

**(2008) 05 GAU CK 0027****Gauhati High Court****Case No:** None

Pulakesh Baruah and Another

APPELLANT

Vs

State of Assam and Others

RESPONDENT

**Date of Decision:** May 28, 2008**Acts Referred:**

- Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1978 - Section 4(A)

**Citation:** (2009) 3 GLR 499 : (2008) 3 GLT 28**Hon'ble Judges:** Iqbal Ahmed Ansari, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

I.A. Ansari, J.

Heard Mr. B.K. Bhattacharjee, learned Counsel for the petitioners, and Mr. B.J. Talukdar, learned Government Advocate, appearing on behalf of the respondent No. 1. Heard also Mr. T.C. Chutia, learned Standing counsel, APSC, appearing on behalf of the respondent Commission.

2. By an advertisement, dated 10.07.2007, applications for filling up of six posts of District Sports Officers were invited by the respondent No. 2, namely, Assam Public Service Commission. The present petitioners, amongst the others, applied for selection and appointment to the said posts. On completion of the selection process, a select list was published by the respondent No. 3 on 28.05.2008. The select list shows that all the six posts were filed up by the candidates from reserved category, though the advertisement clearly stated that two posts were reserved for the candidates of Scheduled Caste and one post for the candidates of Scheduled Tribe (Hills) meaning thereby that the remaining three posts were "unreserved".

3. The grievance of the petitioners is that the said three "unreserved posts" were meant for the candidates of general category, but these posts have been filled up by

the candidates from reserved category.

4. While considering the above grievance of the writ petitioners, what needs to be pointed out is that an "unreserved post" is not necessarily meant for candidates of general category only. An unreserved post is a post, which is open to competition and shall be filled up on the basis of merit and not on the basis of any reservation. An "unreserved post" does not mean that the post is reserved for the candidates of general category.

5. In fact, the second proviso to Clause (A) of Section 4 of the Assam Scheduled Caste and Scheduled Tribe (Reservation for Vacancies) in Service and Vacant Post Act, 1978, states, "provided further that the candidates belonging to the Scheduled Caste, who qualify for selection on merit shall be included in General List and not against reserve quota".

6. A bare reading of the above proviso makes it abundantly clear that even a candidate of reserved category shall, if selected on merit, have to be appointed against "unreserved post". Thus, even a reserved category candidate could have been selected on merit against the said three posts, which were "unreserved posts" and this is precisely what has been, in the present case, done inasmuch as the select list shows that though the three candidates, who have been selected for the said three "unreserved posts", belong to reserved category, the fact remains that these reserved category candidates were selected on the basis of their own merit and not on the basis of any reservation.

7. Because of what have been discussed and pointed out above, this Court finds no infirmity or illegality in the impugned merit list. This writ petition is, therefore, not admitted and the same shall accordingly stand dismissed. No order as to costs.