

GAHC010275952019



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

Case No. : WP(C) 8318/2019

1:SIMANTA PRADIP CHOUDHURY 18 ORS.
S/O LATE AMULYA CHOUDHURY, R/O MILAN NAGAR, BARPETA ROAD,
DIST. BARPETA, ASSAM, PIN - 781315.

2: GUNINDRA TALUKDAR
S/O LATE RADHA KANTA TALUKDAR
R/O GANDHI NAGAR
WARD NO. 16. J.M. PATH
BARPETA
PIN- 781301.

3: ANUPAM DAS
S/O SRI APURBA KUMAR DAS
R/O VILL- CHANDANPUR BARPETA
ASSAM
PIN - 781315.

4: SANTOSH KUTUM
S/O LATE C.R. KUTUM
R/O RUKMINIGAON
SADHANI PATH
HOUSE NO. 36
GUWAHATI
ASSAM
PIN - 781022.

5: BHUPEN BHATTACHARJEE

S/O SRI KHANIN KUMAR BHATTACHARJEE
R/O HOUSE NO. 181
HENGRABARI
GUWAHATI
KAMRUP
PIN - 781036.

6: IRANI THAKURIA

S/O LATE C.K. THAKURIA

R/O NAGAON
DIST. BARPETA
PIN- 781370.

7: JYOTI KUMAR DAS
S/O LATE ASHWINI KUMAR DAS
R/O VILL- BRINDABAN HATI
WARD NO. 9
BARPETA
PIN - 781301.

8: BRAJENDRA NATH DAS
S/O LATE NARESWAR DAS

R/O VILL- MADHYA METUAKUCHI
SUKHALATA CHOUDHURY PATH
WARD NO. 18
DIST. BARPETA
ASSAM
PIN - 781301.

9: MAINUL HAQUE CHOUDHURY
S/O LATE DAGU MIAH
R/O VILL- PALHAZI
BARPETA
ASSAM
PIN - 781309.

10: MONIKA BARTHAKUR
D/O SRI SARAT CHANDRA BARTHAKUR
R/O B.G. ROAD
AMULAPATTY
ITACHALI
PIN - 782003.

11: SRI JITU DEKA
S/O SRI GIRISH DEKA
R/O HATIGARH
KARBI PATH
GEETA NAGAR
PIN - 781024.

12: JAYANTA KUMAR DAS

S/O AMOLAPATTY
BARPETA
WARD NO. 5
ASSAM
PIN - 781301.

13: JINTU MONI PHUKAN
S/O SRI BIPIN CHANDRA PHUKAN
R/O SIVANAGAR
BYE LANE NO. 2
NAGAON
PIN - 782003.

14: KUKHESWAR BORAH
S/O PULESWAR BORAH
R/O HOUSE NO. 46
SWADESH NAGAR
KHANAPARA
KAMRUP
GUWAHATI - 781022.

15: RUDRA PRASAD DAS
S/O LATE HARI PRASAD DAS
R/O RAJGARH LINK ROAD

GUWAHATI- 781005.

16: SRI NILESWAR ROY
S/O LATE PRANESWAR ROY
R/O NATUN PARA
NEW BONGAIGAON

SHANTI NIBAS
PIN - 783380.

17: BRINCHI KUMAR BORAH
S/O LATE UMAKANTA BORAH
R/O VILL- NONOI PANIGAON
NAGAON
PIN - 782001.

18: DHIRAJ KUMAR TALUKDAR

S/O LATE NARAYAN TALUKDAR
R/O VILL- CHAPAGURI
BARPETA
PIN - 781318.

19: BODIOZZAMAN AHMED
S/O LATE ABDUL KARI

R/O HATIGAON
SIJUBARI
GUWAHATI - 781038

VERSUS

1:THE STATE OF ASSAM AND 23 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
SOCIAL WELFARE DEPARTMENT, DISPUR, GUWAHATI- 781006.

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
SOCIAL WELFARE DEPARTMENT
DISPUR
GUWAHATI - 781006.

3:THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF ASSAM
SOCIAL WELFARE DEPARTMENT
DISPUR
GUWAHATI - 781006.

4:THE SECRETARY TO THE GOVT OF ASSAM
SOCIAL WELFARE DEPARTMENT
DISPUR
GUWAHATI - 781006.

5:THE DEPUTY SECRETARY TO THE GOVT. OF ASSAM
SOCIAL WELFARE DEPARTMENT DISPUR
GUWAHATI - 781006.

6:THE DIRECTOR
SOCIAL WELFARE DEPARTMENT
UZANBAZAR
GUWAHATI- 781001.

7:THE ASSAM PUBLIC SERVICE COMMISSION
REP. BY ITS CHAIRMAN
JAWAHARNAGAR
KHANAPARA
GUWAHATI - 781022.

8:SRI BIDYUT HAZARIKA
CHILD DEVELOPMENT PROJECT OFFICER
LAHARIGHAT ICS PROJECT
P.O. LAHARIGHAT
DIST.MORIGAON

9:RAJU CHETRI
PRINCIPAL
BAL- BHAWAN
DIBRUGARH
DIST. DIBRUGARH.

10:KRISHNA CHETRI
CHILD DEVELOPMENT PROJECT OFFICER
BISWANATH ICDS PROJECT
P.O. BISWNATH
DIST. BISWANATH.

11:NASREEN SULTANA
CHILD DEVELOPMENT PROJECT OFFICER
GOROIMARI
ICDS PROJECT
P.O. GOROIMARI
DIST. KAMRUP (R).

12:ARIFA BEGUM
CHILD DEVELOPMENT PROJECT OFFICER
BOKAKHAT ICDS PROJECT
P.O. BOKAKHAT
DIST. GOLAGHAT.

13:UTTAM ADHIKARI
CHILD DEVELOPMENT PROJECT OFFICER
KALIABOR ICDS PROJECT
P.O. KALIABOR
DIST. NAGAON.

14:JATISH BARUAH
CHILD DEVELOPMENT PROJECT OFFICER
BAGINADI ICDS PROJECT
P.O. BAGINADI
DIST. LAKHIMPUR.

15:RUBUL SARMAH
CHILD DEVELOPMENT PROJECT OFFICER
BOKO BONGAON ICDS PROJECT
P.O. BOKO
DIST. KAMRUP (R).

16:RUBI KALITA
CHILD DEVELOPMENT PROJECT OFFICER
TEZPUR URBAN ICDS PROJECT
P.O. TEZPUR

DIST. SONITPUR.

17:KHAGENDRA UPADHAYA
CHILD DEVELOPMENT PROJECT OFFICER
LAOKHOWA ICDS PROJECT
P.O. SINGIMARI
DIST. NAGAON.

18:BHOLANATH PEGU
CHILD DEVELOPMENT PROJECT OFFICER
KARBIANGLONG ICDS PROJECT
DIST. KARBIANGLONG.

19:DIPAK TALUKDAR
CHILD DEVELOPMENT PROJECT OFFICER
GORESWAR ICDS PROJECT
P.O. GORESWAR
DIST. BAKSA.

20:MANJU RAJKHOWA
CHILD DEVELOPMENT PROJECT OFFICER
C/O COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
SOCIAL WELFARE DEPARTMENT
DISPUR
GUWAHATI- 781006.

21:DUDU DUTTA
CHILD DEVELOPMENT PROJECT OFFICER
DIMOW ICDS PROJECT
PO. DIMOW
DIST. SIVASAGAR.

22:DR. SYED NASIUR RAHMAN
CHILD DEVELOPMENT PROJECT OFFICER
HAJO ICDS PROJECT
P.O. HAJO

DIST. KAMRUP (R).

23:SAYED JUUWELL KAZI
PRINCIPAL
VTRC
BARAMA
P.O. BARAMA
DIST. BAKSA.

24:JYOTI BIKASH DUTTA
CHILD DEVELOPMENT PROJECT OFFICER

KALIPANI ICDS PROJECT
P.O. TIOK
DIST. JORHAT

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

Date : 20-11-2019

Heard Mr. K.N. Choudhury, learned Senior Counsel assisted by Mr. R.M. Deka, learned counsel appearing for the petitioners. Also heard Mr. D. Nath, learned Additional Senior Government Advocate, Assam appearing for the respondent Nos. 1 to 6 as well as Mr. C. Baruah, learned Standing Counsel, APSC appearing for the respondent No. 7.

Pursuant to the advertisement made by the APSC on 19.08.1997, on being selected vide select list dated 17.07.2000 the petitioners herein were directly recruited to the post of CDPOs in various ICDS Project by the Social Welfare Department of the State.

The respondents in the Social Welfare Department of the State on 29.12.2017 prepared a provisional gradation list of CDPOs serving under the Social Welfare Department in various places of the State wherein the petitioners seniority position is shown below the private respondent Nos. 8 to 24. Being aggrieved with the same, the petitioners submitted their objections, however without considering their objection, the respondents in the Social Welfare Department published the final gradation list of Class-II Officers including the CDPOs in the Social Welfare Department on 01.10.2019 placing the petitioners below the private respondent Nos. 8 to 24.

Mr. K.N. Choudhury, learned senior counsel for the petitioners submits that the petitioners are directly recruited candidates in the post of CDPOs on the basis of advertisement and selection made by the APSC whereas the private respondent Nos. 8 to 24 were appointed on contractual basis and their service were regularized by the Cabinet only on

30.10.2000.

Mr. K.N. Choudhury, learned senior counsel for the petitioners further submits that it is well settled that to get the seniority in service one has to born in the cadre. In this regard, regarding seniority in service, Mr. Choudhury, placed judgment of the Hon'ble Supreme Court in the case of *State of U.P. -Vs- Refiquddin and others* and other connected cases reported in *1987 (Supp.) SCC 401*.

Mr. K.N. Choudhury, learned senior counsel for the petitioners therefore submitted that the private respondent Nos. 8 to 24 are not entitled to get their seniority above the petitioners. It is also submitted by Mr. Choudhury, that respondent Nos. 8 to 24 were appointed on the Regulation 3(a) of the Assam Public Service Commission (Limitation and Function) Regulation, 1951 and their services were regularized pursuant to a Cabinet decision whereas the petitioners were directly recruited to the post of CDPOs on the basis of due advertisement and selection made by the APSC.

Issue notice, returnable by **22.01.2020**.

As Mr. D. Nath, learned Additional Senior Government Advocate, Assam as well as Mr. C. Baruah, learned Standing Counsel, APSC have accepted notices on behalf of the respondent Nos. 1 to 6 and 7 respectively, no formal notice need to be issued to those respondents.

Petitioners are allowed to take steps for service of notices upon private respondent Nos. 8 to 24 by publishing the Notice in two Dailies, widely circulated in the State of Assam, to be routed through the Registry of this Court, one of which shall be in vernacular (Assameese) and the other in English language, specifying the date of appearance of the private respondent Nos. 8 to 24 as 22.01.2020. Petitioners shall publish such Notice in the news papers on or before 10.12.2019.

On the returnable date the petitioners shall submit the copies of the news papers in which such notice has been published for service of notice on the respondent Nos. 8 to 24 by way of an affidavit .

Petitioners shall serve requisite extra copies of this petition along with the annexures appended thereto to Mr. D. Nath and Mr. C. Baruah, within two days from today for their necessary use.

Until further orders of this Court, respondents shall not promote the private respondent Nos. 8 to 24, disregarding the claim of the petitioners and without the leave of this Court.

JUDGE

Comparing Assistant