(a), (v) of the O.M. dated 18.01.2023 and prepare cadre wise seniority list in terms of Rule 13, 22 & 24 of The Assam Engineering (PWD) Service Rules 1978 also to consider the case of petitioner in terms of judgment passed in BhagwanPator –Vs- The State of Assam &Ors. (W.P.(C) 5005/2016) basing which the petitioner is entitled for consequential seniority cadre-wise.
W.P(C) No. 1121/2023 Bikash Ch. Pangging	Executive Engineer	The petitioner belongs to the Scheduled Tribe (Plains) Category and is entitled to avail the benefits of reservation as envisaged under Article 16(4)(A) of the Constitution of India. The petitioner prays to set aside and quash Clause (iii), (iv)(a), (v) of the O.M. dated 18.01.2023 and prepare cadre wise seniority list in terms of Rule 13, 22 & 24 of The Assam Engineering (PWD) Service Rules 1978 also to consider the case of petitioner in terms of judgment passed in BhagwanPator –Vs- The State of Assam &Ors. (W.P.(C) 5005/2016) basing which the petitioner is entitled for consequential seniority cadre-wise.

13. Mr. D.K. Das, learned counsel for the petitioner argues that Office Memorandum dated 12.03.2002 which has been sought to be superseded by the impugned Office Memorandum dated



18.01.2023 cannot be permitted to be accepted inasmuch as it will amount to overriding the provisions of the Act of 1978. The Office Memorandum dated 12.03.2002 which was brought in by the State, is falling from the power source from Sections 5 and 5A of the Act of 1978. It is submitted that the Act of 1978 was brought in pursuant to the Judgment of the Apex Court and therefore, the Office Memorandum dated 12.03.2002 must be understood to have been brought by the State to satisfy the Constitutional requirements relating to reservation in promotion with consequential seniority.

14. The further argument of the learned counsel for the petitioner is that notwithstanding the supersession of the Office Memorandum dated 12.03.2002, the benefit conferred to the reserved category candidates of consequential seniority upon promotion is protected under Section 5 of the Act of 1978 itself. It is submitted that the State is bound to provide cadre wise promotions and will adhere to seniority in the cadre and not as per the date of their initial appointments.

15. It is further submitted that besides the learned Single Judge vide Judgment and Order dated 06.06.2022, even the Division Bench Judgment and Order dated 10.08.2023 rendered in W.A No.



46/2023 & Ors did not upset the rights of the petitioners towards their claims for consequential seniority in reservation on promotion. It is unheard of that pursuant to reservation on promotion for the reserved category candidates, consequential seniority is denied. This the learned counsel for the petitioner submits was a concept which had long been abundant across the country and this primitive practice of denial of consequential seniority upon promotion being still followed by the State needs to be suitably interfered with and the benefit of consequential seniority be restored to the writ petitioners.

16. It is argued that if Clause (iv) of the Office Memorandum dated 18.01.2023 is to be upheld then the same would be in violation of the Apex Court Judgment of *R.K. Sabarwal (Supra)* inasmuch as per Clause (iv), if a reserved category candidate competes on merit then the said candidate will have to be treated as a reserved category candidate which is quite opposed to the law laid down by Apex Court in *R.K. Sabarwal (Supra)*. The further argument of the learned counsel for the petitioners is that the Office Memorandum brings in the concept of "promotions group-wise". Referring to the Judgment of the Apex Court in *Jarnail Singh-II*, it is submitted that the promotions can't be



group-wise, it has to cadre wise. The entire unit will have to be taken as a cadre to apply the catch up principle. It is submitted that it is only the cadre-wise promotions which can follow and no other. As such the Office Memorandum dated 18.01.2023 seeks to take away the vested rights of the reserved category candidate which cannot be permitted to be taken away.

17. It is also argued that where the Act of 1978 followed by the Rules made thereunder are present enabling the policy of reservation in promotion then the State cannot deny these benefits by bringing in an Office Memorandum which is conflict with the Act and the Rules. Although the provisions of Article 16 (4-A) and Article 16 (4B) are enabling provisions, once the provisions are implemented by the State by bringing in the Act followed by the Rules, it becomes an enforceable right and therefore, the petitioners are within their rights to seek justice from this Court and the respondents are to be suitably directed to restore the vested right accrued to the petitioners by considering their cases and by relegating them to their places of seniority as per the benefit of reservation in promotion in consequential seniority. In support of his submissions, the learned counsel for the petitioner refers to and relies upon the following Judgments:



- "1. R.K. Sabharwal and Ors. Vs. State of Punjab & Ors., reported in (1995) 2 SCC 745;*
- 2. Bhogeswar Saikia Vs. State of Assam & Ors, reported in (2010) 3 GLT 377;*
- 3. Paresh Chand Deka Vs. State of Assam & Ors, reported in (2017) 4 GLT 434;*
- 4. Chairman & Managing Director, Central Bank of India Vs. Central Bank of India SC/ST Employees Welfare Association, reported in (2016) 1 SCC 355;*
- 5. ST/SC Welfare Council Vs. State of Uttar Pradesh & Anr., reported in (1997) 1 SCC 701;*
- 6. Bhagwan Pator Vs. The State of Assam and Ors;*
- 7. B.K. Pavitra & ors. Vs. Union of India & Ors, reported in (2019) 16 SCC 129; and*
- 8. Jarnail Singh & Ors. Vs. Lachhmi Narain Gupta & Ors."*

18. Per contra, Mr. D. Mazumdar, learned Addl. Advocate General, Assam strongly disputes the contentions urged by the learned counsel for the petitioners. It is submitted that both the learned Single Judge in Bhagawan Pator (Supra) as well as the Division Bench in Ivy Gohain Dasgupta (Supra) has categorically held that the power to grant reservation in promotion and consequential seniority squarely lies with the State. The State may decide to grant so or may decide not to grant such benefits. As such, it is submitted that when the question of the power has been decided by the learned Single Judge and to that extent the findings have been upheld by the Division Bench, there is no



quarrel that the State is within its rights to bring out such law which may confer reservation on promotion with consequential seniority or may take away such provisions already granted earlier. These findings rendered in by the Co-ordinate Bench which are upheld by the Division Bench are not in appeal and therefore, they operate against the writ petitioners as well. It is submitted that when the impugned Office Memorandum dated 18.01.2023 was issued, the writ petition of Bhagawan Pator (Supra) was already decided. While the W.A. No. 46/2023 (Ivy Gohain Dasgupta) was pending disposal. Thereafter, the Division Bench upheld the catch up rule and in the absence of any further appeal by the petitioners, the present writ petitions are not maintainable as the same stands squarely covered by the Judgment of the Division Bench in Ivy Gohain Dasgupta (Supra) wherein it was held that it is within the realm of the State to grant or not to grant benefits of reservation on promotion with consequential seniority. It is submitted that unless there is a specific provision under the Rules granting consequential seniority, it is to be accepted that "catch up" theory is the Rule which is to be followed. It is submitted that pursuant to the Judgment rendered in Ivy Gohain Dasgupta (Supra), it is the Division Bench Judgment which will prevail and not the findings of the Co-ordinate Bench



more particularly in view of paragraph-47 and 48 of the said Judgment of the Division Bench. The learned Addl. Advocate General further submits that the reference to provisions of Section 5A of the 1978 Act that it mandates reservation of promotion with consequential seniority, it is submitted that such submissions of the petitioners are totally misplaced inasmuch as Section 5A of the 1978 Act is only meant to maintain/identify the reservation slots in terms of the Judgment rendered by the Apex Court in *R.K. Sabarwal (Supra)*. Relying on the provisions of Section 5A of the Act of 1978, no challenge can be made to the impugned Notification by the writ petitioners. Such a challenge is completely misplaced as Section 5A of the Act of 1978 has no connection with consequential seniority. In support of his arguments Mr. D. Mazumdar referred to and relies on the following Judgments:

1. *S. Panneer Selvam Vs. State of T.N., reported in (2015) 10 SCC 292;*
2. *Sudhakar Baburao Nangnure Vs. Nareshwar Raghunathrao Shende, reported in (2020) 11 SCC 399;*
3. *Ajit Singh (2) Vs. State of Punjab, reported in (1999) 7 SCC 209; and*

19. Mr. K.N. Choudhury, learned Senior Counsel representing the private respondents also strongly disputes the contentions raised by the writ petitioners. He refers to the Paragraphs 45, 46,



47 & 48 of the Judgment of the Division Bench in Ivy Gohain Dasgupta (Supra) to submit that pursuant to the decision of the Division Bench, there is no further question required to be decided as the Division Bench has categorically upheld the power of the State to grant or not to grant consequential seniority for reservation in promotion. He submits that there is no question of any vested rights to the reserved category candidates as it is a policy decision which can be altered by the State and the same has been done by the Office Memorandum dated 18.01.2023. Since both the learned Single Judge as well as the Division Bench in Bhagawan Pator (Supra) and Ivy Gohain Dasgupta (Supra) respectively has upheld the State's power to confer or not to confer consequential seniority on promotion reserved category candidates, the State by the Notification under challenge dated 18.01.2023 has decided to take away the benefits which may have been granted earlier and therefore, as there is no further appeal against the Judgment and Order passed by the Division Bench in Ivy Gohain Dasgupta(Supra), the decision of the Court that the State is within its power to grant or reject such benefits on promotion with consequential seniority has attained finality. It is further submitted that the earlier Office Memorandum dated 03.08.2016 has been upheld by the Division Bench in Ivy Gohain



Dasgupta (Supra). Consequently, the Office Memorandum dated 18.01.2023 is an extension thereof. It is further submitted that the reserved categories candidates have no vested rights which they can complain about. The learned Sr. counsel submits that no individual facts have been pleaded by the writ petitioners and as such it is not understood what relief the writ petitioners are claiming without reference to their individual facts in each of the cases. In support of his contentions, the learned Senior Counsel refers to the Judgment of *Ajit Singh Januja & Ors Vs. State of Punjab and Ors*, reported in (1996) 2 SCC 715; *S. Panneer Selvam Vs. State of T.N.*, reported in (2015) 10 SCC 292 and *Mukesh Kumar and Anr. Vs. State of Uttarakhan and Ors*, reported in (2020) 3 SCC 1.

20. The rival submissions have been heard and carefully considered. The pleadings available on record have also been carefully perused. The Judgments cited in the Bar have also been noted.

21. To address the issues raised in the present writ petitions, it will be necessary to refer to a few provisions of the Assam Scheduled Castes and Scheduled Tribes (Reservation of posts in services) Act, 1978. This Act was published in the Assam Gazette



(Extraordinary) on 28.05.1979. It is this Act has been brought by the State of Assam to provide for reservation of vacancies in services and posts for the members of the Scheduled Castes and Scheduled Tribes. The statement and object of reasons is quoted as under:

"In order to provide for reservation of vacancies in services and posts for the members of the Scheduled Castes and Scheduled Tribes who are the Backward Classes of citizen and are not adequately represented in the services and posts in the affairs of the State within the State, it was considered expedient to provide adequate reservation of vacancies in services and posts for them."

22. Under Section 5 of the Act of 1978, it is provided that reservation for members of Scheduled Castes and Scheduled Tribes in posts to be filled up by promotion in any establishment shall be regulated in the manner provided thereafter.

Clause 5A provides the percentage of reservation for each category namely, 7% for members of Scheduled Caste, 10% for members of Scheduled Tribes (Plains) and 5% for members of Scheduled Tribes(Hills) and further provided that the State Government may from time to time review the implementation of the reservation policy and take adequate measures including the increased of percentage mentioned in the clause.



Section 5B provides for separate post based roster for recruitment and promotion for each cadre to be maintained by every establishment for reservations of candidates of Scheduled Castes and Scheduled Tribes as contained therein.

23. Clause 5A was subsequently inserted by an amendment.

Clause 5-A is extracted as under:

"5A Manner and procedure for giving effect of reservation-

The reservation for the members of the Scheduled Castes and the Scheduled Tribes in services or posts in an establishment shall be given effect to in the following manner, namely:

(i) A post based Roster Register shall be maintained to give effect to the reservation of vacancies for Scheduled Castes and Scheduled Tribes. Such roster shall be based on the Model roster as per Schedule I and II appended to this Act and shall be adopted for the purpose by each Establishment in such manner that the prescribed percentage of reservation is maintained in each cadre;

(ii) Each Appointing authority shall prepare and notify the roster based on the principles laid down in this Act and maintain Roster Register in a manner containing such number of points as are equivalent to the number of posts, in a cadre. In case of any increase or decrease in the cadre strength, the roster shall correspondingly be expanded or contracted;

(iii) The roster is to be operated on the principle of replacement and not as a running account, in other words, the point at which reservation for different categories applies are fixed as per the roster and vacancies caused by retirement etc. of persons occupying those points shall be filled up by appointment of persons of the respective categories;



(iv) Separate rosters are to be maintained for giving effect to reservation in direct recruitment and promotion;

(v) Cadre, for the purpose of a roster, shall mean a particular grade and shall comprise the number of posts to be filled by a particular mode of recruitment in terms of the applicable recruitment rules. Thus in a cadre of say, 100 posts, where the recruitment rules prescribe a ratio of 50:50 for direct recruitment and promotion, two roster- one for direct recruitment and one for promotion (when reservation in promotion applies) each comprising 50 points shall be drawn up on the lines of the respective rosters;

(vi) Since reservation does not apply to transfer on deputation or transfer, where the recruitment rules prescribe a percentage of posts to be filled by this method, such posts shall be excluded while preparing the rosters;

(vii) Appointment of candidates belonging to Scheduled Castes and Scheduled Tribes which were made on merit and not due to reservation, are not to be counted towards reservations so far as direct recruitment is concerned. In other words, they are to be treated as general category appointments;

(viii) For initial adoption of this post based roster, the existing backlog vacancies in a cadre where the prescribed percentage of reservation for the Scheduled Castes and the Scheduled Tribes has not been achieved as per post based roster prepared under this Amendment Act, shall be considered as vacancies released by recruitment, resignation, promotion etc. of the persons belonging to the said reserved categories and the same are to be filled up by direct recruitment or by promotion of eligible persons from the respective categories by special drive so that the prescribed percentage of reservation is maintained.

(ix) Before making an appointment by direct recruitment, the Appointing authority shall ascertain by consulting the Roster Register maintained by each Establishment, whether the post is reserved or



unreserved and if it is reserved, for whom it is so reserved. Immediately after an appointment is made, the particulars thereof shall be entered in the Roster Register and signed by the Appointing authority;

(x) In the absence of a qualified Scheduled Castes or Scheduled Tribes candidate, as the case may be, in a particular year, the vacancy shall be carried forward and filled up in the next year;

(xi) Every Establishment shall prepare and notify the roster for each cadre equivalent to the number of posts with the concurrence of the Personnel Department and Welfare of Plains Tribes and Backward Classes Department;

(xii) The roster shall be maintained separately for permanent and temporary posts;

(xiii) A vacancy caused due to any reason whatsoever, except termination of service during probation, shall be treated as a fresh vacancy;

(xiv) A candidate who claims to be a member of the Scheduled Castes or the Scheduled Tribes shall support his candidature by a Certificate from Deputy Commissioner/ Sub-Divisional Officer or from such other authority as may be prescribed by rules made under the Act."

24. Under Section 13 of the said Act, the Government is empowered to frame the Rules for implementing the provisions of the Act and in consequence thereof, the Assam Scheduled Castes and Scheduled Tribes (Reservation of vacancies in services and posts) Rules, 1983 was framed.



25. A perusal of the Act and the Rules above revealed that under Section 5A of the Act of 1978, the following conditions *inter alia* are noticed:

(i) A post based roster is to be maintained. The roster is to be operated on the principle of replacement and not as a running account;

(ii) The cadre shall mean a particular grade and shall comprise the number of posts to be filled up by particular mode of recruitment; and

(iii) The appointment made on merit of reserved candidates shall not be counted towards the reserved category posts.

26. The parliament by the 77th Amendment had inserted Clause 4A under Article 16 of the Constitution of India. Clause 4A empowers the State to make any provision for reservation. Subsequently by the 85th Amendment, further amendment was brought in to Clause 4A of the Constitution of India to the effect that nothing in the Article shall prevent the State from making any provisions for reservation in matters of promotion with consequential seniority to any class or classes of posts in the services under the State in favour of Scheduled Casts and



Scheduled Tribes which in the opinion of the State are not adequately represented in the services of the State. Pursuant to the 77th and 85th Amendment, the State of Assam had brought in the Office Memorandum No. ABP.59/96/163 dated 12.03.2002. By the said Office Memorandum, consequential seniority was made available to the Scheduled Castes/Scheduled Tribes Government Servants upon their promotions by virtue of the Rule of reservation/roster. This benefit was made available to the reserved category Government servant w.e.f 17.06.1995. As such by the Act of 1978 by virtue of Section 5 reservation in promotion to the reserved category candidates was already in place well prior to the Constitutional Amendment to Article 16. By the Office Memorandum dated 13.03.2002, the consequential seniority upon promotion to the reserved category candidates was also introduced. Subsequently, Section 5A was introduced pursuant to an Amendment. The 2012 Office Memorandum was subsequently followed by another Office Memorandum dated 29.12.2014. The said Office Memorandum provided for the guidelines to implement the post based roster reservation system. In the said Office Memorandum of 29.12.2014 at Clause 1.11, it is provided that the rosters are an aid to determine the entitlement of different categories with regard to the quota reserved for them in matters



of appointment and promotion. They are not intended to determine seniority in the cadre. Pursuant to the Judgment of the Apex Court rendered in *M Nagaraj & Ors. Vs. Union of India*, reported in (2006) 8 SCC 212 and the U.P. Corporation Limited (Supra) that there is a requirement of the State to have a quantifiable data on the backwardness and inadequacy of the representation of the reserved category candidates before effecting the promotion to the reserved category candidates. In pursuance to the said Judgment by the Apex Court, State of Assam constituted a One-Man-Committee. The One-Man-Committee submitted its report to the effect that there is inadequacy of representation in the reserved category and backwardness of the classes and therefore the One-Man-Committee report suggested that reservation in promotion should be continue. This report came to be assailed in writ petitions filed before the Gauhati High Court being W.P(C) No. 1560/2015 and W.P.(C) No. 2680/2015 which was filed by the society named Equality Forum and other individuals. A Co-ordinate Bench of this Court by its Judgment and Order dated 23.12.2015 rejected the contentions of the State Government to proceed for reservation in promotion on the basis of the recommendation of the One-Man-Committee report. It was held by the Co-ordinate Bench that the



mandate in M Nagarajan (Supra) and U.P. Power Corporation (Supra) to have quantifiable data is not satisfied by the One-Man-Committee report in the manner it sought to project the same. It was held that there has to be an exercise of collection of quantifiable data relating to the three Constitutional requirements, namely (i) backwardness of the class; (ii) inadequacy of representation in public service and (iii) overall efficiency in administration in the event of reservation, are the quantifiable data which are to be collected by the State before proceeding for reservation in promotion. The Co-ordinate Bench held that till such quantifiable data is collected. The Amendment of the Act of 1978 brought in by the 2012 Office Memorandum in so far as the reservation in promotion are concerned shall remain in a domain state.

27. Thereafter, the Government by Office Memorandum dated 03.08.2016 vide No. TAD/BC/68/2011/Pt-I/207 brought in the said Office Memorandum for review of the Government Policy of reservation in promotion with reference to the Judgment of the Gauhati High Court in Equality Forum in W.P(C) No. 5610/2015. The said Office Memorandum brought in the various guidelines to be followed while considering promotion in any cadre in any



establishment. It was provided that the policy of reservation in promotion will continue. Under Clause (ii) of the said Office Memorandum, it was laid down that while taking up the process of promotion in a particular cadre of the service, every establishment shall examine the representation of SC, ST(P) and ST(H) candidates in a cadre in comparison with the prescribed percentage of reservation and calculate shortfall if any in any cadre with reference to a particular year. If in any particular cadre, the SCs and STs are not adequately represented and shortfall is found to exist in the cadre, they may be considered as backward in so far as that particular cadre is concerned. Such shortfall shall be filled up by the concerned category of incumbents within the zone of consideration either on account of seniority-cum-merit/merit-cum-seniority or by way of providing reservation as the case may, till the prescribed percentage in respect of the said category is achieved. If no eligible incumbents belonging to the shortfall category are available within the zone of consideration then the number of posts that are required to meet the calculated shortfall shall be kept vacant and the vacancy shall be carry forward and filled up in the next year.



28. Sub-clause (iv) provides that during the promotion process where the stipulated percentage of reserved category is met, but in the gradation list/seniority list, there are candidates of reserved category who on merit are entitled to promotion then their cases shall be considered for promotion on merit if such candidate has not gained the seniority by way of any accelerated promotion earlier.

29. Since the Office Memorandum dated 03.08.2016 is also relevant for the purposes of this case, the same is extracted below:

"GOVERNMENT OF ASSAM

DEPARTMENT OF WELFARE OF PLAINS TRIBES AND BACKWARD CLASSES

DISPUR ::::ASSAM

**No. TAD/BC/68/2011/Pt-I/207 dated Dispur 3rd August, 2016
OFFICE MEMORANDUM**

Subject: Review of Government Policy of Reservation in Promotion with reference to the Hon'ble Gauhati High Court judgments

With a view to bringing the policy of reservation in promotion for reserved categories in line with the directions of the Hon'ble High Court, Government have reviewed the existing procedure of effecting reservation in promotion and accordingly lays down the following guidelines to be followed while considering promotion in any cadre in any establishment

- i) *The policy of reservation in promotion shall continue.*
- ii) *Each establishment while taking up the process of promotion in a particular cadre of a service, shall examine the representation of SC, ST (P) and ST(H) candidates in the cadre in comparison with the prescribed percentage of reservation and calculate shortfall if any, in the cadre with reference to that particular year. Shortfall of reservation of a particular reserved category in a cadre means the difference between the total number of reserved posts for that category in the cadre and the number of persons of that category holding the posts in the cadre. While calculating the shortfall, all candidates belonging to the same category [SC or ST(P) or ST (H)] shall be taken into account irrespective of the mode of their entry into the cadre i.e. whether on*



account of seniority- cum-merit or merit cum seniority, as the case may be, or through any other process admissible in law or by way of reservation. If in a particular cadre, SCs and STs are not adequately represented and shortfall is found to exist in the cadre, they may be considered as backward insofar as that particular cadre is concerned. Such shortfall shall be filled up by the concerned category of incumbents within the zone of consideration either on account of seniority-cum-merit/ merit-cum-seniority or by way of providing reservation as the case may be, till the prescribed percentage in respect of the said category is achieved.

iii) If no eligible incumbent belonging to the shortfall category is available within the zone of consideration, this will further substantiate the status of backwardness and inadequate representation of category in the cadre and therefore the number of posts that are required to meet the calculated shortfall shall be kept vacant and the vacancy shall be carried forward and filled up in the next year. In case, sufficient number of SC or ST(P) or ST(H) candidates fit for promotion against reserved posts are not available and if the posts cannot be allowed to remain vacant on grounds of maintaining efficiency in administration, the appointing authority may with full justification, refer the vacancy to the Department of WPT and BC for de-reservation, subject to the condition that no candidate belonging to the category for which the post is reserved is available within the zone of consideration placed before the annual Selection Committee/ Departmental Promotion Committee for two consecutive years. In other words, the concerned Department may move proposal for de-reservation in the third year.

iv) If an occasion arises during the promotion process, in which stipulated percentage in respect of reserved category is met, but in the gradation list/seniority list there are candidates of reserved category who on merit is entitled to the promotion, his / her case shall be considered for promotion on merit if such candidate has not gained the seniority by way of any accelerated promotion earlier.

v) As regards the question of maintaining administrative efficiency as required under Article 335 of the Constitution of India, Hon'ble High Court held that, ".....it should be assessed applying objective measurable standards." In that sense, the Annual confidential Reports(ACR)/Annual Performance Appraisal Reports(APAR) of the incumbent alongwith the length of service, participation in training programs concerning job requirements, acquisition of degrees or diplomas or diplomas on subject if mandatory to the job, should be considered as the yardstick of measuring efficiency.

vi) It shall be the responsibility of the concerned appointing authority to provide adequate information concerning the above to the Selection Committee (Department Promotion Committee) which shall evaluate all relevant parameters while making its recommendation.

This shall come into force with immediate effect.

Sd/-

(Rajiv Kumar Bora IAS)

*Additional Chief Secretary to the Govt. of Assam,
WT&BC Department, Dispur."*



30. It is this Office Memorandum more particularly Clauses (iii) and (iv) of the said Office Memorandum which came to be assailed by the writ petition being W.P(C) No. 5005/2016 (Bhagwan Pator) on the ground that the Clause (iii) and (iv) will have the effect of de-reservation in respect of promotion and promotion on merit to which a reserved category candidate is otherwise entitled to and which is sought to be taken away. This Office Memorandum was also challenged by the registered society Equality Forum by filing W.P.(C) No. 5026/2016 on the ground that this Office Memorandum is in violation of the Judgment rendered earlier by the Co-ordinate Bench in Judgment dated 23.12.2015 rendered earlier by the Co-ordinate Bench in W.P(C) No. 1560/2015 and W.P(C) No. 2680/2015. These writ petitions came to be heard and disposed of together by Co-ordinate Bench and by Judgment and order dated 06.06.2022, the Co-ordinate Bench finally held as under:

"I. The Policy of the state in providing reservation in promotion with consequential seniority is discernable from Section 5 of the 1978 Act read with O.M. dated 12.03.2002.

II. The Office Memorandum dated 12.03.2002 shall hold the field till such policy is expressly repealed by the State.

III. O.M. dated. 03.06.2016 is notified laying procedure for collection of quantifiable data on Backwardness and inadequacy of



representation and determining efficiency in administration while giving effect to such policy of providing reservation."

31. The Co-ordinate Bench went on to hold the policy of providing reservation in promotion with consequential seniority holding the field as per Office Memorandum dated 12.03.2002, the State is not within in competence and jurisdiction to deprive the benefit to a meritorious reserved category candidate and that too without expressly bringing such policy by superseding the benefit granted under Office Memorandum dated 12.03.2009. The Co-ordinate Bench held that the policy of providing reservation in promotion with consequential seniority is holding the field. The Co-ordinate Bench also held that Article 16 (4A) and Article 16(4B) being enabling provisions, the State is at liberty to implement its policy for giving reservation in promotion with consequential seniority or is at liberty not to provide for any reservation in promotion. But these policies will have to be implemented following due process of law including the dicta rendered in M Nagaraj (Supra) and clarified in Jarnail Singh (Supra).

32. This Judgment came to be assailed before the Division Bench of this Court in W.A No. 46/2023 and other connected writ appeals. A Division Bench of this Court elaborately dealt with the issues raised and overturned the Judgment of the learned Single



Judge. The Division Bench upheld the Office Memorandum dated 03.08.2016 and also held that in view of the Judgment of the Apex Court in *Jarnail Singh Vs. Laxmi Narayan Gupta*, reported in (2018) 10 SCC 396 (hereinafter referred to as "Jarnail Singh-I") that the Judgment of the learned Single Bench rendered in Equality Forum (supra) is no longer a good law and therefore the findings of the Single Bench rendered in Equality Forum(Supra) would no longer be binding on the State.

33. It is pertinent to mention here that the impugned Office Memorandum dated 18.01.2023 which is presently assailed in these bunch of writ petitions came to be issued by the State of Assam after the Judgment of the learned Single Bench rendered in Bhagawan Pator (Supra) but during the pendency of the writ appeal No. 46/2023 and other connected writ appeals and prior to the Judgment dated 10.08.2023 rendered by the Division Bench in these writ appeal. The impugned Office Memorandum being assailed in the present Office Memorandum is extracted below:

**"GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL:::: PERSONNEL (B)
DISPUR::::GUWAHATI-06**

No. ABP.81/2022/58

Dated Dispur, the 18th January, 2023

OFFICE MEMORANDUM



SUBJECT: Review of Government Policy of Reservation in Promotion with reference to the Hon'ble Gauhati High Court judgments.

The Hon'ble Gauhati High Court in its judgment and order dated 06.06.2022 in W.P.(C) No. 5005/2016 (Bhagwan Pator-Vs. SOA & Ors) and WP(C) No. 5026/2016 (Equality Forum-Vs-SOA & Ors) at Para 7 (IX) of this order, has observed that,

"Para 7(IX): Article 16 (4A) and 16(4B) being enabling provision, the State is at liberty to implement its policy of giving reservation in promotion with consequential seniority, without consequential seniority or at liberty not to provide any reservation in promotion. However, while implementing such policy, due process of law need to be followed including dicta in M Nagaraj (Supra) clarified in Jarnail Singh (Supra)."

The Government of Assam after careful examination of the Hon'ble High Court judgment dated 23.12.2015 in W.P.(C) No. 1560 (Equality Forum-Vs-SOA & 3 Ors.) and the judgment dated 06-06-2022 in WP(C) No. 5005/2016 and WP(C) No. 5026/2016, has reviewed the existing procedure of effecting 'reservations in promotion with consequential seniority for the reserved categories and accordingly lays down the following guidelines to be followed while considering promotion in any establishment.

- i) The policy of reservation in promotion shall continue,*
- ii) Each Establishment while taking up the process of promotion in a particular cadre of a service, shall examine the representation of SC, ST(P) and ST(H) candidates in the cadre in comparison with the prescribed percentage of reservation and calculate shortfall if any, in the cadre with reference to that particular year. Shortfall of reservation of a particular reserved category in cadre means the difference between the total number of reserved posts for that category in the cadre and the number of persons of that category holding the posts in the cadre. While calculating the shortfall, all candidates belonging to the same category [SC or ST(P) or ST(H)] shall be taken into account irrespective of the mode of entry into the cadre i.e. whether on account of seniority-cum-merit or merit cum seniority, as the case may be, or through any other process admissible in law or by way of reservation. If in a particular cadre, SCs and STs are not adequately represented and shortfall is found to exist in the cadre, it may be considered as inadequacy in representation insofar as that particular cadre is concerned. Such shortfall shall be filled up by the concerned category of incumbents within the zone of consideration either on account of seniority-cum-merit/merit-cum-seniority or by way of providing reservation as the case may be, till the prescribed percentage in respect of the said category is achieved.*



iii) If no eligible incumbent belonging to the shortfall category is available within the zone of consideration, this will further substantiate the status of backwardness and inadequate representation of the category in the cadre and therefore the number of posts that are required to meet the calculated shortfall shall be kept vacant and the vacancy shall be carried forward and filled up in the next year. In case, sufficient number of SC or ST(P) or ST(H) candidates, fit for promotion against reserved posts, are not available and if the posts cannot be allowed to remain vacant on grounds of maintaining efficiency in administration, the Appointing Authority may with full justification, refer the vacancy to the Department of Personnel for de-reservation, subject to the condition that no eligible candidate belonging to the category for which the post is reserved, is available within the zone of consideration placed before the annual Selection Committees Departmental Promotion Committee for two consecutive years. In other words, the concerned Departments may move proposal for de-reservation in the third year.

iv) (a) In case of promotion in Group-A services, the quantum of reservation for SC, ST(P), STCD in promotion shall be as per stipulated percentage of reservation available for these categories. However, SC or ST(P) or ST(H) Government Servants in Group-A services on their accelerated promotion by virtue of rule of reservation, shall not be entitled to consequential seniority. The application of general catch-up rule will allow eligible officers who were senior in the merit list at the entry level in Group A services to regain their seniority in the promotional post, once they are promoted to the same cadre as an officer of reserved category, provided the officer of the reserved category had got his promotion ahead of an officer senior to him in the merit list, by way of accelerated promotion on account of reservation in promotion in a particular cadre. Seniority of Government servants in Group-A services shall be revised accordingly as per above principle.

Further, an officer promoted from Group-B to Group-A service, will also regain his seniority in Group-A service on promotion vis-a-vis his compatriot in Group-B service, provided that the officer was senior to the reserved category officer in the particular Group B cadre, prior to the promotion of the reserved category officer into Group A. Seniority of such Group B Government servant promoted to Group A service shall be revised accordingly in Group A.

If an occasion arises during the promotion process in Group A service, in which stipulated percentage in respect of reserved category is met in the next promotional grade, but in the zone of consideration there are candidates of reserved category who on merit are entitled to the promotions, their cases shall be considered for promotion on merit, if such candidates



have not made into zone of consideration by way of any accelerated promotion earlier by virtue of rule of reservation.

(b) In case of promotion in Group B, C and D services, the quantum of reservation for SC, ST(P), ST(H) in promotion shall be as per stipulated percentage of reservation of these categories. The SC or ST(P) or ST(H) Government servants on their promotion by virtue of rule of reservation shall be entitled to consequential seniority. In other words candidates belonging to General/OBC/MOBC categories promoted later will be placed junior to the Scheduled Castes/ Scheduled Tribes Government servant promoted earlier. Seniority of Government Servants in Group-B, C and D services shall be revised accordingly.

v) As regards the question of maintaining administrative efficiency as required under Article 335 of the Constitution of India, Hon'ble High Court in WP(C) No.1560/2015 (Equality Forum-Vs-SOA & 3 Ors.) held that ".....it should be assessed applying objective measurable standards". As such, the Annual Confidential Reports (ACR)/ Annual Performance Appraisal Reports (APAR) of the incumbent along with the length of service, participation in training programs concerning job requirements, acquisition of degrees or diplomas on subjects if mandatory to the job, may be considered as the yardstick of measuring efficiency.

vi) It shall be the responsibility of the concerned appointing authority to provide adequate information concerning the above to the Selection Committee (Departmental Promotion Committee) which shall evaluate all relevant parameters while making its recommendation.

This Office Memorandum is issued in supersession of earlier O.M. No. ABP.59/96/163, dated 12/03/2002 and OM No. TAD/BC/68/2011/Pt-I/207, dated 03/08/2016.

This shall come into force with immediate effect.

*Sd/- Tonmoy Pratim Borgohain, IAS
Secretary to the Government of Assam
Personnel Department"*

34. The Clauses No. (iii), (iv)(a) and (v) of this Office Memorandum are challenged in these writ petitions. The essence



of this Office Memorandum is that the State of Assam has decided to continue the policy of reservation and promotion but has done away with the consequential seniority of the reserved category candidates and has instead brought in the "catch-up Rule" enabling the General category candidates who were senior in the feeder posts to regain their seniority in the higher post after promotion provided the reserved category candidate who was promoted earlier did not earn a further promotion and the General category candidate was senior to the said reserved category candidate in the feeder category.

35. It is no longer *res integra* that Article 16 (4A) and Article 16 (4B) had been held to be enabling provisions by the Apex Court in M. Nagaraj (Supra) and the subsequent Judgments. If these provisions are enabling provisions then the State is at liberty to provide for reservation in promotion with or without consequential seniority as the case may be, if such a decision is arrived at by the State. Both the Co-ordinate Bench in Bhagawan Pator (Supra) as well as a Division Bench in Ivy Gohain Dasgupta (Supra) had categorically held that the State is at liberty to grant seniority in promotion to the reserved category or not to grant such seniority in promotion to the reserved category.



36. A careful perusal of the Act read with the Rules will reveal that even prior to the 77th and 85th Constitutional Amendments, the State by way of the Act of 1978 read with the Rules of 1983 had made provisions for reservation in promotion of in respect of reserved categories. This Act and the Rules are not department specific and are applicable to all the Departments/establishments in respect of such promotions to be made to the Government Servants who satisfy the criteria. The Act read with the Rules nowhere specifically provides for grant of consequential seniority upon promotion of the reserved category candidates. It is in the absence of such provisions that the State had brought out the Notifications and Office Memorandums from time to time. By Office Memorandum dated 12.06.1996 pursuant to the Judgment of the Apex Court rendered in *Union of India & Ors. Vs. Virpal Singh Chauhan & Ors*, reported in (1995) 6 SCC 684, it was provided that the candidates promoted earlier by virtue of Rule or reservation/roster shall not be entitled to seniority over his senior in the feeder category and that as an when the General category candidate who was senior to the reserved category candidate in the feeder category is promoted, such General category candidate with regain his seniority over his reserved category. Notwithstanding that he was promoted subsequent to the



reserved category candidate. This Office Memorandum was followed by the Office Memorandum dated 12.03.2002 by which pursuant to the Amendment of Article 16 (4A) of the Constitution of India. The State of Assam conferred consequential seniority to the reserved category Government servants on their promotion by virtue of the Rule of reservation/roster. The earlier Office Memorandum dated 12.06.1996 was accordingly revised and superseded. This Office Memorandum was followed by the subsequent Office Memorandum on 03.08.2016.

37. A careful perusal of the Office Memorandum dated 03.08.2016 reveals that this Office Memorandum was not issued in supersession of the earlier Office Memorandum dated 12.03.2002. It was in this context that the Office Memorandum dated 03.08.2016 was put to challenge and the Co-ordinate Bench in Bhagawan Pator (Supra) had essentially held the Clauses put to challenge in the Office Memorandum dated 03.08.2016 to be not valid in view of the fact that the position in terms of the Office Memorandum dated 12.03.2002 remained unchanged.

38. The contention of the learned counsel for the petitioners that the policy of consequential seniority has always been in place and followed by the Government of Assam and the same could



not have been recalled or turned down as had been sought to be done by the impugned Office Memorandum dated 18.01.2023, will require examination in the above conspectus of facts.

39. As above discussed, although well prior to the Constitutional Amendments brought in to Article 16 of the Constitution, the State of Assam by the Act of 1978 read with the Rules of 1983 had implemented the policy of reservation on promotion. There is no quarrel with this position on facts. The point of discord is whether the Act itself contemplates consequential seniority in respect of the reserved category candidates who have been promoted under the reservation policy and therefore the principle of consequential seniority having been conferred under the Notice dated 12.03.2002 and the source of power for which can be traced back to the Act of 1978, whether denial of such principle in terms of the impugned notification will amount to the vested rights of the writ petitioners being taken away.

40. The Act of 1978 read with the Rules have been brought in by the State with the object of providing reservation in promotions. The statement of objects and reasons clearly provide that the Act proposes to provide for reservation of vacancies in services and posts for the members of Scheduled Castes and



Scheduled Tribes who are backward classes and are not adequately represented in the services and posts in the affairs within the State. A careful perusal of the Act including the Amendment brought thereto reveals that the Act provides for maintaining a post based roster. Cadre is defined, for the purposes of roster, to mean a particular grade and shall comprise the number of posts to be filled up by particular modes of recruitment in terms of the applicable recruitment Rules. The roster to be maintained shall be separate for direct recruitment as well as for promotions. The Rules of 1983 have been framed under the powers conferred under Section 13 of the Act of 1978. Under Rule 5 of the said Rules, the procedure to be followed is prescribed in respect of promotions by selection. Under Rule 5(2), the Selection Committee will consider the suitability of all candidates, the details of whom are furnished by the appointing authority and thereafter recommend a list of candidates found suitable for promotion in order of preference which shall be the determining factor about the inter se seniority of the candidates after promotion. Rule 5(3) provides that in addition to the list as required to be submitted under Rule 5(2), Selection Committee shall furnish separate list of candidates belonging to Scheduled Castes, Scheduled Tribes (Hills), Scheduled Tribes (Plains) and



others in order of preference for appointment against the vacancies shown to be reserved for Scheduled Castes, Scheduled Tribes(Hills), Scheduled Tribes(Plains) against the unreserved vacancy. Under Rule 5(4), the appointing authority shall consider the list in accordance with the provisions of the respective service Rules and shall consult the APSC where such consultation is necessary. Under Rule 6, the appointing authority is required to maintain a register as per the proforma appended to the Rules separately for direct recruitment and for promotion. This register shall be maintained in respect of every year beginning on the 1st of March and ending on the last day of February in the next year. Further Rule 4 of the Rules provides for submission of annual report showing the position regarding appointment of candidates belonging to Scheduled Castes, Scheduled Tribes by direct recruitment and by promotion shall be submitted by each administrative department to the department for the Welfare of Plains Tribes and Backward Classes. The relevant provisions of the Rules are extracted below for ready reference:

***"5. Promotion by selection-* While filling up vacancies by promotion the following procedure shall be followed-**

1) The Appointing Authority while making a request to the selection Committee/Board for recommending candidates for promotion, shall communicate to the Selection Committee / Board the details about the



reservation for the Scheduled Castes and scheduled Tribes (Hills) and Scheduled Tribes (Plains) and shall also furnish the details about such number of candidates as are to be furnished in accordance with the provisions of the respective service rules. In case however, where there is no service rules for the service in which the promotion is to be made, the Appointing Authority will furnish the details about the candidates equal to four times the number of vacancies.

(2) The Selection Committee/ Board will consider the suitability of all the candidates the details of whom are furnished by the appointing authority and recommend a list of candidates found suitable for promotion in order of preference, which shall be the determining factor about the inter se seniority of the candidates after promotion.

(3) In addition to the list mentioned in sub-rule (2) above, the Selection Committee shall furnish separate list of candidates belonging to Scheduled Castes, Scheduled Tribes (Hills), Scheduled Tribes (Plains) and others, in order of preference for appointing against the vacancies shown as reserved for Schedules Castes and Scheduled Tribes (Hills) and Scheduled Tribes (Plains) and against the unreserved vacancies.

(4) The Appointing Authority shall consider the list in accordance with the provisions of the respective service rules and shall also consult the Assam Public Service Commission where such consultation is necessary, and shall finally approve the list.

(5) The Appointing Authority shall thereafter make promotions in accordance with the roster provided in Clause (1) of the Scheduled to the Act in Order of preference indicated in the lists.

(6) In case of non availability of adequate number of candidates belonging to Scheduled Castes and Scheduled Tribes (Hills) and Scheduled Tribes (Plains) in the list mentioned in sub-rules (2) and (3) of this rule and if it is considered that the vacancies reserved for these categories of candidates cannot be left vacant in the interest of Public



Service, the Appointing Authority with prior concurrence of the Department for the Welfare of Plains Tribes and Backward Classes shall issue orders dereserving the vacancies giving one explanation for the dereservation, and shall thereafter fill up the dereserved vacancies by promoting officers from the list furnished by the Selection Committee/Board and approved by the Assam Public Service Commission/Appointing Authority in order of preference. The vacancy so dereserved shall be carried forward till the vacancy is filled up by a candidate in whose favour the reservation stood in the roster.

6. Maintenance of Registers of the appointment- *Even Appointing Authority shall maintain the register as mentioned in Section 12(i) of the Act and also in para (ii) of the Schedule to the Act in respect of every year beginning on the first march and ending on the last day of February in the next year, in the proforma furnished at Appendix-II separately for direct recruitment and for promotion.*

7. Submission of Annual Report- *An annual report showing the position regarding appointment of candidates belonging to Scheduled Castes, Scheduled Tribes by direct recruitment and by promotion shall be submitted by each Administrative Department to Department for the Welfare of Plains Tribes and Backward Classes in the manner prescribed below-*

(1) The annual report shall be for the period from the first day of March to the last day February next.

(2) As soon after the first day March every year as possible, every Appointing Authority shall send to the respective administrative Department-

(i) a Statement in the form given in Appendix-III showing the total number of employees in each class of service indicating the number of employees belonging to the Scheduled Castes and Scheduled Tribes; and



(ii) a Statement each in the proforma given in Appendix-IV A and Appendix-IV B, showing the particulars of appointments made during the year and the number of appointees belonging to Scheduled Castes and Scheduled Tribes.

(3) The Administrative Department shall consolidate all the reports submitted by different Appointing Authority under its administrative control and submit the report as provided in the substantive clause of this rule."

41. A careful perusal of the Act of 1978 read with the Rules will reveal that no such mandate under the Act or the Rules is discernable. This is qualified by the fact that the Government of Assam had from time to time issues various Office Memorandums either conferring consequential seniority or withdrawing the benefit of consequential seniority. If the provisions of the Act of 1978 and the Rules of 1983 are to be read together then it is clear that there is no policy available under the Act of 1978 read with the Rules of 1983 which confers automatic consequential seniority on the reserved category candidates who have been granted accelerated promotion on the reservation policy. In the absence of any specific provisions thereto, it cannot be assumed that accelerated promotions made under the reservation policy will necessarily be also conferred with the benefits of consequential seniority. On the contrary, in the absence of any such specific provisions or criteria specified under the Act of 1978



read with the Rules of 1983, it can only mean that the benefits of accelerated promotion would not grant consequential seniority. This benefit of consequential seniority has been conferred by the State by bringing in Office Memorandum dated 12.03.2002.

42. The petitioners are members of the Water Resources Department and the PWD Department. Promotions in both these Departments are governed by their own service Rules. In the said service Rules, there is a provision which lays down the procedure for promotion. As per the said procedure laid down, the appointing authority is to determine the list of eligible candidates as per the assessments made in terms of the Rules. Ordinarily the Officers who are included in the zone of consideration are four (4) time the number of the vacancies in the order of seniority. This is a standard practice applicable in all most departments including all the works department of the State. As such, the process for promotion is governed by the service Rules and not by the Act of 1978 read with the Rules of 1983. Therefore, the procedure laid down for promotion is provided in detail under the respective Service Rules governing the service conditions of the employees of the various departments. That apart, the Service Rules also provides that the seniority of a member of a cadre shall be in the



order of merit as determined by the selection committee. Under such circumstances, the claim of the petitioners that their rights are infringed by virtue of consequential seniority not being conferred upon promotion also cannot be accepted.

43. As such, it is reiterated that the Act of 1978 read with the Rules of 1983 does not provide for any provision or criteria for automatic or consequential seniority upon such promotion of reserved category candidates under the reservation policy. The Act of 1978 read with the Rules of 1983 merely brings in a law to grant reservation in promotion in respect of reserved category candidates. Any additional benefits of consequential seniority is not provided for under the Act of 1978 read with the Rules of 1983. Such benefits have been brought or provided by the State by issuance of such Notifications or Office Memorandums from time to time.

44. A perusal of the Office Memorandum dated 12.06.1996 reveals that the benefit of consequential seniority on promotion for reserved category candidates had been taken away pursuant to the Judgment of the Apex Court rendered in Virpal Singh Chauhan (Supra). The position which existed in the State prior to the Office Memorandum dated 12.06.1996 is not available before



this Court. Even assuming that consequential seniority on promotion of the reserved category candidates was granted by the State or was in place prior to 12.06.1996, then such benefit was either granted by any such Notification that may have been brought in by the State or upon such interpretation as may have been made by the State of the law as it existed then. However, nothing has been pointed out to the Court that such a provision existed in the Act as well as the Rules prior to 12.06.1996.

45. Under such circumstances, the contention of the learned counsel for the petitioner that in the absence of anything to the contrary, reservation and promotion to the reserved category candidates would also automatically grant them the benefit of consequential seniority cannot be accepted and the same is therefore rejected.

46. The Office Memorandum dated 12.06.2002 having conferred the benefit of consequential seniority in reservation or promotion to reserved category candidates, was conferred by the State of Assam and which continued till the Office Memorandum dated 03.08.2016 was brought in which sought to amend the benefits granted under the Office Memorandum of 12.03.2002.



47. This Office Memorandum dated 03.08.2016 although was considered to be bad in law by the Co-ordinate Bench in Bhagawan Pator (Supra) in view of the fact that the earlier Office Memorandum dated 12.03.2002 was still holding the field. However, the Division Bench in Ivy Gohain Dasgupta (Supra) overruled the views of the Co-ordinate Bench. Both the Co-ordinate Bench as well as the Division Bench had categorically held that the State Government was within its powers to grant or not to grant the benefit of reservation in promotion along with consequential seniority. Such view held by the Single Bench and also by the Division Bench is the correct view as have been laid down in law by the Apex Court in M. Nagaraj (Supra) and the catena of the Judgments thereafter. The findings of the Division Bench in Ivy Gohain Dasgupta (Supra) is not under appeal and therefore the same has attained finality as on date.

48. The impugned Office Memorandum dated 18.01.2023 and the context in which the earlier Office Memorandum dated 03.08.2016 was issued are largely operating in the same sphere. The impugned Office Memorandum dated 18.01.2023 have also been issued in supersession of the earlier Office Memorandums dated 12.03.2002 and 03.08.2016.



49. Clause 4(A) of the Office Memorandum dated 18.01.2023 provides that Government servants in the reserved categories on their accelerated promotion under the Rule or reservation shall not be entitled to consequential seniority. The application of general catch-up Rule will allow the eligible officers who were senior in the merit list at the entry level in Group-A services to regain their seniority in promotional post once they are promoted to the same cadre as the Officer of the reserved category. The said Clause 4A further provides similar benefits from Officers who are promoted from Group-B to Group-A category. It also provides during the process of promotion in the Group-A services in which the stipulated percentage of the reserved category although is met but in the zone of consideration there are candidates of reserved category who on merit are entitled to the promotions, their cases will be considered for promotion on merit, if such candidates are not in the zone of consideration by way of accelerated promotion earlier by virtue of the Rule or reservation.

50. The first part of Clause 4A is the policy of catch-up Rule which as discussed before has been brought in by the State superseding the benefits of consequential seniority as was brought in by the Office Memorandum dated 12.03.2002. The



superseding of the earlier Office Memorandum of 12.03.2002 and the implementation of the policy of catch-up Rule over the consequential seniority by itself cannot be held to be beyond the powers of the State inasmuch as, as have been discussed above, no such policy is discernable in the Act of 1978 read with the Rules of 1983. That apart, the Single Bench in Bhagawan Pator (Supra) as well as the Division Bench in Ivy Gohain Dasgupta (Supra) had categorically held that the State Government is within its powers to grant or not to grant consequential seniority in promotions of reserved category candidates. This is more so in view of the law laid down by the Apex Court in M Nagaraj (Supra) where it was held Article 16 (4A) and Article 16 (4B) are enabling provisions for the State to grant such benefits if the State so desires.

51. In Sudhakar Baburao Nangure Vs. Noreshwar Raghunathrao Shende and Ors., reported in (2020) 11 SCC 399, the Apex Court was considering a challenge made by General Category candidates to the promotion given to reserved category candidates with consequential seniority. In the facts of the case, Government Resolution dated 20.10.1997 provided that Officer belonging to reserved category was to retain seniority in



promotional post. Subsequent Government Resolution dated 20.03.2003 confirmed that policy and also clarified that seniority would be governed by regular date of promotion. The appellant before the Apex Court, however, had failed to challenge the appointment of the respondent to the next higher post as well as the Government Resolution dated 20.03.2003 providing for consequential seniority. It was in these circumstances that the Apex Court held that the seniority list which was challenged fixing the seniority of the respondent reserved category candidate above the appellant belonging to the General category candidate in the cadre of JDTP was justified. The Apex Court while considering the issues had considered the important Judgments and the earlier precedents in respect of the reservation in promotion with consequential seniority. The Apex Court after consideration of all the Judgments referred to in the said case rejected the bill on the ground that the appellant had failed to challenge the appointment of the first respondent to the next higher post as well as a challenge to the circular dated 20.03.2003 providing for consequential seniority. It was held by the Apex Court that in the earlier round of litigation, the Apex Court have given liberty to the parties to pursue the matter regarding the applicability of catch up Rule before the High Court



in the first instance and then before the Supreme Court if the appellant was still aggrieved. However, in the facts of the case, the Apex Court held that the challenge that has been raised before the Apex Court has been developed before this Court without any basis in the pleadings and in that context declined to entertain the appeals. However, the Apex Court while examining the matter had referred to the relevant case laws and the earlier precedents of the Apex Court on the aspect of reservation in promotion with consequential seniority. It is relevant to refer to those discussions of the Apex Court in the said Judgment and for the said purpose, the following paragraphs are extracted:

"36. A line of cases before this Court considered the effect of an accelerated promotion granted to a member of a Scheduled Caste or Scheduled Tribe in terms of consequential seniority in a higher post. More specifically, the vexed issue was whether a member of such a caste and tribe who obtains promotion earlier than a senior belonging to the general or open category in the feeder cadre would retain that seniority on the latter being promoted to a higher post.

37. In Union of India v. Virpal Singh Chauhan [Union of India v. Virpal Singh Chauhan, (1995) 6 SCC 684 : 1996 SCC (L&S) 1] ("Virpal Singh Chauhan"), a two-Judge Bench of this Court held that the State could provide that a candidate who had been promoted earlier on the basis of reservation and on the application of the roster would not be entitled to seniority over a senior belonging to the general category in the feeder category. A senior belonging to



the general category who is promoted to a higher post subsequently would regain seniority over the reserved candidate.

38. *The decision in Virpal Singh Chauhan [Union of India v. Virpal Singh Chauhan, (1995) 6 SCC 684 : 1996 SCC (L&S) 1] led to the Constitution (Eighty-fifth Amendment) Act, 2001 with effect from 17-6-1995. Clause (4-A), as amended, expanded the ambit of the earlier provision by enabling the State to also provide for consequential seniority, while making the provision for reservation in matters of promotion. Clause (4-A) of Article 16, in its present form, reads thus:*

"16. (4-A) *Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State."*

39. *The principle which has been enunciated in Virpal Singh Chauhan [Union of India v. Virpal Singh Chauhan, (1995) 6 SCC 684 : 1996 SCC (L&S) 1] has come to be known as the "catch-up" rule. In Ajit Singh Januja v. State of Punjab [Ajit Singh Januja v. State of Punjab, (1996) 2 SCC 715 : 1996 SCC (L&S) 540] ["Ajit Singh (1)"], a three-Judge Bench of this Court adopted the catch-up rule propounded in Virpal Singh Chauhan [Union of India v. Virpal Singh Chauhan, (1995) 6 SCC 684 : 1996 SCC (L&S) 1]. This Court held that a balance has to be maintained so as to avoid reverse discrimination and a rule or circular which gives seniority to a candidate belonging to the reserved category promoted on the basis of the roster point would violate Articles 14 and 16 of the Constitution.*

40. *A contrary view was taken by another three-Judge Bench in Jagdish Lal v. State of Haryana [Jagdish Lal v. State of Haryana, (1997) 6 SCC 538 : 1997 SCC (L&S) 1550] ("Jagdish Lal") to the effect that by virtue of the principle of continuous officiation, a*

candidate belonging to the reserved category who is promoted earlier than a general candidate due to an accelerated promotion would not lose seniority in the higher cadre. This conflict of decisions was resolved by a Constitution Bench in Ajit Singh (2) v. State of Punjab [Ajit Singh (2) v. State of Punjab, (1999) 7 SCC 209 : 1999 SCC (L&S) 1239] ["Ajit Singh (2)"]. The Constitution Bench upheld the principle laid down in Virpal Singh Chauhan [Union of India v. Virpal Singh Chauhan, (1995) 6 SCC 684 : 1996 SCC (L&S) 1] and Ajit Singh (1) [Ajit Singh Januja v. State of Punjab, (1996) 2 SCC 715 : 1996 SCC (L&S) 540] and disapproved of the decision in Jagdish Lal [Jagdish Lal v. State of Haryana, (1997) 6 SCC 538 : 1997 SCC (L&S) 1550] . This Court held thus : [Ajit Singh (2) case [Ajit Singh (2) v. State of Punjab, (1999) 7 SCC 209 : 1999 SCC (L&S) 1239] , SCC p. 246, para 77]

"77. We, therefore, hold that the roster-point promotees (reserved category) cannot count their seniority in the promoted category from the date of their continuous officiation in the promoted post, — vis-à-vis the general candidates who were senior to them in the lower category and who were later promoted. On the other hand, the senior general candidate at the lower level, if he reaches the promotional level later but before the further promotion of the reserved candidate — he will have to be treated as senior, at the promotional level, to the reserved candidate even if the reserved candidate was earlier promoted to that level. We shall explain this further under Point 3. We also hold that Virpal [Union of India v. Virpal Singh Chauhan, (1995) 6 SCC 684 : 1996 SCC (L&S) 1] and Ajit Singh [Ajit Singh Januja v. State of Punjab, (1996) 2 SCC 715 : 1996 SCC (L&S) 540] have been correctly decided and that Jagdish Lal [Jagdish Lal v. State of Haryana, (1997) 6 SCC 538 : 1997 SCC (L&S) 1550] is not correctly decided. Points 1 and 2 are decided accordingly."

41. *The constitutional validity of clauses (4-A) and (4-B) of Article 16 of the Constitution was dealt with in a decision of a Constitution*



Bench of this Court in Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] . Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] laid down that the catch-up rule and the concept of the consequential seniority are essentially precepts of service jurisprudence. They cannot, in the view of the Constitution Bench, be elevated to the status of a component of the basic structure. These precepts have been held to be practices as distinct from constitutional principles. The consequence is that they do not lie beyond the amending power of Parliament : neither the catch-up rule nor consequential seniority are elements of clauses (1) or (4) of Article 16. These have been held to be the principles evolved to control the extent of reservation.

42. *The validity of clauses (4-A) and (4-B) of Article 16 has been upheld by the Constitution Bench in Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] on the rationale that "they retain the controlling factors or the compelling reasons, namely, backwardness and inadequacy of representation which enables the States to provide for reservation keeping in mind the overall efficiency of the State administration under Article 335" [M. Nagaraj v. Union of India, (2006) 8 SCC 212 at p. 278 : (2007) 1 SCC (L&S) 1013] . Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] held that the State must demonstrate in each case the existence of compelling reasons, namely, (i) backwardness; (ii) inadequacy of representation; and (iii) overall administrative efficiency before providing for reservation. Construing clauses (4-A) and (4-B) of Article 16 to be enabling, Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] holds that if the State wishes to exercise its discretion under the enabling provisions, it must collect quantifiable data showing backwardness of the class as well as inadequacy of representation of that class in public employment in*



addition to complying with the norm of efficiency embodied in Article 335. The Court held thus : (SCC p. 278, para 123)

"123. However, in this case, as stated above, the main issue concerns the "extent of reservation". In this regard the State concerned will have to show in each case the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation. As stated above, the impugned provision is an enabling provision. The State is not bound to make reservation for SCs/STs in matters of promotions. However, if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance with Article 335. It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling limit of 50% or obliterate the creamy layer or extend the reservation indefinitely."

43. *In the recent decision of a Constitution Bench of this Court in Jarnail Singh v. Lachhmi Narain Gupta [Jarnail Singh v. Lachhmi Narain Gupta, (2018) 10 SCC 396 : (2019) 1 SCC (L&S) 86] ("Jarnail Singh"), Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] has been followed save and except for the dictum requiring the State to demonstrate backwardness as a condition for the exercise of the enabling power in making reservations in promotion for Scheduled Castes and Tribes. This part of the judgment in Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] has been held to be inconsistent with the nine-Judge Bench decision in Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1] . The Court in Jarnail Singh [Jarnail Singh v. Lachhmi Narain Gupta, (2018) 10 SCC 396 : (2019) 1 SCC (L&S) 86] held thus : (SCC p. 423, para 23)*

"23. ... It is clear, therefore, that Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] has, in unmistakable terms, stated that the State has to collect quantifiable data showing backwardness of the Scheduled Castes and the Scheduled Tribes. We are afraid that this portion of the judgment is directly contrary to the nine-Judge Bench in Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1] . Jeevan Reddy, J., speaking for himself and three other learned Judges, had clearly held:

'[t]he test or requirement of social and educational backwardness cannot be applied to the Scheduled Castes and Scheduled Tribes, who indubitably fall within the expression "backward class of citizens".'(See SCC p. 727, paras 796 to 797.)"

R.F. Nariman, J. speaking for the Constitution Bench held thus : (SCC p. 424, para 24)

"24. ... Thus, it is clear that when Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] required the States to collect quantifiable data on backwardness, insofar as Scheduled Castes and Scheduled Tribes are concerned, this would clearly be contrary to Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1] and would have to be declared to be bad on this ground."

44. The decision in Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] has been followed in several subsequent decisions of this Court : (i) Suraj Bhan Meena v. State of Rajasthan [Suraj Bhan Meena v. State of Rajasthan, (2011) 1 SCC 467 : (2011) 1 SCC (L&S) 1] ("Suraj Bhan Meena"); (ii) U.P. Power Corpn. Ltd. v. Rajesh Kumar [U.P. Power Corpn. Ltd. v. Rajesh Kumar, (2012) 7 SCC 1 : (2012) 2 SCC (L&S) 289] ("U.P. Power Corpn."); (iii) S. Panneer Selvam v. State of T.N. [S. Panneer Selvam v. State of T.N., (2015) 10 SCC 292 : (2016) 1 SCC (L&S) 76] ("Panneer Selvam"); and (iv) B.K. Pavitra v. Union of India [B.K.



Pavitra v. Union of India, (2017) 4 SCC 620 : (2017) 2 SCC (L&S) 128] ("B.K. Pavitra").

45. *In Suraj Bhan Meena [Suraj Bhan Meena v. State of Rajasthan, (2011) 1 SCC 467 : (2011) 1 SCC (L&S) 1] the question which arose for consideration before a two-Judge Bench of this Court was formulated thus : (SCC p. 480, para 49)*

"49. The primary question which we are called upon to answer in these five special leave petitions is whether the amended provisions of Article 16(4-A) of the Constitution intended that those belonging to the Scheduled Caste and Scheduled Tribe communities, who had been promoted against reserved quota, would also be entitled to consequential seniority on account of such promotions, or would the "catch-up" rule prevail."

Answering this question, this Court held thus : (SCC p. 484, para 66)

"66. The position after the decision in M. Nagaraj case [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] is that reservation of posts in promotion is dependent on the inadequacy of representation of members of the Scheduled Castes and Scheduled Tribes and Backward Classes and subject to the condition of ascertaining as to whether such reservation was at all required."

The Court held that since no exercise was carried out by the State of Rajasthan to acquire quantifiable data regarding the inadequacy of representation of Scheduled Castes and Tribes in public services in the State, the High Court was justified in quashing the notifications providing for consequential seniority and promotion.

46. *In Panneer Selvam [S. Panneer Selvam v. State of T.N., (2015) 10 SCC 292 : (2016) 1 SCC (L&S) 76] the issue before a two-Judge Bench of this Court was thus : (SCC p. 298, para 1)*

"1.1. (i) In the absence of policy decision taken by the State/rules framed pursuant to the enabling provision of Article 16(4-A) of the Constitution of India, whether a reserved category candidate promoted on the basis of reservation earlier than his senior general

category candidate in the feeder category can claim consequential seniority in the promotional post?"

Rule 12 of the sub-rules to the Tamil Nadu Highways and Engineering Service provided as follows:

"12. Reservation of appointment.—*The rule of reservation of appointments (General Rule 22) shall apply to the appointment of Assistant Divisional Engineers by direct recruitment and recruitment by transfer separately and the appointment of Assistant Engineers by direct recruitment."*

Under Rule 12, reserved category Assistant and Junior Engineers had secured promotion as Assistant Divisional Engineers earlier than their counterparts belonging to the general category as a result of accelerated promotion following the rule of reservation.

47. *R. Banumathi, J. speaking for the two-Judge Bench held that Rule 12 did not provide for consequential seniority to candidates drawn from the reserved category who are granted accelerated promotion and, in the absence of a specific provision or policy, consequential seniority could not be granted : (Panneer Selvam case [S. Panneer Selvam v. State of T.N., (2015) 10 SCC 292 : (2016) 1 SCC (L&S) 76], SCC p. 308, para 26)*

"26. The true legislative intent under Article 16(4-A) of the Constitution is to enable the State to make provision or frame rules giving consequential seniority for the accelerated promotion gained based on the rule of reservation. Rule 12 evidently does not provide for the consequential seniority for reserved category promotees at any point of time. The consequential seniority for such reserved category promotees can be fixed only if there is express provision for such reserved category promotees in the State rules. In the absence of any specific provision or policy decision taken by the State Government for consequential seniority for reserved category accelerated promotees, there is no question of automatic application of Article 16(4-A) of the Constitution."

The Court noted that the appellants who belonged to the general category were not questioning the accelerated promotion granted to their counterparts from the reserved category by following the rule of reservation but were only seeking the application of the catch-up rule in the fixation of seniority in the promotional cadre. The Court held that in the absence of any provision of consequential seniority in the rules, the catch-up rule will prevail : (Panneer Selvam case [S. Panneer Selvam v. State of T.N., (2015) 10 SCC 292 : (2016) 1 SCC (L&S) 76] , SCC pp. 312-13, para 36)

"36. In the absence of any provision for consequential seniority in the rules, the "catch-up rule" will be applicable and the roster-point reserved category promotees cannot count their seniority in the promoted category from the date of their promotion and the senior general candidates if later reach the promotional level, general candidates will regain their seniority. The Division Bench appears to have proceeded [V. Vivekanandan v. S. Pannerselvam, 2011 SCC OnLine Mad 2241 : (2012) 2 Mad LJ 346] on an erroneous footing that Article 16(4-A) of the Constitution of India automatically gives the consequential seniority in addition to accelerated promotion to the roster-point promotees and the judgment of the Division Bench cannot be sustained."

48. *The decision in Panneer Selvam [S. Panneer Selvam v. State of T.N., (2015) 10 SCC 292 : (2016) 1 SCC (L&S) 76] has since been followed by a two-Judge Bench of this Court in B.K. Pavitra [B.K. Pavitra v. Union of India, (2017) 4 SCC 620 : (2017) 2 SCC (L&S) 128] . A.K. Goel, J. speaking for the Bench held thus : (B.K. Pavitra case [B.K. Pavitra v. Union of India, (2017) 4 SCC 620 : (2017) 2 SCC (L&S) 128] , SCC p. 641, para 29)*

"29. It is clear from the above discussion in S. Panneer Selvam v. State of T.N. [S. Panneer Selvam v. State of T.N., (2015) 10 SCC 292 : (2016) 1 SCC (L&S) 76] that exercise for determining "inadequacy of representation", "backwardness" and "overall efficiency", is a must for exercise of power under Article 16(4-A).



Mere fact that there is no proportionate representation in promotional posts for the population of SCs and STs is not by itself enough to grant consequential seniority to promotees who are otherwise junior and thereby denying seniority to those who are given promotion later on account of reservation policy. It is for the State to place material on record that there was compelling necessity for exercise of such power and decision of the State was based on material including the study that overall efficiency is not compromised. In the present case, no such exercise has been undertaken. The High Court erroneously observed [M. Nagaraj v. Union of India, 2010 SCC OnLine Kar 5407] that it was for the petitioners to plead and prove that the overall efficiency was adversely affected by giving consequential seniority to junior persons who got promotion on account of reservation. Plea that persons promoted at the same time were allowed to retain their seniority in the lower cadre is untenable and ignores the fact that a senior person may be promoted later and not at the same time on account of roster point reservation. Depriving him of his seniority affects his further chances of promotion. Further plea that seniority was not a fundamental right is equally without any merit in the present context. In absence of exercise under Article 16(4-A), it is the "catch-up" rule which fully applies. It is not necessary to go into the question whether the Corporation concerned had adopted the rule of consequential seniority."

67. *In Suraj Bhan Meena [Suraj Bhan Meena v. State of Rajasthan, (2011) 1 SCC 467 : (2011) 1 SCC (L&S) 1] , the petitioners had challenged a Notification dated 25-4-2008 issued by the State of Rajasthan under the proviso to Article 309 of the Constitution, amending the Rajasthan "Various Service Rules" with effect from 28-12-2012. This was challenged on the ground that the deletion amounted to giving consequential seniority to candidates belonging to the Scheduled Castes and Tribes without carrying out the exercise of collecting quantifiable data.*



68. In *U.P. Power Corpn. [U.P. Power Corpn. Ltd. v. Rajesh Kumar, (2012) 7 SCC 1 : (2012) 2 SCC (L&S) 289]*, there was a specific challenge before the High Court of Judicature at Allahabad to the validity of Rule 8-A of the U.P. Government Servants Seniority Rules, 2007. Section 3 of the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 and Rule 8-A of the 1991 Rules brought into force in 2007 were challenged as being ultra vires and unconstitutional. As a consequence, the consequential orders relating to seniority were impugned. Once again, the challenge was on the ground that the exercise which was required in pursuance of the decision of this Court in *Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013]* had not been carried out.

69. In *Panneer Selvam [S. Panneer Selvam v. State of T.N., (2015) 10 SCC 292 : (2016) 1 SCC (L&S) 76]*, Rule 12 of the Special Rules to Tamil Nadu Highways Engineering Service provided that the rule of reservation of appointments (General Rule 22) shall apply to the appointment of Assistant Divisional Engineers by direct recruitment and by transfer of the appointment of Assistant Engineers. This Court held that Rule 12 did not provide for consequential seniority and, in the absence of a provision for consequential seniority catch-up rule will be applicable. The litigation in *Panneer Selvam [S. Panneer Selvam v. State of T.N., (2015) 10 SCC 292 : (2016) 1 SCC (L&S) 76]* did not engage a situation such as the present where the GR dated 20-3-2003 specifically provides for consequential seniority.

70. The decision in *B.K. Pavitra [B.K. Pavitra v. Union of India, (2017) 4 SCC 620 : (2017) 2 SCC (L&S) 128]* involved a specific challenge to the validity of the Karnataka Determination of Seniority of the Government Servants promoted on the basis of Reservation (to the posts in the Civil Services of the State) Act, 2002. The Act was struck down by a two-Judge Bench of this Court on the ground that the State had not undertaken an exercise to establish a "compelling necessity" since no material had been placed by the State on record.

71. *All these decisions (except the decision in Panneer Selvam [S. Panneer Selvam v. State of T.N., (2015) 10 SCC 292 : (2016) 1 SCC (L&S) 76]) involved a specific challenge to the validity of administrative notifications or, as the case may be, an Act of the legislature. Panneer Selvam [S. Panneer Selvam v. State of T.N., (2015) 10 SCC 292 : (2016) 1 SCC (L&S) 76] was a case where in the absence of a provision for consequential seniority, it was held that the catch-up rule will prevail. In the present case, there is a specific provision for consequential seniority in the GR dated 20-3-2003. Absent a challenge to the GR in the proceedings which were initiated before the Tribunal, such a challenge cannot be entertained at this stage."*

52. In view of the fact that the Judgments referred above have also been referred to at the bar as such no further discussions is necessary in respect of the Judgments referred to by the rival counsel in support of their contentions in respect of the issue of reservation on promotion with consequential seniority.

53. Therefore, the consistent views both by the Apex Court as well as by a Division Bench of this Court having held that the State is within its liberty to grant or not to grant the benefit of consequential seniority during promotions of reserved category candidates, the impugned Office Memorandum dated 18.01.2023 bringing in the policy of catch-up Rule and superseding the earlier policy of consequential seniority cannot be held to be bad in law.

54. The subsequent part of Clause 4A whereby, it is provided that where notwithstanding the reserved quota having been met by the reserved category candidates, if there are suitable



candidates belonging to the reserved category in the zone of consideration, then such candidates can be considered provided these candidates did not gain the benefit of accelerated seniority during their promotions by virtue of the Rule of reservation also cannot be held to be incongruous. If the first part of Clause 4A is held to be valid then the later part of Clause 4A which provides for consideration of those reserved category candidates for promotion if there otherwise within the zone of consideration and they did not get the benefits of consequential seniority during their promotion under the reservation policy is also required to be consequentially held to be valid as it is a sequel to the policy of the State Government of granting reservation and promotion but without consequential seniority. No fault can be found with regard to such policy being implemented by the State. The claim of the petitioners that by the impugned notification, then vested right have been sought to be taken away is also not made out and therefore such claims are also rejected.

55. That apart the second part of Clause 4A is parameteria with Clause 4 of the earlier Office Memorandum dated 03.08.2016 and which provisions has already been upheld by the Division Bench of this Court in Ivy Gohain Dasgupta (Supra). The Division Bench



had declined to interfere with the Clause 4 of the Office Memorandum dated 03.08.2016. This Judgment of the Division Bench has not been subsequently assailed and therefore, the same has attained finality. Consequently, the findings of the Division Bench in Ivy Gohain Dasgupta (Supra) are equally binding on this Court.

56. In view of all the above discussions held, the writ petitions fail, the prayers in the writ petitions are found to be devoid of merit and therefore, the writ petitions are rejected. No order as to cost.

57. Pending I.A.s are also disposed of.

JUDGE

Comparing Assistant

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