
(2010) 06 GAU CK 0010
In the Gauhati High Court
Case No : Writ Petition (C) No. 4099 of 2009

Sibananda Choudhury and Another APPELLANT
Vs
State of Assam and Others RESPONDENT

Date of Decision : 29-06-2010

Acts Referred:

Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1978 — Section 5, 7
Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Rules, 1983 — Rule 5, 5(6), 8, 9

Citation : (2010) 6 GLR 585

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Advocate : N. Choudhury, S.C. Keyal, S.K. Ghose, H. Sarmah and H.P. Choudhury, for the Appellant; H. Rahman, G. Uzir, R. Baruah, S. Kalita, S.N. Baruah, M. Saikia, J. Deka, B.D. Goswami and B. Buragohain, for the Respondent

Final Decision : Allowed

Judgement

P.K. Musahary, J.—Heard Mr. N. Choudhury, learned Counsel for the Petitioners. Also heard Mr. H. Rahman, learned Junior Government Advocate, for State Respondent Nos. 1, 2 and 3, Mr. G. Uzir, learned Counsel, for Respondents Nos. 4-7 and Sri B. D. Goswami, learned Counsel, for Respondent Nos. 11-17.

2. The facts of this case are very simple and short. The question of law involved is rather considerably serious and important.

3. The Petitioner No. 2, on being selected by the Assam Public Service Commission ("APSC") and on completion of Ranger training at Dehradun, joined as a Ranger in Soil Conservation Department, Government of Assam, on 1.4.1972. He was promoted as Assistant Soil Conservation Officer w.e.f. 29.1.1988. The Petitioner No. 1 also entered into service on 27.7.1982 as Soil Conservation Officer on being selected by the APSC. He was promoted to the rank of Divisional Soil Conservation Officer ("DSCO") on 13.9.1991. So also the

Petitioner No. 2 was promoted to the rank of DSCO on 18.1.1996. The Government of Assam prepared a draft Recruitment Rules called Assam Soil Conservation (Recruitment and Promotion to the Service) Order, 1988, ("1988 Order") on 29.10.1988. As per the aforesaid "1988 Order", the cadre strength Joint Director is 6. Out of 6 posts, 2 are permanent and 4 are temporary. The total cadre strength of Joint Director was reduced to 4 with the creation of new cadre called Additional Director of Soil Conservation with 2 posts. 3 posts of Joint Director fell vacant. Another vacancy of 1 post of Joint Director was anticipated. The Respondent authorities, therefore, decided to hold Departmental Promotion Committee ("DPC") for filling up 4 posts of Joint Director under the provision of "1988 Order", As per provision under Rule 8(i)(b) of the said "1988 Order", the post of DSCO is the feeder post for promotion to the post of Joint Director. Rule 9(ii) provides for constitution of selection committee for considering the promotion to the posts of Joint Director (Soil Conservation), DSCO and Soil Conservation Ranger, Assistant Soil Conservation Officer and Soil Conservation Ranger with the following members:

- (a) Secretary, Soil Conservation Department, as Chairman,
- (b) Secretary, Personnel or his nominee, as Member,
- (c) Director, Soil Conservation Department, as Member Secretary.

For giving promotion to the aforesaid posts of Joint Director, the Government constituted a 5-member DPC with one Sri H.K. Sharma, IAS, Commissioner and Secretary to the Government of Assam, Soil Conservation Department, as chairman and 4 other members including 2 Deputy Secretaries of Soil Conservation Department, in violation of Rule 9(ii) of the said "1988 Order". The said DPC held its meeting on 24.08.1989 and considered the cases of 13 candidates. It recommended the following DSC Os for promotion to Joint Promotion:

- (1) Sri J.N. Malakar (SC)
- (2) Sri E.P. Marak, ST(H)
- (3) Sri C.R. Das (SC)
- (4) Sri R.M. Das (SC)
- (5) Sri A.B.M.T. Hussain
- (6) Sri Sivananda Choudhury
- (7) Sri P. Saikia, and
- (8) Sri A.B. Baruah

4. The Committee recommended keeping the promotion of Sri A.B.M.T. Hussain under sealed cover in view of the vigilance case pending for prosecution sanction. No. SC(H) and ST(P) candidates were available within the zone of

consideration for filling up the respective reserved category back log quota and so the DPC recommended to fill up all 4 posts of Joint Director from SC only. The Respondent Nos. 4-7 belong to SC community. Among them, Sri R.M. Das, Respondent No. 7, did not complete the minimum 5 years service as DSCO and so he was not eligible for promotion to the post of Joint Director when the said DPC was held and he was going to complete his 5 years only on 1.1.2010.

5. The correctness and legality of the said decision to reserving all 4 posts in the cadre of Joint Director for SC is under challenge in this writ proceeding.

6. Mr. Choudhury, learned Counsel for the Petitioners, makes the following submissions:

(1) The percentage of reservation is to be worked out in relation to number of posts which form the cadre strength and the concept of vacancy has no relevancy for operating the percentage of reservation. Since in the present case, the cadre consists of only 4 posts and if it is calculated taking the reservation for SC at 7%, there cannot be any reservation for SC inasmuch as 7% of 4 posts would be much below 0.5. In this regard, he would rely on the decisions rendered by this Court in *Khanindra Nath Choudhury Vs. State of Assam and Others*, and *The State of Assam and Ors. v. Dr. Aswini Kumar Sarma* (WP No. 1947/2009).

(2) The provision of reservation in the matter of promotion cannot be implemented unless the State Government concerned frames the Rules as per the direction given by the Supreme Court in *Indra Sawhney v. Union of India* 1992 Supp (3) SCC 217.

(3) Article 16(4A) was incorporated by the Constitution vide 77th Amendment, Act, 1995. It is only an enabling provision. The State of Assam has not so far enacted any law for reservation in the matter of promotion after it has been empowered to do so w.e.f. 17.6.1995 under Article 16(4A) of the Constitution of India and this being the position, the State cannot go for reservation in the matter of promotion.

(4) The provision u/s 5 of the Assam Scheduled Castes Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1978 ("SC/ST Reservation Act of 1978"), prescribing reservation in the matter of promotion are unauthorized as the said Act received the assent of the Governor of Assam on 23.5.1979 whereas the Constitution of India authorizes the State authorities to make such provision only w.e.f. 17.6.1995 vide 77th Amendment Act, 1995 to the Constitution of India, and, therefore, the impugned action taken by the State Respondents is illegal, unauthorized and without any jurisdiction.

(5) Even assuming, but not accepting, that there is an existence of such law w.e.f. 17.6.1995, the Roster register of Joint Director showing back log of reserved categories w.e.f. 1981 and for that matter, showing all the 4 posts in question reserved for SC, is clearly illegal and impermissible.

7. Mr. Choudhury, learned Counsel for the Petitioners, further contends that the SC/ST Reservation Act of 1978, particularly, in respect of reservation has become inconsistent with Article 16(4) as soon as the Apex Court made the direction to the States to enact laws for reservation (vide *Indra Sawhney's* case). The existing SC/ST Reservation Act of 1978 has become void to the extent of such inconsistency under Article 13(1) of the Constitution of India. In this respect, he submits that the "doctrine of eclipse" would apply and he would, in support of his submissions, place reliance on *Bhikaji Narain Dhakras and Others Vs. The State of Madhya Pradesh and Another*,

8. Mr. Uzir, learned Counsel for private Respondent Nos. 4-7 countered the submissions of Mr. Choudhury, learned Counsel for the Petitioners, referring to proviso to Article 335 of the Constitution of India wherein it is clearly provided that nothing in this article shall prevent in making any provision in favour of the members of scheduled castes and scheduled tribes for relaxation in qualifying marks in any examination or lowering the standard of evaluation, for reservation in matter of promotion to any class or classes of services or posts in connection with the affairs of Union or a State and as such, it cannot be questioned as to how and what manner, the State, as also the Public Service Commission ("PSC") concerned, would comply with the constitutional requirements. The adoption of roster point is a means of filling up the reservation for the SC/ST and compliance of the constitutional mandate. There is nothing wrong if the back-log is sought to be filled up by selecting candidates from the reserved categories. It has already been held by the Supreme Court that proviso to Article 335 of Constitution of India is applicable only for the purpose of promotion. According to him, subsequent to *Indra Sawhney's* case (supra), the Supreme Court elaborately dealt with reservation in promotion for reserved category and held that the reservation provided for by reasons of Articles 15 and 16 is subject to Article 335 of Constitution of India and while complying with the mandates of reservation provision under Article 335, the procedure evolved for laying down the mode and manner for consideration of a right, is not questionable unless the procedure adopted by the PSC concerned is held to be arbitrary or against the known principles of fair play. He puts his reliance on *A.P. Public Service Commission Vs. Baloji Badhavath and Others*,

9. On consideration of the pleadings and arguments advanced by the learned Counsel appearing for the parties, it is found that there is no dispute on the facts. However, they have dispute on the procedure adopted by the Respondent authorities in the matter of promotion sought to be made to the posts of Joint Director, particularly with an attempt to fill up all the 4 posts of Joint Director from the SC community. The reasons for filling up the abovementioned posts of Joint Director by SC candidates are reflected in the Minutes of the meeting held on 24.08.2009. It mainly took into account the back-log and the roster point. The relevant petition of the said minutes is quoted below:

Promotion to the rank of Joint Directors, Soil Conservation, from the rank of

Divisional Soil Conservation Officers:

(B) ...

The Committee decided to fill up the posts by selection of the officers from the rank of Divisional Soil Conservation Officers as per Gradation list in accordance with the Assam Soil Conservation Department (Recruitment and promotion to the Service) Order, 1988. As required under the Rules, the number of officers that were to be brought within the zone of consideration is four times the number of vacancy and therefore, the names of 16(sixteen) officers are to be considered by the Committee, but there are only 13(thirteen) Nos. of officers in the posts of DSCO who fulfill the eligibility criterion of having five years of service as Divisional Soil Conservation Officer. Sri R.M. Das has completed five years of service as DSCO on 27.6.2009. But as per definition of Assam Soil Conservation Department (Recruitment & Promotion to the Service) Order, 1988, as amended the year refers to Calendar Year and therefore, as per this order, Sri R.M. Das will complete five years as DSCO on 1.1.2010 which also needs to be clarified and condoned. The names of eligible DSC Os for promotion are as given below:

- (1) Sri A.B.M.T. Hussain
- (2) Sri Sibananda Choudhury
- (3) Sri P. Saikia
- (4) Sri A.B. Baruah
- (5) Sri H.C. Roy
- (6) Sri J.N. Malakar(SC)
- (7) Sri E.P. Marak, S.T.(H)
- (8) Sri B. Goala
- (9) Sri C.R. Das (SC)
- (10) Sri H.M. Mazumder
- (11) Sri R. Dewan
- (12) Sri R. Tassa
- (13) Sri R.M. Das (SC)

10. The Committee perused, the relevant Rules, gradation lists. Roster Register as well as AC Rs of the individual officers mentioned above. The promotion to the posts of Joint Director would start at Roster point No. 22 and end at No. 25. The Roster point No. 23 is meant for SC candidate. As per record, there were 2(two) backlog posts for SC and one for ST(H) and 2 Nos. for ST(P) candidates. Therefore, the Committee decided to recommend to fill up 2(two) Nos. backlog vacancies meant for SC and one No. of vacancy meant for ST(H). Committee

recommends one candidate belonging to SC at RP No. 23 which is reserved for SC subject to approval by Personnel Department, Government of Assam, regarding eligibility criteria having served as DSCO for 5 years as per Calendar Year. However, since ST(P) candidates are not available within the zone of consideration of the candidate, filling up of backlog vacancies against ST(P) is not possible. The Committee recommends the following eight numbers of officers for promotion to the rank of Joint Director, Soil Conservation, keeping in mind the clearance of SC and ST(H) backlog and current reservation at R.P. No. 23 as mentioned above for filling up 4(four) Nos. of vacancies as double the vacancies."

11. According to the present settled law, the manner in which the reservation quota is sought to be filled, may not be questioned but while seeking to fill up all the 4 posts of Joint Director from a particular reserved category alone due to non-availability of suitable candidate(s) from other reserved category, care must be taken to follow the due procedure. It must be noted that the Government of Assam have already framed the Assam Scheduled Castes & Scheduled Tribes (Reservation of Vacancies in Services and Posts) Rules, 1983. Rule 5 provides for procedure for filling up the vacancies by promotion. Sub-rule (6) of Rule 5 provides that in case of non-availability of adequate number of candidates from SC, ST(Hills) and ST(Plains) 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 ("WPT & BC Department"), Government of Assam, shall issue orders de-reserving the vacancies giving an explanation for the de-reservation and shall thereafter, fill up the de-reserved vacancies by promoting officers from the list furnished by the Selection Committee and approved by the APSC/appointing authority in order of preference. It also provides that the vacancy so de-reserved shall be carried forward till the vacancy is filled-up by a candidate in whose favour the reservation stood in the roster. Without following the said procedure, the Selection Committee would not have any authority to make recommendation for filling up the back-log of a particular reserved category by a candidate of other reserved category and even if such recommendation is not made by the Selection Committee, the appointing authority would have the authority to fill up the back-log of a particular community by candidate(s) of other reserved category provided the due prior concurrence is obtained from the WPT & BC Department. u/s 7 of the SC/ST Reservation Act of 1978, penal provision has been made for making appointment in contravention of provision of the said Act. From the minutes of the Selection Committee, it does not reflect or shown on record that the aforesaid procedure was followed by the Respondent authorities prior to placing the matter before the Selection Committee. It must be shown that the posts reserved for ST(H) and ST(P) have been de-reserved in the interest of public service and the Respondent appointing authority has obtained prior concurrence from the WPT & BC Department as required under the aforesaid rules. In my considered view, the Selection Committee as well as the

appointing authority have committed gross irregularities and illegalities and their action on that count has become unacceptable.

12. The moot question, in this case, is as to whether the State Respondents have any authority to fill up the posts by promotion without there being any appropriate enactment of law for reservation in the matter of promotion after the mandates of the Supreme Court in Indra Sawhney's case (supra). It is not disputed by the State Respondents that no enactment of law has been made after the judgment in Indra Sawhney's case (supra). If it is so, whether there should be a blanket prohibition on the authorities concerned to make provision for reservation in promotional posts and to effect any promotion to reserved categories in promotional posts. Before dealing with this aspect, it is necessary to refer to decision of the Supreme Court particularly, decision No. 7, as mentioned in paragraph 859 in Indra Sawhney's case (supra) which is quoted hereunder:

(7) Article 16(4) does not permit provision for reservations in the matter of promotion. This Rule shall, however, have only prospective operation and shall not affect the promotions already made, whether made on regular basis or on any other basis. We direct that our decision on this question shall operate only prospectively and shall not affect promotions already made, whether on temporary, officiating or regular/permanent basis. It is further directed that wherever reservations are already provided in the matter of promotion - be it Central Services or State Services, or for that matter services under any Corporation, authority or body falling under the definition of "State" in Article 12 - such reservations may continue in operation for a period of five years from this day. Within this period, it would be open to the appropriate authorities to revise, modify or re-issue the relevant rules to ensure the achievement of the objective of Article 16(4). If any authority thinks that for ensuring adequate representation of "backward class of citizens" in any service, class or category, it is necessary to provide for direct recruitment therein, it shall be open to do so. (Ahmadi, J, expresses no opinion on this question upholding the preliminary objection of Union of India). It would not be impermissible for the State to extend concessions and relaxations to members of reserved categories in the matter of promotion without compromising the efficiency of the administration.

13. In the subsequent case of Ashok Kumar Gupta and Another Vs. State of U.P. and Others, it has been held that ordinarily, right to promotion is not a fundamental right and it is only a statutory right but the provisions under Articles 16(4A) & (1) and 14 guarantee a fundamental right to S Cs and S Ts in the matter of promotion where they do not have adequate representation consistently with the efficiency in administration. This fundamental right of the S Cs and S Ts would remain uninterrupted as the Supreme Court in Indra Sawhney's case (supra), over-ruled the decision in Rangachari case and directed to be operative for five years from 16.11.1992 and it continued to remain because, before expiry of that period, Article 16(4A) had come into force. For

better appreciation of this point, it would be apt to quote paragraph 23 of Ashok Kumar Gupta's case (supra) as under:

23. In the light of this normal run of service jurisprudence, the question emerges whether the right to promotion is a fundamental right and the direction of prospective operation of the decision in Mandal judgment, after five years, violates equality enshrined in Articles 14 and 16(1) and is void under Article 13(2) of the Constitution? Right to reservation itself is a fundamental right under 16(1) as was laid in *State of Kerala v. N.M. Thomas* which was reiterated in Mandal case. The permanent bureaucracy in Part XIV of the Constitution is an integral scheme of the Constitution to aid and assist the political executive in the governance of the country. Abraham Lincoln, one of the greatest Presidents of the United States of America, a noble soul, who laid his life in giving right to equality to the Blacks, a living truth enshrined in 14th Amendment, had stated that democracy, is by the people, of the people and for the people. Democracy governed by rule of law brings about change in the social order only through governance of the State. The Dalits and Tribes equally being citizens have a right to a share in the governance of the State, and in the permanent democracy service conditions are assured under Articles 309 to 312A of the Constitution subject to the pleasure of the President under Article 310 and also express exclusion of its applicability to the specified services in Articles 33 and 34. The right to seek equality of opportunity to an office or a post under the State is a guaranteed fundamental right to all citizens alike under Article 16(1), the specie of Article 14, the genus. In *State of Maharashtra v. Chandrabhan Tale*, it was held that public employment opportunity is a national wealth and all citizens are equally entitled to share it. In *Delhi Transport Corpn. v. D. T. C. Mazdoor Congress* (SCC at p.737, para. 271) it was held that law-is a social engineering to remove the existing imbalance and to further the progress, serving the needs of the socialist Democratic Bharat under the rule of law. The prevailing social conditions and actualities of life are to be taken into account in adjudging whether or not the impugned legislation would subserve the purpose of the society.

14. Viewed in the light of the aforesaid decision of the Supreme Court, I am of the considered view that promotion can be made for the SC/ST even without there being any special enactment for such reservation as emphasized in *Indra Sawhney's* case (supra), because Article 16(4A) was incorporated in the Constitution as an enabling provision to implement the great goal and purpose as declared under Article 325, i.e., to fulfill the claims of S Cs and S Ts to services and posts. It follows that for fulfilling the said aim, there should not be any bar to filling up the posts by promotion providing quota for reserved categories even without any enactment or framing of rules after the judgment in *Indra Sawhney's* case (supra) more particularly when the law has been settled in *Balofi's* case (supra) holding that proviso to Article 335 is applicable only for the purpose of promotion. On the same consideration, it may be stated that the State cannot be prevented from filling up the posts meant for reserved

categories under provisions of Act or Rules framed by the State Government before incorporation of Article 16(4A). The only consideration to be made by the State is the compelling interest of backwardness and inadequacy of representation in public employment of that class subject to overall efficiency of the administration. It would be beneficial to refer to the decision of the Supreme Court in *M. Nagaraj and Others Vs. Union of India (UOI) and Others*, wherein it is held that once a separate category is carved out of Article 16(4) then that category is being given relaxation in the matters of reservation in promotion. Article 335 proviso is confined to S Cs and S Ts alone and the said proviso has a nexus with Articles 16(4A) and 16(4B). However, it is provided therein that efficiency in administration is held to be a constitutional limitation on the discretion vested in the State to provide for reservation in public employment.

15. I may again refer to Ashok Kumar Gupta's case (*supra*) in order to come to a conclusion whether the State has authorities to act under the existing provision of SC/ST Reservation Act of 1978 for filling up the posts by way of recruitment and promotion of reserved category candidates. In the said case, it was found that the rule of reservation in promotion was in vogue in the State of Uttar Pradesh right from 1973 and the promotions of Respondents came to be made from 1981 onwards. Of course, the U.P. Service (reservations for Scheduled Castes, Scheduled Tribes and Other Backward Class) Act, 1994, was enacted after the judgment in *Indra Sawhney's case (supra)* was pronounced on 16th November, 1992, and thereby, it has saved the existing policy of reservation and promotion in the State of Uttar Pradesh. In the State of Assam, in the SC/ST Reservation Act of 1978, provisions have already been made for reservation of vacancies and posts for the S Cs and S Ts, both in direct recruitment and promotion. Therefore, in the State of Assam, there is no impediment in implementing the constitutional mandate under Article 335 of the Constitution of India as well as the mandate of the Supreme Court issued in *Indra Sawhney's case (supra)*. In my considered view, it made the matter easier in Assam inasmuch as the Supreme Court in Ashok Kumar Gupta's case (*supra*) held that policy of reservation is a part of socio-economic justice enshrined in the preamble of Constitution of India and the fundamental rights under Articles 15, 15(1), 15(4), 16(1), 16(4), 16(4A), 46 and 335 and other related Articles to give effect to the respective constitutional objectives. One should not suffer from conflict of law between the right of promotion which is a statutory right and the right under Article 16(4A) which is a fundamental right. The members of the reserved category has the fundamental right for promotion under Article 16(4A) and also the statutory right for promotion under the service rules on fulfillment of eligibility criteria with or without any relaxations.

16. Coming to roster point, it is to be noted that the SC/ST Reservation Act of 1978, provides for 20-point roster providing reservation for SC, ST(P) and ST(H). Each Department has to maintain a register to give effect to the reservation of vacancies for the S Cs and S Ts. Gainfully, I would, in this respect, refer to *R.K. Sabharwal and others Vs. State of Punjab and others*, wherein it has been held

that when a percentage of reservation is fixed in respect of a cadre and the roster point indicates the reserve points, the posts shown at the reserved points are to be filled up from amongst the members of reserved categories and the candidates belonging to the general category are not entitled to be considered for reserved posts. Further, it has been held that for making any provision for reservation in appointment and posts in favour of any backward class of citizens, it is incumbent on the State Government under Article 16(4) to reach to a conclusion that the backward class or classes for which the reservation is made is not adequately represented in the State. In the present case, nothing has been shown from the record that the State Government had done any exercise so as to show that the SC is under-represented requiring filling up of all the 4 posts of Joint Director from SC community alone. For this reason, the decision of the State authorities to fill up all the 4 posts of Joint Director by the candidates from SC community cannot be accepted as valid and justified. I may add from paragraph 5 of Sabharwal's case (supra) - ";.... The percentage of reservation is the desired representation of the Backward Classes in the State Services and is consistent with the demographic estimate based on the proportion worked out in relation to their population. The numerical quota of the posts is not a shifting boundary but represents a figure with due application of mind.....". The natural question that may be put is whether the State Respondents ever applied their minds to this aspect. The answer as I find is in the negative.

17. It is held in Sabharwal's case (supra) that roster is implemented in the form of a running account from year to year and the purpose of such running account is to make sure that SCs/STs and Backward Classes get their percentage of reserved posts. Such account is to be maintained to readily make an assessment as to whether there is an adequate representation of the aforesaid reserved categories. The mandate of the Constitution of India is that in every case where the State decides to provide for reservation, there must exist 2 circumstances, namely, "backwardness" and "inadequacy of representation". Articles 16(4) and 16(4A) does not specify the yardstick to identify and measure the "backwardness" and "inadequacy of representation" but the duty is cast upon the State concerned to identify and measure the "backwardness", "inadequacy of representation" and "overall administrative efficiency" while making the provision of reservation for the SC/ST communities. In order to justify the provision made for SC/ST, the State must show that before filling up the posts by promotion by reserved category, it has done the required exercise to determine the "backwardness", "inadequacy of representation" and "overall administrative efficiency" of the said community in service.

18. For the decisions and reasonings made as above, I would come to a conclusion that the State Respondents are authorized to take steps for promotion of SC/ST candidates towards implementation of provisions under Article 335 read with Articles 16(4) and 16(4A) of the Constitution of India even though no special enactment has been made therefore as mandated by the Supreme Court in Indra Sawhney's case (supra) and the steps taken by the State of Assam, in

the present case, under the existing provision of SC/ST Reservation Act of 1978, towards implementation of the said mandates under the aforesaid provision of Constitution of India, cannot be termed as unauthorized and illegal. However, at the same time, the decision taken by the Respondent authorities for filling up all the 4 posts of Joint Director is found to be unreasonable and without any sound basis inasmuch as no exercise with application of mind was done in respect of determining the "inadequacy of representation" of the SC community in the State. The decision of the Selection Committee taken in its meeting held on 24.8.2009, so far as it relates to promotion to the rank of Joint Director, Soil Conservation Department, for the aforesaid reasons, is liable to be interfered with and accordingly, the impugned Selection made vide Selection Committee proceedings dated 24.8.2009 is quashed and set aside.

19. In view of the above, the State Respondents, particularly, Respondent No. 1 (Commissioner and Secretary to the Government of Assam, Department of Soil Conservation, Dispur) and Respondent No. 2 (Director of Soil Conservation, Guwahati) are directed to do required/necessary exercise for determining the inadequacy of representation of all the reserved categories and their entitlement of respective percentage of reservation in Service under State Soil Conservation Department as per their "demographic estimate" as directed by the Supreme Court in above cited case and maintenance of roster point and also with required/ necessary prior concurrence from the WPT & BC Department, Government of Assam, for filling up the reserved posts of ST(P) and ST(H) by the candidate(s) from SC community with due regard to the provision under SC/ST Reservation Act of 1978 and rules made thereunder. The Respondent No. 3, viz., Selection Committee, through its Member Secretary (who is the Director of Soil Conservation Department) is also directed to initiate fresh process as indicated above and in the light of the decisions and Rulings mentioned above. The State Respondents shall place the matter again before the Selection Committee for re-consideration within a period of 3 (three) months from the date of receipt of a certified copy of this order from the Petitioners and on receipt of necessary materials and records, the Respondent Selection Committee shall hold its sitting and make its recommendations within a period of 1(one) month therefrom.

20. With the above observations and directions, the instant writ petition stands allowed to the extent indicated above.

21. There shall be no order as to costs.