

GAHC010270052022



2025:GAU-AS:8386-DB

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

Case No. : WA/59/2023

KAMAL DEBNATH
S/O KHITISH DEBNATH, R/O WARD NO. 3, KALABHANGA, BARPETA
ROAD, DIST.- BARPETA (M), ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR. A
REP. BY THE COMMISSIONER AND SECRETARY, HOME (A) DEPTT. DISPUR,
GUWAHATI-781006

2:THE JOINT SECRETARY
HOME (A) DEPTT. DISPUR
GUWAHATI-781006

Advocate for the Petitioner : MR. P J SAIKIA, MS D DUTTA

Advocate for the Respondent : GA, ASSAM,

Linked Case : WA/219/2020

SMTI. LEENA KRISHNA KAKATI
D/O- TIKENDRA NATH KAKATI
W/O- DHRUBA JYOTI PATHAK
AGED ABOUT 35 YEARS
R/O- H/NO. 20
BAGHARBARI- SATGAON ROAD
PANJABARI
P.O. PANJABARI

P.S. DISPUR
PIN- 781037
DIST.- KAMRUP(M)
ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI- 781006
ASSAM.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI- 781006.

Advocate for : MR F KHAN
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WA/50/2021

DILIP KUMAR KALITA
S/O- SHRI BHABA KANTA KALITA
R/O- VILL.- SENCHOWA
P.O. SENCHOWA TINIALI
P.S. NAGAON
DIST.- NAGAON
ASSAM
PIN- 785201.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI- 781006

ASSAM.

2:THE SECRETARY TO THE GOVT. OF ASSAM
HOME (A) DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE ADDITIONAL SECRETARY TO THE GOVT. OF ASSAM
HOME (A) DEPARTMENT
DISPUR
GUWAHATI- 781006.

Advocate for : MR F KHAN
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WA/26/2021

GULSHAN DAOLAGUPU
S/O- LATE GOVINDDAOLAGUPU
R/O- FLAT NO. 408
SILVER OAK APARTMENT
R.G. BARUAH ROAD
MANIK NAGAR
GUWAHATI- 781005
P.O. AND P.S. DISPUR
DIST.- KAMRUP(M)
ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI- 781006
ASSAM

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME (A) DEPARTMENT
DISPUR
GUWAHATI- 781006
ASSAM.

3:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
HOME (A) DEPARTMENT

DISPUR
GUWAHATI- 781006
ASSAM

Advocate for : MR. M P CHOUDHURY
Advocate for : SR. GA
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WA/196/2020

SABBIRA IMRAN
D/O- NURUL IMRAN
R/O- MANIRAM DEWAN ROAD
NEAR NAGAON SADAR THANA
KHAN BAHADUR COMPLEX
P.S. AND DIST.- NAGAON
ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI- 781006.

2:THE SECRETARY TO THE GOVT. OF ASSAM
HOME (A) DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE ADDITIONAL SECRETARY TO THE GOVT. OF ASSAM
HOME (A) DEPARTMENT
DISPUR
GUWAHATI- 781006.

Advocate for : MR. S K TALUKDAR
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WA/103/2020

DWITHUN BORGAYARY
R/O HATIMATHA

WARD NO. 8
P.O. AND P.S. KOKRAJHAR
ASSAM
PIN 783370

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE CHIEF SECY. TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI 06

2:THE ADDL. CHIEF SECY. TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPTT.
DISPUR
GUWAHATI 06

3:THE SECY. TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPTT.
DISPUR
GHY-6

Advocate for : MR. K N CHOUDHURY
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS

Linked Case : WA/216/2021

ANIRUDHYA ROY
S/O MANOMOHAN ROY
R/O OXIGURI
P.O.-SRINAGAR
P.S.-TAMARHAT
DIST-DHUBRI
ASSAM
PIN-783332

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM
DISPUR
GUWAHATI-781006

2:THE ADDITIONAL CHIEF SECRETARY TO THE GOVERNMENT OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI-781006

3:THE SECRETARY TO THE GOVERNMENT OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI-781006

Advocate for : MR. S A HUSSAIN
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WA/47/2021

GANESH CHANDRA DAS AND 2 ORS.
S/O- SRI RAGHAB CHANDRA DAS
R/O- BELTOLA COLLEGE ROAD
BELTOLA
GUWAHATI- 781028
P.O. BELTOLA
P.S. BASISTHA
DIST.- KAMRUP(M)
ASSAM

2: SMTI. DEEPSIKHA PHUKAN
D/O- DIPAK KUMAR PHUKAN
R/O- H/NO. 9
A.G. OFFICE ROAD
D. TAROO PATH
KRISHNAPUR
GUWAHATI- 781028
P.O. BELTOLA
P.S. BASISTHA
DIST.- KAMRUP(M)
ASSAM.

3: SMTI. MONIKA TERONPI
W/O- SRI HABE TIMUNG
R/O- RONGHINGCHONG (NEAR PANCHAYAT OFFICE)
KARBI ANGLONG- 782460
P.O. AND P.S. DIPHU
DIST.- KARBI ANGLONG
ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI- 781006
ASSAM.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI- 781006
ASSAM.

3:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI- 781006
ASSAM.

Advocate for : MR N DUTTA
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WA/333/2021

HARSHAJYOTI BORA AND 7 ORS.
S/O SRI ANIL CHANDRA BORA
R/O BISNHURAVA ROAD
P.S.-TEZPUR
DIST-SONITPUR
ASSAM

2: JAYANTA KUMAR NATH
S/O NAGEN CHANDRA NATH
R/O VILL-KABIACHUBA
BORDOIGURI
P.S.-SIPAJHAR
DIST- DARRANG
ASSAM

3: HEMANTA SAIKIA
S/O BHOGESWAR SAIKIA
VILL-LAKHTAKIA
P.S.-DHEMAJI
DIST-DHEMAJI

ASSAM

4: MS. SABBIRA IMRAN
D/O SRI NURUL IMRAN
R/O MANIRAM DEWAN ROAD
NEAR NAGAON SADAR THANA
P.O.-NAGAON
PIN-782001

5: DILIP KR. KALITA
S/O LT. BHABA KANTA KALITA
R/OSENCOWA TINIALI
P.O.-SENCOWA
DIST-NAGAON
ASSAM
PIN-782002

6: JATINDRA PRASAD BARUA
S/O DR. HOMESWAR BARUAH
R/O AMOLAPATTY
B.M. ROAD
NAGAON
ASSAM

7: KAUSHIK KALITA
S/O SRI SANATAN CH. KALITA
R/O HOUSE NO. 28
LAKHIMI NAGAR
HATIGAON
GUWAHATI-781038

8: SMTI. KAVITA DAS
R/O SRIMANTAPUR
BHANGAGARH
GUWAHATI
ASSAM
PIN-781032
VERSUS

THE STATE OF ASSAM AND 2 ORS.
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM
DISPUR
GUWAHATI-06

2:THE ADDITIONAL CHIEF SECRETARY TO THE GOVERNMENT OF ASSAM
HOME AND POLITICAL DEPARTMENT
DISPUR

GUWAHATI-781006

3:THE ADDITIONAL SECRETARY TO THE GOVERNMENT OF ASSAM
HOME AND POLITICAL DEPARTMENT

DISPUR

GUWAHATI-06

Advocate for : MR. J PATOWARY

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WA/128/2020

KUNAL DAS

S/O- TAPAN DAS

R/O- VILL.- ULABARI

P.O. ULABARI

P.S. PALTANBAZAR

DIST.- KAMRUP(M)

ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS.

REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM

DISPUR

GUWAHATI-06.

2:THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT

DISPUR

GUWAHATI-06.

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PERSONAL (A) DEPARTMENT

DISPUR

GUWAHATI- 06.

4:THE SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT

DISPUR

GUWAHATI-06.

Advocate for : MR. A K BHUYAN

Advocate for : SC

APSC appearing for THE STATE OF ASSAM AND 3 ORS.

Linked Case : WA/95/2022

GEETALI DOLEY
RESIDING AT VILLAGE TARIANI BHEKELI
PO DHINPORA BALIJAN
P.S. BOGIMADI
DIST.-LAKHIMPUR
PIN-786003

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-781006

2:THE PRINCIPAL SECRETARY
TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPTT. BLOCK-A
3RD FLOOR
JANATA BHAWAN
DISPUR
GUWAHATI-781006

3:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPTT. BLOCK-A
3RD FLOOR
JANATA BHAWAN
DISPUR
GUWAHATI-781006

4:THE SECRETARY
TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPTT. BLOCK-A
3RD FLOOR
JANATA BHAWAN
DISPUR
GUWAHATI-781006

Advocate for : MR A JAIN

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 3 ORS.

Linked Case : WA/147/2020

JATINDRA PRASAD BARUAH
S/O- DR. HOMESWAR BARUAH
R/O- AMOLAPATTY
B.M. ROAD
P.O. NAGAON
P.S. SADAR
DIST.- NAGAON
ASSAM
PIN- 782001.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-06.

2:THE SECRETARY TO THE GOVT. OF ASSAM
HOME (A) DEPARTMENT
DISPUR
GUWAHATI-06.

3:THE ADDITIONAL SECRETARY TO THE GOVT. OF ASSAM
HOME (A) DEPARTMENT
DISPUR
GUWAHATI-06.

Advocate for : MR. R P KAKOTI SR. ADV.
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WA/14/2022

SURANJITA HAZARIKA
W/O. SRI SAURAV KUMAR DEKA
HOUSE NO. 34
KALYANI NAGAR
KAHILIPARA
GUWAHATI-781019.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-06.

2:THE COMMISSIONER AND SECY.
TO THE GOVT. OF ASSAM
TRANSPORT DEPTT.
DISPUR
GUWAHATI-781006.

3:THE SECRETARY
TO THE GOVT. OF ASSAM
TRANSPORT DEPTT.
DISPUR
GUWAHATI-781006.

4:THE ADDL. SECRETARY
TO THE GOVT. OF ASSAM
TRANSPORT DEPTT.
DISPUR
GUWAHATI-06.

Advocate for : MR. J PATOWARY
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 3 ORS.

Linked Case : WA/279/2021

RAJU SAHA
S/O- LATE RAMKRISHNA SAHA
R/O- KALAHBHANGA (MISSION ROAD)
P.O. AND P.S. BARPETA ROAD
DIST.- BARPETA
ASSAM
PIN- 781315.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVERNMENT OF ASSAM
DISPUR

GUWAHATI-781006.

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

3:THE SECRETARY TO THE GOVT. OF ASSAM
LABOUR WELFARE DEPARTMENT
DISPUR
GUWAHATI-781006.

Advocate for : MR. S A HUSSAIN
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WA/118/2020

SUSOVAN DAS
S/O- SRI SALIL KUMAR DAS
LONGAI ROAD
SREEPALLI
KARIMGANJ TOWN
P.O.- SETTLEMENT ROAD- 788712
DIST.- KARIMGANJ
ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM
PERSONAL (A) DEPTT.
DISPUR
GHY- 6.

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

3:THE SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPTT.
DISPUR
DISPUR GUWAHATI- 781006.

4:THE ASSAM PUBLIC SERVICE COMMISSION
REP. BY THE CHAIRMAN
ASSAM PUBLIC SERVICE COMMISSION
KHANAPARA
GUWAHATI- 781022
ASSAM.

5:THE DEPUTY COMMISSIONER
KARIMGANJ DISTRICT
P.O.- KARIMGANJ- 788710
DIST.- KARIMGANJ
ASSAM.

Advocate for : MR. N DHAR
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 4 ORS.

Linked Case : WA/101/2020

SMTI RUMI SAIKIA
R/O VILL. NAGAON
ROAD PANINGAON
JYOTINAGAR
HOUSE NO. 69A
P.O. ITACHALI
DIST. NAGAON
ASSAM
PIN 782003

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE CHIEF SECY. TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI 06

2:THE ADDITIONAL CHIEF SECY. TO THE GOVT. OF ASSAM

PERSONNEL (A) DEPTT.
DISPUR
GUWAHATI 06

3:THE SECY. TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPTT.

DISPUR
GUWAHATI 6

Advocate for : MR. K N CHOUDHURY
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS

Linked Case : WA/169/2020

MANZOOR ELAHI LASKAR
S/O- MAHI UDDIN LASKAR
R/O- MEHERPUR
P.O. SILCHAR
DIST.- CACHAR
ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI- 781006.

2:THE ADDITIONBAL CHIEF SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI- 781006.

Advocate for : MR. A B T HAQUE
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WA/98/2020

PALLAVI SHARMA
D/O SRI RAM PRASAD SARMAH
HOUSE NO. 6
B.K. ROAD

KACHARIBASTI
ULUBARI
GUWAHATI
PIN 781007
DIST. KAMRUP (M)
ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE CHIEF SECY. TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI 781006
ASSAM.

2:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM

HOME (A) DEPTT.
DISPUR
GUWAHATI 781006

3:THE SECY. TO THE GOVT. OF ASSAM

HOME (A) DEPTT.
DISPUR
GUWAHATI 781006

Advocate for : MR. P N SHARMA
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS

Linked Case : WA/163/2020

BARNALI DAS
D/O- JAGADISH DAS
R/O- VILL.- PIJUPARA
P.O. AND P.S. NAGARBERA
PIN- 781037
DIST.- KAMRUP
ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS.

REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-781006
ASSAM.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI-781006.

3:THE SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI- 781006.

Advocate for : MR F KHAN
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WA/321/2021

SUNAYANA AIDEW
W/O DR. PRANJAL BORA
R/O B.N. MAHANTA ROAD
HOUSE NO. 54
AMOLAPATTY
NAGAON
P.O.-NAGAON
P.S.-NAGAON SADAR
DIST-NAGAON
WARD NO. 10
PIN-782001
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM
DISPUR
GUWAHATI-781006

2:THE PRINCIPAL SECRETARY/JOINT SECRETARY TO THE GOVERNMENT
OF ASSAM
FINANCE (TAXATION) DEPARTMENT

1ST FLOOR
F BLOCK
JANATA BHAWAN
GUWAHATI-781006

3:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
FINANCE (TAXATION) DEPARTMENT
2ND FLOOR
F BLOCK
JANATA BHAWAN
DISPUR
GUWAHATI-781006

4:THE COMMISSIONER OF TAXES
GOVERNMENT OF ASSAM
KAR BHAWAN
G.S ROAD
DISPUR
GUWAHATI-781006

5:THE DEPUTY COMMISSIONER OF TAXES
NAGAON ZONE
GOVERNMENT OF ASSAM
COURT CAMPUS
NAGAON-782001

Advocate for : MR. P K MUNIR
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 4 ORS.

Linked Case : WA/206/2020

SAIBUR RAHMAN BARBHUIYA
S/O- TAYEEBUR RAHMAN BARBHUIYA
R/O- TML ROAD
KADAMTAL
P.O. RONGPUR
P.S. SILCHAR
DIST.- CACHAR
ASSAM
PIN- 788009.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI- 781006
ASSAM

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI- 781006.

Advocate for : MR F KHAN
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WA/93/2022

SRABANTI SENGUPTA
RESIDING AT BHOLANATH ROAD
VILLAGE KADAMONI
PO DIBRUGARH
PS DIBRUGARH
DIST DIBRUGARH WARD NO. 3
786001

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM.
DISPUR
GUWAHATI 781006

2:THE PRINCIPAL SECRETARY
TO THE GOVT. OF ASSAM
PERSONNEL(A) DEPARTMENT
BLOCK A
3RD FLOOR
JANATA BHAWAN
DISPUR
GUWAHATI 781006

3:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
PERSONNEL(A) DEPARTMENT
BLOCK A
3RD FLOOR
JANATA BHAWAN
DISPUR
GUWAHATI 781006

4:THE SECRETARY
TO THE GOVT. OF ASSAM
PERSONNEL(A) DEPARTMENT
BLOCK A
3RD FLOOR
JANATA BHAWAN
DISPUR
GUWAHATI 781006

Advocate for : MR A JAIN
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 3 ORS.

Linked Case : WA/119/2020

SRI BHASKAR DUTTA DAS
S/O- SRI BHADRESWAR DUTTA DAS
H/NO. 9
A.G. OFFICE ROAD
P.O. GUWAHATI- 781028
DIST.- KAMRUP(M)
ASSAM.

VERSUS

STATE OF ASSAM AND 2 ORS
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI- 781006.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
REVENUE AND DISASTER MANAGEMENT DEPARTMENT
DISPUR
GUWAHATI- 781006.

Advocate for : MR. N DHAR
Advocate for : SR. GA
ASSAM appearing for STATE OF ASSAM AND 2 ORS

Linked Case : WA/335/2023

ABHISHEK BORBORA
R/O HOUSE NO. 26
PUB- SARANIA MAIN ROAD
5TH BYELANE
RAJGARH
GUWAHATI
ASSAM
PIN-781003.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE
GOVERNMENT OF ASSAM
EXCISE DEPARTMENT
DISPUR
GUWAHATI- 06.

2:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
EXCISE DEPARTMENT
DISPUR
GUWAHATI- 6.

3:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
EXCISE DEPARTMENT
DISPUR
GUWAHATI- 6.

4:THE JOINT SECRETARY TO THE GOVERNMENT OF ASSAM
EXCISE DEPARTMENT
DISPUR
GUWAHATI- 6.

Advocate for : MR. K N CHOUDHURY
Advocate for : SC
EXCISE DEPTT. appearing for THE STATE OF ASSAM AND 3 ORS.

Linked Case : WA/31/2021

BHARGAV PHUKAN
S/O SRI DIPAK KUMAR PHUKAN
R/O HOUE NO. 9 D. TAROO PATH
KRISHNAPUR BELTOLA
GUWAHATI-781028
P.S. BASISTHA
P.O. LAKHIMANDIR
DIST. KAMRUP (M)
ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY CHIEF SECRETARY TO THE GOVT. OF ASSAM DISPUR
GUWAHATI-781006
ASSAM

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
HOME (A) DEPTT. DISPUR
GUWAHATI-781006
ASSAM

3:THE PRINCIPAL SECRETARY
TO THE GOVT. OF ASSAM
HOME (A) DEPTT. DISPUR
GUWAHATI 781006
ASSAM

Advocate for : MR. M P CHOUDHURY
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WA/159/2022

DIPAK KHANIKAR
RESIDENT OF NATUN BAZAR

PO RATANPUR
PS JENGRAIMUKH
DIST MAJULI
WARD NO. 10
ASSAM 785105

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI 781006

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR GUWAHATI 781006

3:THE SECRETARY
TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR GUWAHATI 781006

Advocate for : MS H AHMED
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS

Linked Case : WA/217/2021

HIMANGSHU CHOUDHURY
S/O BIBHU BHUSAN CHOUDHURY
R/O BELTOLA
P.O.-BALADMARI
P.S.-GOALPARA
DIST-GOALPARA
ASSAM
PIN-783121

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM
DISPUR

GUWAHATI-781006

2:THE ADDITIONAL CHIEF SECRETARY TO THE GOVERNMENT OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI-781006

3:THE SECRETARY TO THE GOVERNMENT OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI-781006

Advocate for : MR. S A HUSSAIN
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WA/141/2020

PRASENJIT KR. GHOSH
S/O- LATE SURESH KUMAR GHOSH
R/O- H/NO. 40
APRO COLONY LANE
ULUBARI
GUWAHATI
P.S. PALTANBAZAR
DIST.- KAMRUP(M)
ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER AND SECRETARY
TRANSPORT DEPARTMENT
GOVT. OF ASSAM
DISPUR
GUWAHATI- 781006
ASSAM.

2:THE SECRETARY
TRANSPORT DEPARTMENT
GOVT. OF ASSAM
DISPUR
GUWAHATI- 781006
ASSAM

3:THE ADDITIONAL SECRETARY
TRANSPORT DEPARTMENT
GOVT. OF ASSAM
DISPUR
GUWAHATI- 781006
ASSAM.

Advocate for : MR S S DEY
Advocate for : SC
TRANSPORT appearing for THE STATE OF ASSAM AND 2 ORS

Linked Case : WA/131/2020

DEBAJIT BORA AND ANR.
S/O- LATE JITENDRA MOHAN BORA
R/O- VILL.- GANDHINAGER
L.K. ROAD
P.S. AND DIST.- NAGAON
ASSAM
PIN- 782002.

2: RAJARSHI SEN DEKA
S/O- NILAMANI SEN DEKA
R/O- LACHIT NAGAR
KANAKLATA PATH
GUWAHATI- 781007.
VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-06.

2:THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI-06.

3:THE SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI-06.

Advocate for : MR. K N CHOUDHURY
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WA/185/2020

UTPAL BHUYAN
S/O- LATE JOGEN BHUYAN
R/O- MODHUPUR VILLAGE
P.O. KURUKANI
P.S. KAKOTIBARI
DIST.- CHARAIDEO
PIN- 785691
ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI- 781006.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE SECRETARY TO THE GOVT. OF ASSAM

PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI- 781006.

Advocate for : MR A D CHOUDHURY
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WA/70/2023

NISHA MONI DEKA
WIFE OF BIKASH KUMAR PINCHA
RESIDENT OF SRCB ROAD
FANCY BAZAR
DIST.- KAMRUP (M)
ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR. B
REPRESENTED BY THE COMMISSIONER AND SECRETARY
HOME (A) DEPARTMENT
DISPUR
GUWAHATI- 781006.

2:THE JOINT SECRETARY
HOME (A) DEPARTMENT
DISPUR
GUWAHATI- 781006.

Advocate for : MR. P J SAIKIA
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND ANR. B

Linked Case : WA/155/2020

BADRUL ISLAM CHOUDHURY
S/O- LATE ABDUS SHAKUR CHOUDHURY
R/O- VILL. AND P.O. MOHAKAL
P.S. BADARPUR
DIST.- KARIMGANJ
ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI- 781006.

2:THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI- 781006.

Advocate for : MR. S K TALUKDAR

Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WA/185/2021

RHITURAJ NEOG
S/O- SRI RAJENDRA PRASAD NEOG
R/O- HN-1
BYE LANE NO. 2
CHANDAN NAGAR
SURVEY
BELTOLA
GUWAHATI- 781006
DIST.- KAMRUP(M)
ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI- 781006
ASSAM

2:THE COMMISSIONER AND SECRETARY
GOVT. OF ASSAM
FINANCE (TAXATION) DEPARTMENT
DISPUR
GUWAHATI- 781006
ASSAM

3:THE JOINT SECRETARY
GOVT. OF ASSAM
FINANCE (TAXATION) DEPARTMENT
DISPUR
GUWAHATI- 781006
ASSAM

4:THE DEPUTY SECRETARY
GOVT. OF ASSAM
FINANCE (TAXATION) DEPARTMENT
DISPUR
GUWAHATI- 781006
ASSAM

Advocate for : MR. N J KHATANIAR
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 3 ORS.

Linked Case : WA/22/2023

VIKASH KUMAR PINCHA
S/O- SHIKHAR CHAND PINCHA
R/O- SHREE ARIHANT GARMENTS
B.G. MARKET
2ND FLOOR

SRCB ROAD
FANCY BAZAR
DIST- KAMRUP (M)
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR. H
REP. BY THE COMMISSIONER AND SECRETARY FINANCE(TAXATION)
DEPARTMENT
DISPUR
GUWAHATI- 781006

2:THE JOINT SECRETARY
FINANCE(TAXATION)
DEPARTMENT
DISPUR
GUWAHATI- 781006.

Advocate for : MR. P J SAIKIA
Advocate for : MR. B GOGOI appearing for THE STATE OF ASSAM AND ANR. H

Linked Case : WA/75/2020

SMTI PALLABI SARMA CHAUDHURY
W/O SRI SURAJIT CHAUDHURY
R/O HOUSE NO. 26
KRISHNA NAGAR CHATTRIBARI
P.S. PALTANBAZAR
GUWAHATI 01
DIST. KAMRUP (M)

ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE CHIEF SECY. TO THE GOVT .OF ASSAM
DISPUR
GUWAHATI-6

2:THE ADDITIONAL CHIEF SECY. TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPTT.
DISPUR
GUWAHATI-6

3:THE SECY. TO THE GOVT. OF ASSAM

PERSONNEL (A) DEPTT.. DISPUR
GUWAHATI 781006

Advocate for : MR A C BORBORA

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 2 ORS

Linked Case : WA/111/2020

KAVITA DAS
R/O- SRIMANTAPUR
BHANGAGARH
GUWAHATI
ASSAM
PIN- 781032

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-06.

2:THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPARTMENT
DISPUR
GUWAHATI-06.

3:THE SECRETARY TO THE GOVT. OF ASSAM
HOME (A) DEPARTMENT
DISPUR
GUWAHATI-06.

4:THE JOINT SECRETARY TO THE GOVT. OF ASSAM
HOME (A) DEPARTMENT
DISPUR
GUWAHATI-6.

Advocate for : MR. K N CHOUDHURY
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 3 ORS.

Linked Case : WA/213/2020

MD. MUSTAFA AHMED BARBHUIYA
S/O- ISHAQUE ALI BARBHUIYA
R/O- H/NO. 5
LNB ROAD
HATIGAON
P.O. AND P.S. HATIGAON
DIST.- KAMRUP(M)
PIN- 788038.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI- 781006.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI- 781006.

Advocate for : MR. M H LASKAR
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WA/110/2020

DHRUBOJYOTI CHAKRABORTY
S/O- LATE SUDHANGSHU SEKHAR CHAKRABORTY
SETTLEMENT ROAD
KARIMGANJ TOWN
P.O. KARIMGANJ- 788710
DIST.- KARIMGANJ
ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI- 781006.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI- 781006.

4:THE ASSAM PUBLIC SERVICE COMMISSION
REP. BY THE CHAIRMAN
ASSAM PUBLIC SERVICE COMMISSION
KHANAPARA
GUWAHATI- 781022
ASSAM.

5:THE DEPUTY COMMISSIONER

HAILAKANDI DISTRICT
P.O. HAILAKANDI- 788151
ASSAM.

Advocate for : MR. N DHAR
Advocate for : SR
GA

ASSAM appearing for THE STATE OF ASSAM AND 4 ORS.

Linked Case : WA/154/2020

JYOTIRMOY ADHIKARY
R/O- WARD NO. 1
KANAKLATA ROAD
P.O. AND P.S. BONGAIGAON
ASSAM
PIN- 783380.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-06.

2:THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF ASSAM
LABOUR WELFARE DEPARTMENT
DISPUR
GUWAHATI- 06.

3:THE SECRETARY TO THE GOVT. OF ASSAM
LABOUR WELFARE DEPARTMENT
DISPUR
GUWAHATI-06.

Advocate for : MR. K N CHOUDHURY
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WA/180/2020

BARNALI DEVI
W/O- DIPJYOTI UZIR
R/O- H/NO. 6
HATIGAON
P.S. HATIGAON
PIN- 781038
DIST.- KAMRUP(M)
ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI- 781006.

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
FINANCE (TAXATION) DEPARTMENT
1ST FLOOR
F BLOCK
JANATA BHAWAN
DISPUR
GUWAHATI- 781006.

3:THE COMMISSIONER OF TAXES
GOVT. OF ASSAM
KAR BHAWAN
G.S. ROAD
DISPUR
GUWAHATI- 781006.

4:THE DEPUTY COMMISSIONER OF TAXES

NALBARI UNIT
ZONE B
NALBARI
ASSAM
PIN- 781335.

Advocate for : MR. A CHAMUAH
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 3 ORS.

Linked Case : WA/277/2021

JOYDEV MAHANTA
S/O LATE NILMONI MAHANTA
R/O BAPUJI NAGAR
P.O.-BALADMARI
P.S.-GOALPARA
DIST- GOALPARA
ASSAM
PIN-783121

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM
DISPUR
GUWAHATI-781006

2:THE ADDITIONAL CHIEF SECRETARY TO THE GOVERNMENT OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI-781006

3:THE SECRETARY TO THE GOVERNMENT OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI-781006

Advocate for : MR. S A HUSSAIN
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WA/96/2022

MANAS PRATIM HALOI
AEC ROAD
ANGAD NAGAR PATH
HOUSE NO. 41
P.O. GAUHATI UNIVERSITY
P.S. JALUKBARI
DIST. KAMRUP(M)
WARD NO. 02
PIN- 781014.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-781006.

2:THE PRINCIPAL SECRETARY/ JOINT SECRETARY TO THE GOVT. OF
ASSAM
FINANCE (TAXATION) DEPTT.

1ST FLOOR
F BLOCK
JANATA BHAWAN
DISPUR
GUWAHATI-781006.

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE (TAXATION) DEPTT.
2ND FLOOR
F BLOCK
JANATA BHAWAN
DISPUR GUWAHATI-781006.

4:THE COMMISSIONER OF TAXES
GOVT. OF ASSAM
KAR BHAWAN
G.S. ROAD
DISPUR
GUWAHATI- 781006.

5:THE DEPUTY COMMISSIONER OF TAXES
NAGAON ZONE
GOVT. OF ASSAM
COURT CAMPUS
NAGAON- 782001.

Advocate for : MR A JAIN
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 4 ORS.

Linked Case : WA/125/2020

AMRIT JYOTI SHARMA
S/O- LATE PRAFULLA CHANDRA SHARMA
NEAR AMOLAPATTY
GOLAGHAT TOWN
P.O. AND DIST.- GOLAGHAT
ASSAM
PIN- 785621.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR

GUWAHATI- 781006.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
REVENUE AND DISASTER MANAGEMENT DEPARTMENT
DISPUR
GUWAHATI- 781006.

Advocate for : MR. N DHAR
Advocate for : SR. GA
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS

Linked Case : WA/126/2020

HARSHAJYOTI BORA AND 2 ORS.
S/O- ANIL CHANDRA BORA
R/O- BISHNURAVA ROAD
P.S. TEZPUR
DIST.- SONITPUR
ASSAM.

2: JAYANTA KUMAR NATH
S/O- NAGEN CHANDRA NATH
R/O- VILL.- KABAICHUBA
BORDOLGURI
P.S. SIPAJHAR
DIST.- DARRANG
ASSAM.

3: HEMANTA SAIKIA
S/O- BHOGESWAR SAIKIA
VILL.- LAKHTAKIA
P.S. DHEMAJI
DIST.- DHEMAJI
ASSAM.
VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-06.

2:THE SECRETARY TO THE GOVT. OF ASSAM
HOME (A) DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE ADDITIONAL SECRETARY TO THE GOVT. OF ASSAM
HOME (A) DEPARTMENT
DISPUR
GUWAHATI-6.

Advocate for : MR. K N CHOUDHURY
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WA/137/2020

NIPAN KR PATHAK
S/O SRI SUSENDRA KUMAR PATHAK
PERMANENT R/O VILL. MAIRAMARA
P.O. AND P.S HOWLY
DIS. BARPETA
ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP .BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-6

2:THE PRINCIPAL SECRETARY
TO THE GOVT OF ASSAM
FINANCE (TAXATION) DEPTT. 1ST FLOOR
F BLOCK
JANATA BHAWAN
DISPUR
GUWAHATI-781006

3:THE JOINT SECRETARY
TO THE GOVT OF ASSAM
FINANCE (TAXATION) DEPTT. 1ST FLOOR
F BLOCK
JANATA BHAWAN
DISPUR
GUWAHATI-781006

4:THE COMMISSIONER AND SECRETARY
TO THE GOVT OF ASSAM
FINANCE (TAXATION) DEPTT. 2ND FLOOR
F BLOCK
JANATA BHAWAN
DISPUR
GUWAHATI-781006

5:THE COMMISSIONER OF TAXES
GOVT. OF ASSAM
KAR BHAWAN
G.S. ROAD
DISPUR
GUWAHATI-6

6:THE DEPUTY COMMISSIONER OF TAXES
KOKRAJHAR

Advocate for : MR. A K BHUYAN
Advocate for : SC
APSC appearing for THE STATE OF ASSAM AND 5 ORS.

Linked Case : WA/174/2020

KAUSHIK KALITA
S/O- SANATAN CHANDRA KALITA
R/O- HATIGAON
LAKHIMINAGAR
P.O. AND P.S. HATIGAON
DIST.- KAMRUP(M)
ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI- 781006.

2:THE SECRETARY TO THE GOVT. OF ASSAM
HOME (A) DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE ADDITIONAL SECRETARY TO THE GOVT. OF ASSAM
HOME (A) DEPARTMENT
DISPUR
GUWAHATI- 781006.

Advocate for : MR. A CHAMUAH
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WA/58/2021

MOON MAZOOMDER
W/O- PANKAJ CHAKRABORTY
R/O- H/NO. A 202
AAKRUTI AMITY
SRI ANANTHA NAGAR LAYOUT
PHASE 2
HUSKER GATE
HOSUR MAIN ROAD
ELECTRONIC CITY PHASE 2
BANGALORE
ELECTRONICS CITY KARNATAKA- 560100.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI- 781006
ASSAM.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPARTMENT
DISPUR
GUWAHATI- 781006.

Advocate for : MR F KHAN
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS.

BEFORE**HON'BLE MR. JUSTICE KALYAN RAI SURANA****HON'BLE MRS. JUSTICE MALASRI NANDI**

Case No.	Advocate for the Appellants
WA 75/2020	Mr. A.C. Borbora, Sr. Adv., assisted by Mrs. R. Borbora
WA 14/2022	Mr. A. Choudhury, Sr. Adv., assisted by Ms. Barnali Choudhury & Ms. Imsenkala
WA 137/2020	Mr. A.K. Bhuyan & Ms. N. Choudhury.
WA 26/2021, WA 31/2021	Mr. M.P. Choudhury
WA 47/2021	Mr. N.N.B. Choudhury
WA 147/2020	Mr. A.B. Dey & Mr. S. Sutradhar
WA 159/2022	Mr. Firuz Khan
WA 174/2020, WA 180/2020	Mr. A. Chamuah
WA 216/2021, WA 217/2021, WA 277/2021, WA 279/2021, WA 93/2022, WA 95/2022	Mr. S.A. Hussain
WA 96/2022, WA 333/2021, WA 219/2020, WA 206/2020, WA 50/2021, WA 58/2021, WA 111/2020	Mr. D. Das, Sr. Adv., assisted by Mr. S. Das & Ms. S. Sharma
WA 101/2020, WA 103/2020, WA 126/2020, WA 131/2020, WA 154/2020, WA 335/2023,	Mr. K.N. Choudhury, Sr. Adv., assisted by Mr. J. Patowary
WA 98/2022, WA 196/2020	Mr. D.K. Mishra, Sr. Adv., assisted by Mr. B. Prasad
WA 206/2020, WA 213/2020	Mr. M.H. Laskar
WA 155/2020, WA 169/2020	Mr. A.B.T. Haque
WA 110/2020, WA 118/2020, WA 119/2020, WA 125/2020	Mr. N. Dhar & Ms. S. Dasgupta

WA 163/2020	Mr. M.S. Hussain
WA 141/2020	Mr. S. Biswakarma
WA 321/2021	Mr. P.K. Munir
WA 185/2020	Mr. P. Dutta
WA 128/2020	Mr. B.D. Das, Sr. Adv., assisted by Mr. H.K. Sarma
WA 59/2023, WA 98/2020, WA 185/2021, WA 22/2023, WA 70/2023	None appears
Mr. T.J. Mahanta and Mr. P.P. Dutta, SC, APSC in WA 110/2020, WA 118/2020, WA 128/2020, WA 137/2020.	
Mr. Nalin Kohli, Sr. Adv., assisted by Mr. Ankit Roy, Ms. Nimisha Menon, Advocates and Mr. H.K. Hazarika, Govt. Advocate.	
Date of hearing	01.05.2025, 02.05.2025, 05.05.2025, 06.05.2025, 13.05.2025, 14.05.2025, 15.05.2025, 16.05.2025, 19.05.2025, 20.05.2025, 21.05.2025, 22.05.2025, 23.05.2025, 26.05.2025, 27.05.2025, 28.05.2025, 29.05.2025, 30.05.2025, 02.06.2025, 03.06.2025, 04.06.2025, 05.06.2025, 06.06.2025, 12.06.2025, 13.06.2025, 16.06.2025, 17.06.2025
Date of judgment	20.06.2025.

JUDGMENT AND ORDER

(CAV)

(K.R. Surana, J)

1) By these set of 40 (forty) intra-court appeals, the appellants have assailed the common judgment and order dated 18.03.2020, passed by the learned Single Judge in a batch of 49 writ petitions [*W.P.(C) Nos. 4198/2019 - Geetali Doley v. State of Assam & Ors.*, and 48 connected writ petitions], by which all the said writ petitions were dismissed.

2) It may be mentioned that a total of 49 (forty nine) writ appeals were filed. However, during the pendency of these appeals, the appellant in W.A. 127/2020 had expired. Moreover, it may also be mentioned that by a

separate order, W.A. No. 27/2024 has been segregated, as the appellant therein, who is one of the accused in Special Case No. 5/2021, (arising out of Bhangagarh P.S. Case No. 159/2017), has been convicted.

3) Out of the remaining 47 writ appeals, it has been noted that 8 (eight) appellants had filed two writ petitions each, which were dismissed by the said common judgment under appeal. Therefore, these eight appellants, namely, Kavita Das, Kaushik Kalita, Harshajyoti Bora, Jayanta Kumar Nath, Hemanta Saikia, Jatindra Prasad Baruah, Dilip Kalita and Sabbira Imran have filed two separate writ appeals against dismissal of one their writ petitions, but against their second set of writ petitions, they have filed a common appeal, being WA 333/2021. Accordingly, 47 appeals have heard together.

4) The back-ground on which the writ petitions were filed by the appellants was that they were appointed in service pursuant to their selection through Combined Competitive Examination (Mains), 2013 and 2014, which was conducted by the APSC. On the basis of First Information Report lodged by one complainant, alleging that the accused person named therein had contacted the complainant and told her to pay a sum of Rs.10.00 lakh in consideration of her recruitment to a particular post in exercise which was being carried out by APSC. Accordingly, Dibrugarh P.S. Case No. 936/2016 was registered. In a trap laid, the FIR named accused was apprehended while receiving cash from the complainant. As per the charge-sheet and supplementary charge-sheets filed in that case, it appears that during investigation that was carried out, the then Chairman of APSC along with several other accused had colluded with several candidates including the writ petitioners and with each other and indulged printing fake answer-scripts, which were given to the writ petitioners to re-write answer-scripts again after the examination and replaced them with the original

answer-scripts lying in the APSC strong-room; marks were found to be manipulated by using correction fluids and erasures and over-writing; the re-written answer-scripts either did not contain the signature of the invigilators or contained fake signatures, which did not match with the signatures of the concerned invigilators. All these were done for getting the writ petitioners selected in the CCE-2013 and CCE-2014 batch of APSC conducted examination. In course of time, the appellants were discharged from service and they have assailed their respective discharge by filing writ petitions, which were dismissed by the common judgment and order dated 18.03.2020. Resultantly, these appeals.

5) It may be stated that against all the writ petitioners, pursuant to investigation carried out in connection with Dibrugarh PS Case No. 936/2016, charge-sheets/ supplementary charge-sheets have been filed. Accordingly, the status of the writ petitioners in the present appeal, their status as accused in the said case and the charge-sheets where their names appear are as follows:-

ASSAM CIVIL SERVICE (JUNIOR GRADE)

Sl. No.	W.P.(C) Nos.	WA No.	NAME OF THE PETITIONERS	ACCUSED No.	SUPPLEMENTARY CHARGE/SHEET
1.	5817/2017	127/2020	Bhaskar Chandra Dev Sharma	A-12	I
2.	2621/2018	119/2020	Bhaskar Dutta Das	A-11	I
3.	2625/2018	125/2020	Amrit Jyoti Sharma	A-13	I
4.	156/2018 5809/2018	217/2021	Himangshu Chowdhury	A-25	II
5.	5809/2018	131/2020	Debojit Bora	A-20	II
6.	156/2018 5809/2018	155/2020	Badrul Islam Choudhury	A-32	II
7.	156/2018 5809/2018	131/2020	Rajarshi Sen Deka	A-35	II

8.	7098/2018	103/2020	Dwithun Borgayary	A-17	II
9.	8554/2018	128/2020	Kunal Das	A-27	II
10.	131/2019	101/2020	Rumi Saikia	A-36	II
11.	779/2019	118/2020	Susovan Das	A-59	VI
12.	863/2019	110/2020	Dhrubojyoti Chakraborty	A-55	VI
13.	1008/2019	47/2021	Ganesh Chandra Das	A-58	VI
14.	1008/2019	47/2021	Deepsikha Phukan	A-52	VI
15.	1008/2019	47/2021	Monika Teronpi	A-48	VI
16.	1346/2019	216/2021	Anirudhya Roy	A-24	II
17.	1371/2019	277/2021	Joydev Mahanta	A-45	IV
18.	1442/2019	159/2020	Manzoor Elahi Laskar	A-56	VI
19.	1727/2019	163/2020	Barnali Das	A-51	VI
20.	1749/2019	206/2020	Saibur Rahman Barbhuiya	A-57	VI
21.	1759/2019	58/2021	Moon Mazoomder	A-47	VI
22.	1762/2019	213/2020	Mustafa Ahmed Barbhuiya	A-65	VI
23.	1766/2019	219/2021	Leena Krishna Kakati	A-50	VI
24.	2228/2019	93/2022	Srabanti Sengupta	A-49	VI
25.	2244/2019	159/2020	Dipak Khanikar	A-14	II
26.	2454/2019	95/2020	Pallabi Sarma Choudhury	A-22	II
27.	2513/2019	185/2020	Utpal Bhuyan	A-60	VI
28.	3121/2019		Hrituraj Gogoi	A-43	IV
29.	3123/2019	70/2023	Nisha Moni Deka	A-37	II
30.	3066/2019	59/2023	Kamal Debnath	A-30	II
31.	4198/2019	95/2022	Geetali Doley	A-34	II

ASSAM POLICE SERVICE (JUNIOR GRADE)

Sl. No.	W.P.(C)No.	WA No.	NAME OF THE PETITIONERS	ACCUSED No.	SUPPLEMENTARY CHARGE/ SHEET
32	7122/2018 7768/2018	126/2020	Harshajyoti Bora	A-21	II
33	7122/2018 7768/2018	126/2020	Jayanta Kr. Nath	A-16	II
34	7122/2018 7768/2018	126/2020	Hemanta Saikia	A-15	II
35	7122/2018 7891/2018	196/2020	Sabbira Imran	A-18	II

36	7122/2018 8523/2018	147/2020	Jatindra Pd. Baruah	A-26	II
37	7122/2018 820/2019	333/2021	Kaushik Kalita	A-42	IV
38	7122/2018 954/2019	333/2021	Kavita Das	A-66	VI
39	7122/2018 998/2019	333/2021	Dilip Kumar Kalita	A-29	II
40	2163/2019	98/2020	Pallavi Sharma	A-53	VI
41	2374/2019	31/2021	Bhargav Phukan	A-62	VI
42	2376/2019	26/2021	Gulshan Daolagapu	A-61	VI

ASSAM TAXATION SERVICE

Sl. No	W.P.(C)No.	WA No.	NAME OF THE PETITIONER	ACCUSED No.	SUPPLEMENTARY CHARGE/SHEET
43	1721/2019	321/2021	Sunayana Aidew	A-33	II
44	1730/2019	96/2022	Manas Protim Haloi	A-39	III
45	2131/2019	180/2020	Barnali Devi	A-44	III
46	2458/2019	85/2021	Rhituraj Neog	A-63	VI
47	2684/2019	139/2020	Nipan Kr. Pathak	A-64	VI
48	4905/2019	22/2023	Vikas Kr. Pincha	A-38	III

ASSAM TRANSPORT SERVICE

Sl. No	W.P.(C)No.	WA No.	NAME OF THE PETITIONER	ACCUSED No.	SUPPLEMENTARY CHARGE/SHEET
49	8539/2018	141/2020	Prasenjit Kr. Ghosh	A-46	V
50	206/2019	14/2022	Suranjita Hazarika	A-54	VI

ASSAM LABOUR SERVICE

Sl. No	W.P.(C)No.	WA No.	NAME OF THE PETITIONER	ACCUSED No.	SUPPLEMENTARY CHARGE/SHEET
51	8117/2018	154/2020	Jyotirmoy Adhikari	A-31	II
52	2783/2019	279/2021	Raju Saha	A-19	II

Case of the appellants, in brief:

6) The appellants are candidates of two batches of who had appeared in the Combined Competitive Examination (Mains), 2013 (hereinafter referred to as 'CCE-2013' for brevity), and CCE-2014, which was conducted by the Assam Public Service Commission (hereinafter referred to as the 'APSC' for brevity). The appellants, who had cleared the CCE-2013, were appointed in the year 2015. The other batch of appellants who had cleared CCE-2014, were appointed in 2016.

7) A total of 421 nos. of candidates who had cleared the said two examinations were offered appointments on probation including the appellants herein. The appellants, purportedly being referred to by the State respondents as probationers, are amongst 60 such candidates who were discharged from service. Those discharge orders in respect of 52 writ petitioners were challenged by filing 49 writ petitions. Accordingly, on dismissal of the said writ petitions, the present batch of intra-court appeals have been filed.

Summary of the common submissions of the learned senior counsel and learned counsel for the appellants:

8) Upon clearing the CCE-2013 and CCE-2014 conducted by the APSC, out the 52 writ petitioners, vide orders passed on different dates, 30 appellants were appointed in the Assam Civil Service (Junior Grade) (ACS-JG for brevity), whose service are governed under the Assam Civil Service Rules, 1998. Similarly, 11 appellants were appointed in the Assam Police Service (Junior Grade) (APS-JG for brevity) and their services are governed by the Assam Police Service Rules, 1966; 6 (six) appellants were appointed in the Assam Taxation Service (ATxS for brevity) and their service are governed by the Assam Taxation

Service Rules, 1995; 2 (two) appellants were appointed in the Assam Transport Service (ATrS for brevity) and their services are governed by the Assam Transport Service Rules, 2003; 2 (two) appellants in were appointed in Assam Labour Service (ALS for brevity) and their services are governed by the Assam Labour Service Rules, 1970.

9) It has been submitted that initially, the appellants were on probation and on completion of their respective statutory 2 (two) year probation period, the appellants must be deemed to be a regular member of their respective service. In this regard, Mr. D.K. Mishra, the learned senior counsel had submitted that if the State Government refuses to treat the appellants as regular members of their respective service, there would be no record as to in what capacity, the appellants had been working after their probation period is over.

10) Thereafter, on 27.10.2016, a First Information Report (FIR for sort) was lodged by a particular complainant before the Dibrugarh P.S., alleging therein that the FIR named person named had contacted her and told her to pay Rs.10.00 lakh to him to recruit her in the post of Dental Surgeon conducted by the APSC. The said FIR was registered as Dibrugarh P.S. Case No. 936/2016. Subsequently, during the investigation of the said case, it was unearthed 60 candidates had allegedly been selected in the post of ACS, APS, ATxS, ATrS, and ALS through illegal means in lieu of money and not on merit. Accordingly, by separate orders, issued on different dates, those 60 candidates including the appellants herein were discharged from their respective services without giving them any opportunity of being heard. The said termination orders have been assailed by filing of 52 writ petitions.

11) It has been submitted that the Dibrugarh P.S. Case No.

936/2016, is being tried as Spl. Case No. 2/2017, before the learned Court of Special Judge, Assam. Moreover, Bhangagarh P.S. Case No. 159/2017, is being tried as Special Case No. 5/2021, which is pending for adjudication before the Court of the learned Special Judge, Assam.

12) It was submitted on behalf of the appellants that their service are governed by 5 (five) different service rules. Therefore, all the cases ought not to have been heard and decided by the learned Single Judge by a common judgment and order.

13) It has been submitted that though the State has projected that all appellants were probationers, but the said stand of the State, treating the appellants as probationers has no legs to stand because in most of the cases the principle of "deemed confirmation" would come into play. It was submitted that in none of the cases, the State and its authorities have arrived at a considered conclusion that the appellants are not suitable for confirmation in service, which is also a requirement of Article 311(2) of the Constitution of India. In this regard, it has been submitted that the same is also a requirement under the relevant service rules applicable to the respective appellants.

14) It has been submitted that in most of these appeals, the concerned appellants were given regular posting, which can only be done after the probation period is completed. In this regard, referring to the documents appended to the memorandum of appeals, it has been submitted that the appellants, while handing over their charge, did so as a probationer and/or Officer of Junior Grade. However, when the appellants had taken over charge, they did so as a regular member of service. Accordingly, it has been submitted that the State Government, having given regular posting to the majority of the appellants, the stand of the State that the appellants are the still probationers is

an after-thought and not sustainable.

15) It has been further submitted that when the appellants were under probation, the appellants were only entitled to one increment only. Under their respective service rules, the appellants would have become entitled to second increment only after successfully completing the period of probation. Moreover, in respect of the some of the appellants who were in APS, in view of exigency in service, the training period for the appellants who were APS was curtailed/ reduced from two years to one year four months. Accordingly, it has been submitted that as the appellants are deemed to have been confirmed in regular service, they have become entitled to protection of Article 311(2) of the Constitution of India. Thus, it was submitted that it was imperative for the State to have taken recourse to departmental proceedings against the appellants. In this regard, it has also been submitted that the provisions of Article 311(2) of the Constitution of India has been violated.

16) In respect of some of the appellants, it was submitted that the Investigating Officer had alleged in the charge-sheet submitted before the learned Special Court that the appellants had paid bribe either to the then Chairman of the APSC or to the middlemen named in the charge-sheet. However, there is a noticeable deviation of the amount of bribe paid, as stated in the charge-sheet, compared to the disclosure made to the affidavit in opposition filed in the concerned writ petition.

17) In the aforesaid context, it has been submitted that charge-sheet contained allegation that in their respective statement before the Investigating Officer, 23 (twenty-three) writ petitioners (22 appellants herein) had stated about paying bribe. In this regard, the learned Single Judge had held that the money paid in lieu of appointment ranged from Rs.25.00 lakh to

Rs.40.00 lakh. However, the State respondents have not annexed any such statement to their affidavit-in-opposition filed in connection with some of the writ petitions. It has been specifically submitted that statement allegedly made by the concerned appellants before the police admitting their complicity in paying bribe do not form part of the documents which accompanied the charge-sheet no. 3/2017, submitted in Dibrugarh PS Case No. 936/2016, or in any of the Supplementary Charge-Sheet nos. I to XIV filed therein from time to time.

18) In the said context, it has been submitted that most the appellants have been charged of committing offence punishable under Sections 12 and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred as PC Act) and Sections 109, 120B, 420, 465, 468, 471 and 201 of the Indian Penal Code (hereinafter referred as IPC). Accordingly, it has been submitted that though the appellants have been discharged from service allegedly for pre-service misconduct of paying bribe for their entry into service, none of the appellants are facing charge of committing offence under Section 8 of the PC Act for giving bribe.

19) It has also been submitted that in law there is no distinction regarding pre-recruitment and post recruitment misconduct. Accordingly, it has been submitted that in the eyes of law, the probationers as well as regular employees are required to be equally treated. Thus, it was submitted that if the State is charging the appellants for committing any offence including misconduct, it is imperative that the State Government, as an ideal employer, should ensure that none of the appellants ought to have been dismissed, discharged or removed except after an inquiry, informing the appellants of the charges against them and after giving them a reasonable opportunity of being heard in respect of those charges, which is the requirement of Article 311(2) of

the Constitution of India and there could be no short-cut to the said procedure.

20) It has been submitted that in paragraph nos. 64 and 77 of the additional-affidavit filed by the respondent nos. 2 to 4, the carrying out of "preliminary enquiry" including the investigation carried out by the police has been referred to. However, without disclosing which authority had conducted the "preliminary enquiry". In this regard, it has been submitted that the learned Single Judge, in paragraph-45 of the impugned judgment has mentioned that the office files produced before the Court chronologically recorded the events taking place following information received from the Dibrugarh police as regards the arrest made in connection with Dibrugarh P.S. Case No. 936/2016. The contents of paragraph-45 of the impugned judgment is extracted below:

"45. The office files, as indicated above, chronologically records the events taking place, following information received from the Dibrugarh Police as regards arrest of the petitioners in connection with Dibrugarh P.S. Case No.936/2016. From the decision calling for detailed reports from the Dibrugarh Police for taking further action, to receiving such reports in connection with the arrest of the petitioners, to the decisions to withdraw the services of the petitioners pending action to be taken by the Personnel (A) Department, Government of Assam, to obtaining the views of the Judicial Department before taking final decision and to obtaining the approval accorded by the Chief Minister of Assam, together with the views of the Advocate General, Assam, before the petitioners were discharged from service by orders of the Governor of Assam, the same finds recorded in the respective office files."

21) It has been also submitted that 60 (sixty) officers had allegedly secured service through APSC by paying bribe. However, in course of police investigation, three of them had become approvers. On such consideration, the appropriate Government, in its wisdom, did not terminate their service and rather, departmental proceedings were drawn up against them. Thus, on behalf of the appellants, it has been submitted that the appellants had suffered discrimination by the State.

22) It has further been submitted that in the affidavit-in- opposition filed on behalf of respondent nos. 2 and 3, the State respondents have taken a specific stand that the entire process of examination was vitiated with a lot of anomalies in the conduct of examination, which included (a) manipulation of marks by interpolation, (b) re-writing/ correction of answer scripts, (c) substitution of answer scripts in fake answer scripts by printing such fake answer scripts in private printing presses, etc. However, in light of police investigation, instead of scraping the entire examination process, the Government arrived at a conclusion that the appellants were tainted candidates whose entry in service was by paying bribe. Resultantly, the other candidates allowed to continue in service, by treating them as non-tainted candidates and were retained in service. Accordingly, it has been submitted that the Government has segregated the candidates clearing the CCE-2013 and CCE-2014 conducted by the APSC under three categories, viz., (i) tainted and discharged without drawing a departmental proceeding; (ii) tainted but not discharged, and against whom departmental/ disciplinary proceeding has been initiated and; (iii) non-tainted.

23) It has further been submitted that moreover, the FIR named accused in Dibrugarh PS Case no. 936/2016, who had approached the complainant and asked for money in lieu of job through APSC, and thus, a prime accused, was reinstated in service.

24) It has further been submitted that the fundamental error which vitiated the Government action is that a police report was accepted by the Governor of Assam as a cogent and reliable material to discharge the appellants from service without granting any opportunity to any of the appellants of being heard. Moreover, the learned Single Judge had also accepted the police report

and heavily relied on the statement allegedly made by 22 appellants to justify the discharge of all the appellants from service and for dismissing the writ petition, which had vitiated the impugned judgment.

25) It has been submitted that vide notification dated 15.09.2017, issued in the name of the Governor of Assam, by which the service of the APS-JG Officers whose names appeared therein were regularized and given regular posting, is a proof that the probation period of those APS-JG were completed. However, the State respondents, by filing an affidavit- in-opposition, produced copy of two notifications dated 30.12.2017, 20.01.2018 by which the probation period of the APS-JG and those in other allied service were purportedly extended, thereby making an attempt to over-ride the notification dated 15.09.2017, which was *ex facie* illegal. It has been submitted that the copy of each such notification dated 30.12.2017 and 20.01.2018 are shown to be sent to 17 (seventeen) recipients other than the concerned appellants. However, neither any appellants nor any other named authorities to whom the said notification were marked, had been served with a copy of the said two notifications. It was also submitted that some of the appellants had sent RTI queries to the authorities to whom the said notification were purportedly sent, but those authorities, vide their respective RTI reply, stated that they had not received the copy of the said notifications, which includes, amongst others,(a) the Assam Government Press, which publishes the Assam Gazette, and (b) the Head of the Departments under whom the appellants were serving. It has been also submitted that the State has not produced a copy of the Gazette where the said two notifications were published. Accordingly, it has been submitted that the said two notifications were a post-dated manufactured document only to make-out a case against the appellants and to prejudice the learned Single

Judge, whereas no such notification had actually been issued. Accordingly, it has been submitted that the action of the State in creating a fake and manufactured document is quite questionable, which is nothing but malice in law.

26) It has further been submitted that in the affidavit-in- opposition filed by the State respondent nos.2 and 3 first in point of time, the stand of the State was that of denial, with no reference to culpability of any of the appellants. No statement was made regarding existence of any overwhelming public interest. However, in the garb of leave granted by the learned Single Judge to file documents, the State respondents, without taking prior leave of the Court, filed another affidavit-in-opposition, thereby making a tectonic shift in the stand of the State respondents. By the second affidavit-in-opposition, the State had projected culpability against all the appellants, and accusation has been made against the appellant of paying bribe to secure their entry into service. It has been submitted that moreover, the element of overwhelming interest was also introduced in the subsequent affidavit-in-opposition only to prejudice the Court against the appellants.

27) It has also been submitted that at the fag-end of the hearing before the learned Single Judge, certain files relating to the appellants containing report of police investigation were placed before the learned Single Judge in a sealed cover, without providing any copies thereof to any of the appellants. However, the learned Single Judge, having perused the same, relied on it and dismissed all the writ petitions. Thus, it was submitted that the appellants have been denied an opportunity of being heard on the materials which was placed for consideration before the learned Single Judge and accordingly, a sort of *ex parte* decision was passed by the learned Single Judge against the appellants without affording any opportunity to the appellants of

being heard on those adverse materials.

28) The respective learned senior counsel and the learned counsel for the appellants, in support of their submissions, have cited the following cases:-

1. *Inderpreet Singh Kahlon v. State of Punjab*, (2006) 11 SCC 356,
2. *Joginder Pal v. State of Punjab*, (2014) 6 SCC 644,
3. *Parshotam Lal Dhingra v. Union of India*, AIR 1958 SC 36,
4. *Samsher Singh v. State of Punjab*, (1974) 2 SCC 831,
5. *Anoop Jaiswal v. Govt. of India*, (1984) 2 SCC 369,
6. *State Bank of India v. Palak Modi*, (2013) 3 SCC 607,
7. *Ratnesh Kumar Choudhary v. Indira Gandhi Institute of Medical Sciences, Patna*, (2015) 15 SCC 151,
8. *Chandra Prakash Shahi v. State of U.P.*, (2000) 5 SCC 152,
9. *Union of India v. Mahaveer C. Singhvi*, (2010) 8 SCC 220,
10. *Dipti Prakash Banerjee v. Satyendra Nath Bose Institute National Centre for Basic Sciences*, (1999) 3 SCC 60,
11. *Rajendra Yadav v. The State of Madhya Pradesh*, (2013) 3 SCC 73,
12. *Manager, Govt. Branch Press v. D.B. Beliappa*, (1979) 1 SCC 477,
13. *Sarita Choudhary v. High Court of Madhya Pradesh*, 2025 SCC OnLine SC 459, (Diary 30 Jan)
14. *State of Orissa v. Binapani Dei*, 1967 SCC OnLine SC 15
15. *K.I. Shephard v. Union of India*, (1987) 4 SCC 431
16. *C.B. Gautam v. Union of India*, (1993) 1 SCC 78
17. *State of Maharashtra v. Public Concern for Governance Trust*, (2007) 3 SCC 587
18. *Maneka Gandhi vs. Union of India*, (1978) 1 SCC 248
19. *State Bank of India v. Rajesh Agarwal*, (2023) 6 SCC 1
20. *Kumaon Mandal Vikas Nigam Ltd. V. Girja Shankar Pant*, (2001) 1 SCC 182
21. *Mohinder Singh Gill v. The Chief Election Commissioner*, (1978) 1 SCC 405
22. *Cdr. Amit Kumar Sharma v. Union of India*, 2022 SCC OnLine SC 1570
23. *Madhyamam Broadcasting Limited v. Union of India*, (2023) 13 SCC 401
24. *Krishnadatt Awasthy v. State of M.P. and Others*, 2025 SCC OnLine SC 179
25. *State of Punjab v. Ram Singh Ex- Constable*, (1992) 4 SCC 54
26. *Jagdish Mitter v. Union of India*, AIR 1964 SC 449
27. *State of Bihar v. Shiva Bhikshuk Mishra*, (1970) 2 SCC 871
28. *Gujarat Steel Tubes Ltd. V. Gujarat Steel Tubes Mazdoor Sabha*, (1980) 2 SCC 593

29. *V.P. Ahuja v. State of Punjab*, (2000) 3 SCC 239
30. *Tarsem Singh v. State of Punjab*, (2006) 13 SCC 581
31. *Registrar General, High Court of Gujarat v. Jayshree Chamanlal Budhbhatti*, (2013) 16 SCC 59
32. *Mahipal Singh Tomar v. State of U.P.*, (2013) 16 SCC 771
33. *Vijayakumaran C.P.V. v. Central University of Kerala*, (2020) 12 SCC
34. *State of W.B. v. Baishakhi Bhattacharyya*, 2025 SCC OnLine SC 719
35. *Union of India v. O. Chakradhar*, (2002) 3 SCC 146
36. *Krishan Yadav v. State of Haryana*, (1994) 4 SCC 165
37. *Malti Dadaji Mahajan v. Chief Executive Officer, Zila Parishad, Wardha*, 1975 SCC OnLine Bom 72
38. *Moti Ram Deka v. North East Frontier Railway*, AIR (1964) SC 600
39. *Amar Singh v. Union of India*, (2011) 7 SCC 69
40. *Suzuki Parasrampuriah Suitings (P) Ltd. v. Official Liquidator*, (2018) 10 SCC 707
41. *Commr. of Police v. Gordhandas Bhanji*, AIR 1952 SC 16
42. *Manoj Narula v. Union of India*, (2014) 9 SCC 1
43. *DTC v. Mazdoor Congress*, 1991 Supp (1) SCC 600
44. *Sukhjinder Singh v. Director State Transport*, 1997 SCC OnLine P&H 1332
45. *S.L. Kapoor v. Jagmohan*, (1980) 4 SCC 379
46. *G.S. Ramaswamy v. I.G. Police*, (1964) 6 SCR 279
47. *Satya Narayan Athya v. High Court of M.P.*, (1996) 1 SCC 560
48. *Wasim Beg v. State of U.P.*, (1998) 3 SCC 321
49. *Durgabai Deshmukh Memorial Sr. Sec. School v. J.A.J. Vasu Sena*, (2019) 17 SCC 157
50. *Rajasthan High Court v. Ved Priya*, (2021) 13 SCC 151
51. *Ashok Kumar Sonkar v. Union of India*, (2007) 4 SCC 54
52. *Sachin Kumar v. Delhi Subordinate Service Selection Board*, (2021) 4 SCC 631
53. *Sudesh Kumar v. State of Haryana*, (2005) 11 SCC 525
54. *X v. High Court of M.P.*, (2022) 14 SCC 187
55. *S.R. Venkataraman v. Union of India*, (1979) 2 SCC 491
56. *Olga Tellis v. Bombay Municipal Corpn.*, (1985) 3 SCC 545
57. *Rita Mishra v. Director, Primary Education, Bihar*, 1987 SCC OnLine Pat 159
58. *Naresh Kumar v. State (NCT of Delhi)*, 2022 SCC OnLine Del 4002
59. *Union of India v. R.S. Dhaba*, (1969) 3 SCC 603
60. *M.P. Hasta Shilpa Vikas Nigam Ltd. v. Devendra Kumar Jain*, (1995) 1 SCC 638
61. *Registrar, High Court of Gujarat v. C.G. Sharma*, (2005) 1 SCC 132
62. *Devendra Kumar v. State of Uttaranchal*, (2013) 9 SCC 363

63. *P. Singaravelan v. Collector, Tiruppur*, (2020) 3 SCC 133
64. *State of Tripura v. Krishna Kanta Debbarma*, 2006 SCC OnLine Gau 503
65. *Rajesh Kohli v. High Court of J&K*, (2010) 12 SCC 783
66. *Kazia Mohammed Muzzammil v. State of Karnataka*, (2010) 8 SCC 155
67. *State of Punjab v. Dharam Singh*, 1968 SCC OnLine SC 66
68. *Pratap Singh v. Union Territory of Chandigarh*, (1979) 4 SCC 263
69. *Municipal Corpn., Raipur v. Ashok Kumar Misra*, (1991) 3 SCC 325
70. *Bihar School Examination Board v. Subhas Chandra Sinha*, (1970) 1 SCC 648
71. *Union of India v. Anand Kumar Pandey*, (1994) 5 SCC 663
72. *Biswa Ranjan Sahoo v. Sushanta Kumar Dinda*, (1996) 5 SCC 365
73. *Hanuman Prasad v. Union of India*, (1996) 10 SCC 742
74. *Amarbir Singh I – MANU/PH/1791/2013*
75. *Amarbir Singh II – MANU/PH/1791/2013*
76. *Virendra Kumar Tailor vs. State of Rajasthan- MANU/ RH/0476/2015*
77. *Dharampal Satyapal Ltd. v. CCE*, (2015) 8 SCC 519
78. *M.C. Mehta v. Union of India*, (1999) 6 SCC 237
79. *Abhay Jain v. High Court of Rajasthan*, (2022) 13 SCC 1
80. *Union of India v. Tulsiram Patel*, (1985) 3 SCC 398
81. *State of Mizoram v. Darkunga*, 2024 SCC OnLine Gau 2048
82. *PRP Exports v. State of T.N.*, (2014) 13 SCC 692
83. *Sanjay Kumar Singh v. State of Jharkhand*, (2022) 7 SCC 247
84. *S. Ramachandra Rao v. S. Nagabhushana Rao*, 2022 SCC OnLine SC 1460
85. *State of Punjab v. Amar Singh Harika*, 1966 SCC OnLine SC 48
86. *State of U.P. v. Akbar Ali Khan*, 1966 SCC OnLine SC 59
87. *D.B. Raju v. H.J. Kantharaj*, (1990) 4 SCC 178
88. *Om Parkash Maurya v. U.P. Coop. Sugar Factories Federation*, 1986 Supp SCC 95
89. *High Court of M.P. v. Satya Narayan Jhavar*, (2001) 7 SCC 161
90. *BHEL v. Vijay Kumar D.*, (2022) 15 SCC 792
91. *Bipromasz Bipron Trading Sa v. Bharat Electronics Ltd.*, (2012) 6 SCC 384
92. *Kunhayammed v. State of Kerala*, (2000) 6 SCC 359
93. *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569
94. *Swati Priyadarshini v. The State of Madhya Pradesh & Ors.* 2024 INSC 620
95. *Lovely Singha v. State of Assam*, 2020 SCC OnLine Gau 4958
96. *Radhey Shyam Gupta v. U.P. State Agro Industries Corpn. Ltd.*, (1999) 2 SCC 21
97. *Benny T.D. v. Registrar of Coop. Societies*, (1998) 5 SCC 269
98. *Khatri (IV) v. State of Bihar*, (1981) 2 SCC 493
99. *Union of India v. Sanjeev Kumar*, 2024 SCC OnLine Del 4902

Submissions of learned Senior Counsel for the State:

29) It has been submitted that consequent upon registration of Dibrugarh PS Case No. 936/2016, the concerned Investigating Officer and subsequent Special Investigation Team (SIT for short) had carried out thorough investigation. During investigation, it came out that there was certain middleman who along with the then Chairman of the APSC had created an illegal network to recruit candidates who had paid them bribe and thus, a few middlemen, the then Chairman of the APSC, some other officers and staff of APSC, and the candidates, in conspiracy with each other, took money from the candidates in lieu of giving them government jobs. In course of investigation, all the appellants and many others were arrested on different dates. The I.O. had examined the arrested accused persons and several other witnesses and seized a lot of documents and articles including manufactured and/ or altered answers script and many documents, electronic records seized answer scripts, seized tabulation sheets containing use of eraser, overwriting and interpolation of marks, etc. for forensic examination and based on the evidence so collected, the I.O. obtained sanction for prosecution of several accused persons and submitted charge-sheet no. 3/2017 and supplementary charge-sheet nos. 1 to 14 on different dates. Three beneficiaries of such fraudulent entry in service have been made approver in the case. In course of time, except for the then Chairman of the APSC, several arrested accused persons have been granted bail. Moreover, it has been submitted that the duplicate answers script were printed in the printing press of the brother of the then Chairman of the APSC, who is still absconding. It has been submitted that in course of the time, on the basis of the charge-sheet filed by the I.O., charges were framed against the accused person under various provisions of the PC Act and the IPC and the prayer for

discharging two accused persons were accepted and they were discharged and the prayer for discharge of other accused persons were rejected.

30) Accordingly, it has been submitted that on the basis of enquiry made by the Police, there was segregation of the accused persons under three categories, viz., those appellants, who were found tainted of entry into service by illegal means were summarily discharged from service; in respect of some of the accused, they had given the consent of becoming approvers, which was accepted by the learned trial court and therefore, they were kept under suspension and departmental enquiry were initiated against them; and those candidates who were appointed into various services in the APSC, 2015 and 2016 batch, against whom no proof could be collected to show their tainted entry into service, were considered non-tainted and they were allowed to continue in service.

31) Countering the general submissions on behalf of the appellants, it was submitted that the first proposition of law by which he was countering those submissions is that if the applicable service rules provide for extension of probation, none of the appellants can claim "deemed confirmation" in service, unless a specific order of confirmation is passed by the competent authority. In the said context, it has been submitted that the "deeming" fiction in respect of a probationer is only towards "extension of probation" and not "deemed confirmation in service". In this regard, the learned Senior Counsel for the State has referred to the provisions of Rule 22 of the Assam Civil Services Rules, 1998, Rule 15 and 17 of Assam Police Service Rules, 1966, Rule 21 of the Assam Taxation Service Rules, 1995, Rule 21 of the Assam Transport Service Rules, 2003, Rule 12, 13 and 14 of the Assam Labour Service Rules, 1970.

32) It has been submitted that the investigation carried out in

Dibrugarh P.S. Case No. 936/2016 revealed that the then Chairman of APSC had colluded with various touts and other officials and printed fake and duplicate answer scripts, which were given to the appellants for re-writing the examination papers, which were subsequently replaced with the original answer scripts by the then Chairman of APSC in connivance with other co-accused and resultantly, the appellants got selected in lieu of money and not on merit in the APSC conducted CCE-2013 and CCE-2014. It has also been submitted that in course of investigation, the seized answer scripts were sent for forensic examination and as per expert opinion, several answer scripts contained the handwriting of the then Chairman of the APSC. It was also found that the illegally replaced answer scripts either did not contain the signature of the Invigilator and in cases where the signature of Invigilator appeared, the signatures were fake.

33) Accordingly, it has been submitted that in this batch of cases, the appellants were selected fraudulently with corrupt selection process of the APSC. Thus, it has been submitted that the illegal activities of the appellants relate to their indulging and/or participating in a colossal fraud during selection process relating to prior to entry into service, but none of the appellants are accused of commission of any corrupt practice or misconduct in course of discharge of service. It has been submitted that had the examination and selection process been carried out fairly, there was every likelihood that the appellants would not have got entry into service in the first place and accordingly, the appellants do not have any right to continue in the respective public offices, which they have reached by a fraudulent selection process. It has also been submitted that the selection and appointment of the appellants being a part of colossal fraud, their entry into service is *ex facie* void *ab initio*, thereby

disentitling the appellants to continue to serve in public offices. Accordingly, the discharge of the appellants is invalid, illegal and is also in larger public interest.

34) It has been submitted that in CCE-2013 (Preliminary), 42553 candidates had appeared, out of which 2284 candidates (5.36%) had qualified for CCE (Mains) Examination, and out of them, only 497 candidates (1.1% of total candidates) were called for interview and a total of 241 candidates (0.56% of total candidates) were selected and recommended for appointment. Similarly, in CCE-2014 (Preliminary), 24722 candidates had appeared, out of which 1550 candidates (6.26%) had qualified for CCE (Mains) Examination, and out of them, only 371 candidates (1.5% of total candidates) were called for interview and a total of 180 candidates (0.72% of total candidates) were selected and recommended for appointment. It is submitted that the aforesaid facts and figures is only to show before this Court that but for the illegalities and manipulation committed, the appellants could find entry into service, which they would not have got without pre-recruitment fraud.

35) It has been submitted that all the appellants in this batch of appeals were probationers or temporary employees on the date when their respective discharge orders were passed/issued. It has been submitted that the service rules applicable for the appellants specifically provide for probation, extension of probation, and the requirement of "satisfaction" of the competent authorities for their "confirmation" under their respective service rules. Accordingly, it has been submitted that there are no legal ground for the appellants to contend that their services became confirmed due to efflux of time.

36) It is also submitted that the relevant service rules applicable for the appellants provide for extension of the period of probation. Therefore, there

cannot be implied or deemed confirmation of service, rather, it would only mean that there was a deemed extension of the period of probation and nothing more.

37) It has been submitted that during the pendency of this appeal, apart from charge-sheet no. 3/2017 being submitted, supplementary charge-sheet nos. I to XIV have been filed. Moreover, vide order dated 19.04.2022, charges have been framed by the learned trial court against all those appellants, whose names figure up to Supplementary Charge-Sheet-XI.

38) In support of his submission on non-availability of any right for "deemed confirmation", the following cases have been cited- (i) *G. Ramaswamy v. Inspector General of Police (1964) 6 SCR 279*; (ii) *Pratap Singh v. UT of Chandigarh (1979) 4 SCC 263*; (iii) *Satya Narayan Athya v. High Court of M.P. & Anr., (1996) 1 SCC 560*; (vi) *Wasim Beg v. State of UP, (1998) 3 SCC 321*; (v) *Durga Bai Deshmukh Memorial Senior Secondary School & Anr. v. J.A.J. Vasu Sena & Anr., (2019) 17 SCC 157*, and; (vi) *Rajasthan High Court v. Ved Priya, (2021) 13 SCC 151*.

39) The second point submitted by the learned senior counsel for the respondent was on the proposition that where any appointment has been secured through illegal means, or when the appointee was not qualified at the time of appointment, such an appointment is void *ab initio* and consequently, on discharge of such person, it cannot be claimed that the principles of natural justice was violated. Accordingly, it has been submitted that the summary discharge of the appellants without taking recourse to disciplinary action as envisaged under Article 311(2) of the Constitution of India, cannot be faulted with. It has been further submitted that the submissions made on behalf of the appellants that a disciplinary enquiry ought to have been conducted before

discharging the appellants is not sustainable.

40) The third point submitted on behalf of the State is that notwithstanding that the words "FIR" or "suspension" has been mentioned in the discharge orders, still those orders of discharge and/ or removal from service continues to remain an order of simpliciter discharge/ removal from service and does not carry any stigma and, as such, in respect of all the appellants, the provisions of Article 311 of the Constitution of India did not apply. Accordingly, it has been submitted that the submissions made on behalf of the appellant that merely because the discharge orders referring to "FIR" and/or "suspension" of the appellants, the projection that those discharge orders carried "stigma" is not sustainable.

41) In support of his submissions in this regard, the following cases have been cited- (i) *Union of India v. R.S. Dhaba*, (1969) 3 SCC 603; (ii) *Madhya Pradesh Hasta Shilpa Vikas Nigam v. Devendra Kr. Jain*, (1995) 1 SCC 638; (iii) *Hukam Chand Khundia v. Chandigarh Administration*, (1995) 6 SCC 534; (iv) *K.V. Krishnamani v. Lalita Kala Academy*, (1996) 5 SCC 89; (v) *Registrar, High Court of Gujarat v. C.G. Sharma*, (2005) 1 SCC 132; (vi) *Sekhar Roy v. Union of India*, 1984 SCC OnLine Gau 70; (vii) *Parshotam Lal Dhingra v. Union of India*, AIR 1958 SC 36, and; (viii) *Samsher Singh v. State of Punjab*, (1974) 2 SCC 831.

42) It has further been submitted that in connection with W.A. 111/2020 – *Kavita Das v. State of Assam & Ors.*, misplaced reliance is made to notification dated 15.09.2017, by submitting that the note at the end of the said notification amounts to an order of confirmation in service. It was submitted that the said note was issued only to exempt the appellants whose name appeared in the said notification from mandatory posting in the battalions for a

period of 4 (four) months as per OM No. HMA.229/99/Pt/22 dated 30.08.2004 and moreover, it has been clarified therein that the services of those officers were urgently required in the field and in the specified agencies like CID, Border, V&AC, CM's Vigilance, STF, SB due to shortage of officers.

43) By referring to paragraph 26 of the case of *Parshotam Lal Dhingra v. Union of India*, AIR 1958 SC 36, it has been submitted that the Constitution Bench of Supreme Court of India had held that a Government servant on probation has a status equal to an employee on probation with a private employer and therefore, he has no right to hold a post and can be discharged from service in terms of the rules or the conditions of temporary employment. It was submitted that discharge of a person appointed on probation/temporary basis would not constitute a "removal by way of punishment" and therefore, the rigours of Article 311 would not be available to the appellants whose selection and appointment are tainted and/or fraudulent. Referring to section 16 of the General Clauses Act, it is submitted that power to appoint includes power to suspend and to discharge the person from service.

44) It has also been submitted that as the appellants had secured appointment through illegal means at the time of entry into service, such recruitment and appointment would be void *ab initio*. Accordingly, it has been submitted that the summary discharge of the appellants, who were probationers, by the State Govt. are valid, made in discharge of public duties for ensuring that the trust and faith of public is not prejudiced in any manner and moreover, the decision is in public interest. In this regard, reliance is placed on paragraph-44 of the case of *Union of India v. Tulsiram Patel*, (1985) 3 SCC 398.

45) It has been submitted that not all those who had cleared CCE-

2013 and CCE-2014 had secured service in a process tainted by colossal fraud and therefore, by virtue of competent manner in which investigation was carried out by the police in Dibrugarh P.S. Case No. 936/2016, it was possible on part of the Govt. to segregate the tainted candidates from the non-tainted ones. Therefore, it has been submitted that there was no necessity to set aside the entire selection process, which would not have been in public interest.

46) It has been submitted that as sufficient incriminating materials have been unearthed during police investigation and there are also materials in the office files, which were produced before the learned Single Judge, the application of the principles of *audi alteram partem* for the appellants would be a useless formality because there is only one possible conclusion that the appellants, who had secured their entry into service fraudulently, their services had to be terminated. Therefore, it has been submitted that the appellants have not served any serious prejudice. Accordingly, it has also been submitted that no real purpose would be served in initiating departmental proceeding against the appellants. In support of "useless formality theory", reliance is placed in the case of *Aligarh Muslim University v. Mansoor Ali Khan*, (2000) 7 SCC 529 and *Karnataka State Road Transport Corporation v. S.G. Kotturappa*, (2005) 3 SCC 409, which are both referred to by the Supreme Court of India in the case of *Ashok Kumar Sonkar v. Union of India*, (2007) 4 SCC 54.

47) It is submitted that in this case, the appellants have secured service in connivance with the then Chairman of the APSC, in exercise of fraud. Therefore, the appellants have no legal and fundamental right which can be enforced. Accordingly, it is submitted that since mandamus can be issued, these appeals are liable to be dismissed. In support of the said submissions, reliance is placed on the case of *Rita Mishra v. Director, Primary Education, Bihar*, 1987

SCC OnLine Pat 159, approved by the Supreme Court of India in the case of *State of Bihar v. Devendra Sharma*, (2020) 15 SCC 466.

48) It has been reiterated that as all the appellants are probationers, notwithstanding the reference to "FIR" or "suspension" in the discharge orders, those discharge orders would still continue to remain non-stigmatic and therefore, no proceedings under Article 311(2) was necessary. It has also been submitted that it would not be in public interest to compel the Govt. to keep in its roll, a group of persons, who were not only probationers, but had entered into service through illegal means. In this regard, it is submitted that the very entry of the appellants into service is by way of colossal fraud by adopting illegal means and therefore, existence of such materials would constitute a "motive" to discharge the appellants from service and not the "foundation" thereof. Accordingly, it has also been submitted that a writ should not be issued when it is not in public interest or public good. In respect of the said legal proposition, reliance is placed on the cases of *State of Maharashtra v. R. Prabhu*, (1994) 2 SCC 481, and *Devendra Kumar v. State of Uttaranchal*, (2013) 9 SCC 363.

49) Moreover, the learned senior counsel for the respondent no.1 has made his submissions to distinguish the cases cited on behalf of the appellants at the bar. It has been submitted that the submissions made by the learned senior counsel for the appellants in W.A. 96/2022 – *Manas Pratim Haloi v. State of Assam*, is to project that the investigation made by the I.O. in connection with Dibrugarh P.S. Case No. 936/2016 was tainted, which was never argued before the learned Single Judge.

50) It may be stated that the learned senior counsel for the State has relied on the following cases:

1. *G. Ramaswamy v. Inspector General of Police (1964) 6 SCR 279;*
2. *Pratap Singh v. UT of Chandigarh (1979) 4 SCC 263;*
3. *Satya Narayan Athya v. High Court of M.P. and Anr., (1996) 1 SCC 560;*
4. *Wasim Beg v. State of UP, (1998) 3 SCC 321;*
5. *Durga Bai Deshmukh Memorial Senior Secondary School and Anr. v. J.A.J Vasu Sena and Anr., (2019) 17 SCC 157;*
6. *Rajasthan High Court v. Ved Priya, (2021) 13 SCC 151.*
7. *Union of India v. R.S. Dhaba, (1969) 3 SCC 603;*
8. *Madhya Pradesh Hasta Shilpa Vikas Nigam v. Devendra Kr. Jain, (1995) 1 SCC 638;*
9. *Hukam Chand Khundia v. Chandigarh Administration, (1995) 6 SCC 534;*
10. *K.V. Krishna Mani v. Lalita Kala Academy, (1996) 5 SCC 89;*
11. *Registrar, High Court of Gujarat v. C G Sharma, (2005) 1 SCC 132;*
12. *Sekhar Roy v. Union of India, 1984 SCC OnLine Gau 70;*
13. *Purshotam Lal Dhingra v. Union of India, AIR 1958 SC 36;*
14. *Samsher Singh v. State of Punjab, (1974) 2 SCC 831.*
15. *Union of India v. Tulsi Ram Patel, (1985) 3 SCC 398*
16. *Aligarh Muslim University v. Mansoor Ali Khan, (2000) 7 SCC 529*
17. *Karnataka State Road Transport Corporation v. S.G. Kotturappa,*
18. *Ashok Kumar Sonkar v. Union of India, (2007) 4 SCC 54*
19. *State of Bihar v. Devendra Sharma, (2020) 15 SCC 466*
20. *State of Maharashtra v. R. Prabhu, (1994) 2 SCC 481, and*
21. *Devendra Kumar v. State of Uttaranchal, (2013) 9 SCC 363*
22. *Krishan Yadav v. State of Haryana, (1994) 4 SCC 165*
23. *State of M.P. v. Shyama Pardhi, (1996) 7 SCC 118*

24. *Union of India v. O. Chakradhar*, (2002) 3 SCC 146
25. *State of Chhattisgarh v. Dhirjo Kumar Sengar*, (2009) 13 SCC 600
26. *Sachin Kumar v. Delhi Subordinate Service Selection Board*, (2021) 4 SCC 631
27. *Rita Mishra v. Director, Primary Education, Bihar*, 1987 SCC OnLine Pat 159
28. *Lovely Singha v. State of Assam*, 2020 SCC OnLine Gau 4958
29. *Naresh Kumar v. State (NCT of Delhi)*, 2022 SCC OnLine Del 4002
30. *S. Janaki Iyer v. Union of India*, 2025 SCC OnLine SC 1179
31. *Rajesh Kohli v. High Court of J&K*, (2010) 12 SCC 783
32. *State of Tripura v. Krishna Kanta Debbarma*, 2006 SCC OnLine Gau 503
33. *Khatri (IV) v. State of Bihar*, (1981) 2 SCC 493
34. *Amarbir Singh v. State of Punjab*, 2013 SCC OnLine P&H 11542
35. *Joginder Pal v. State of Punjab*, (2014) 6 SCC 644
36. *Union of India v. Bihari Lal Sidhana*, (1997) 4 SCC 385
37. *Vipul Shital Prasad Agarwal v. State of Gujarat*, (2013) 1 SCC 197
38. *AAI v. Pradip Kumar Banerjee*, (2025) 4 SCC 111
39. *P. Singaravelan v. Collector, Tiruppur*, (2020) 3 SCC 133
40. *A.J. Peiris v. State of Madras*, (1954) 1 SCC 509
41. *T. P. Mohideen v. State of Madras*, 1965 SCC OnLine Mad 36
42. *Ratnesh Kumar Choudhary v. Indira Gandhi Institute of Medical Sciences*, (2015) 15 SCC 151
43. *CBI v. Ashok Kumar Aggarwal*, (2013) 15 SCC 222
44. *Satyavir Singh v. Union of India*, (1985) 4 SCC 252
45. *Kuldip Singh v. State of Punjab*, (1996) 10 SCC 659
46. *Southern Railway Officers Assn. v. Union of India*, (2009) 9 SCC 24

47. *Ved Mitter Gill v. UT, Chandigarh*, (2015) 8 SCC 86
48. *Md. Abdul Khaliq and ors. Vs. State of Manipur and Ors.*- MANU/MN/0052/2016
49. *K.A. Barot v. State of Gujarat*, 1990 Supp SCC 287
50. *Kazia Mohammed Muzzammil v. State of Karnataka*, (2010) 8 SCC 155
51. *R.S. Sial v. State of U.P.*, (1975) 3 SCC 111
52. *State of U.P. v. Kaushal Kishore Shukla*, (1991) 1 SCC 691
53. *Municipal Committee, Sirsa v. Munshi Ram*, (2005) 2 SCC 382
54. *M.C. Mehta v. Union of India*, (1999) 6 SCC 237

Reply submissions by the learned senior counsel and learned counsel for the appellants:

51) The reply submissions by the learned senior counsel and the learned counsel for the appearing appellants can be summarized by stating that while reiterating the broad principles of law already submitted during opening submissions were reiterated and submissions were also made to distinguish the cases cited by the learned senior counsel for the State.

Discussion and decision:

52) The Court is conscious of the scope and ambit of an intra-court appeal. In the case of *State of Tripura v. Ramendra Nath Dey*, 2000 (3) GLT 214: (2001) 1 GLR 54: (2000) 0 Supreme(Gau) 280, this Court has held that the judgment of the Single Judge should be set aside or quashed only when there is patent error on the face of the record or the judgment is against the established or well settled principle of law. In the case of *Starline Agency v. Nabajit Das*, 2011 (1) GLT 710: (2011) 5 GLR 186: (2011) 0 Supreme(Gau) 149, this Court has held that if two reasonable and logical views are possible, the view adopted by the Single Judge should normally be allowed to prevail. Again, in the case of

Assam State Electricity Board V. Sri Surya Kanta Roy, (1994) 1 GLR 383, this Court has held that the appellate Court will not interfere with the discretion of the Court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversity or where the Court has ignored the settled principles of law.

53) Mindful of the hereinbefore referred precedents, it is required to be examined whether the judgment and order, impugned in this intra-court appeal, warrants any interference.

54) At the outset, it would be relevant to refer to the provisions to “discharge” of the probationers and for “probation and confirmation”, which are as under:-

Assam Civil Service Rules, 1998

20. Discharge of Probationer.- A member shall be liable to be discharged from service-

(a) if he fails to make sufficient use of the opportunities given during the training or otherwise fails to give satisfaction, during or at the end of the period of probation; or

(b) if he fails to pass the departmental examination unless the Governor permits him to sit for re-examination in the subject or subjects in which he failed; or

(c) if any information received relating to his integrity, age, health, character and antecedents the Governor is satisfied that the probationer is ineligible or otherwise unfit for being a member of the service; or

(d) if he fails to comply with any of the provisions of these rules; or

(e) if it is found on a subsequent verification that he was initially not qualified for the appointment or that he had furnished any incorrect information with regard to his appointment.

* * *

22. Probation and confirmation.- (1) A member of the service shall be placed, according to seniority on probation for a period of 2 years, provided that the period of probation may for good and sufficient reasons be extended by the Governor in individual case for any specified period not exceeding a period of 2 years:

Provided that the period of probation may be curtailed or dispensed with in any case for good and sufficient reasons by the Appointing Authority.

(2) A member of the service placed on probation under sub-rule (1) shall be confirmed against the permanent vacancy subject to the following conditions-

(a) he has completed the period of probation to the satisfaction of the Appointing Authority in accordance with sub-rule (1);

(b) he has successfully undergone the training and passed the departmental examination, prescribed by Government under Rule 17.

(3) Every probationer shall during the period of probation successfully undergo the Survey and Settlement Training and such other training as the Governor may from time to time prescribe and shall appear and pass the departmental examination conducted by the Commission."

* * *

Assam Police Service Rules, 1966

16. Discharge of a probationer.- *A probationer shall be liable to be discharged from the service or in the case of persons appointed to the service under Cl. (b) of Rule 5 (1) be reverted to the post of Inspector of police if he*

(a) Fails to pass the departmental examinations within the period of probation: or

(b) Is considered otherwise unsuitable, for reasons to be recorded, for continuing in the service by the Governor.

17. Confirmation.-*(1) A person appointed to the service shall be confirmed in the service, if-*

(a) He has completed his period of probation, if any, to the satisfaction of the Governor;

(b) He has passed the departmental examinations and successfully undergone the course of training prescribed for him, and

(c) He is considered otherwise fit for confirmation by the Governor:

Provided that where a member of the service is not given an opportunity for undergoing the prescribed survey and Settlement training during the period of his probation, his confirmation shall not be held up for reason only of not having undergone such training but such a person shall, when called upon by the Governor and opportunity given successfully undergo such training

Provided further that the Governor may for good and sufficient reasons temporarily exempt a member of the service from passing any one or more of the Prescribed departmental examinations and confirm him in the service.

(2) A member of the service may be confirmed in the senior grade if-

(a) He has completed one year of service in that grade to the satisfaction of the Governor;

(b) He is otherwise considered suitable for confirmation; and

(c) *There is a permanent vacancy in the senior grade of the cadre to confirm him.*
 (3) *Subject to the conditions laid down in sub-rules (1) and (2) confirmation shall ordinarily be made on the basis of seniority as determined under Rule 18 in the junior grade, as the case may be."*

* * *

Assam Taxation Service Rules, 1995

19. Discharge or reversion.- *A temporary or officiating member under these Rules shall be liable to be discharged or reverted to the lower cadre of the service or to his original service as the case may be, if:-*

- (i) *he fails to make sufficient use of the opportunities given during any training as may be prescribed by the Government Cove from time to time or fails to render satisfactory service in the cadre; and/or*
- (ii) *it is found on a subsequent verification that he was initially not qualified for the appointment or that he had furnished any incorrect information with regard to his appointment.*

* * *

21. Probation and confirmation.-(1) *Subject to availability of a permanent vacancy a member of the cadre of the Superintendent of Taxes and Inspector of Taxes shall be placed according to seniority on probation for a period of 2 years before he is confirmed against a permanent post:*

Provided that the period of probation may for good and sufficient reasons, be extended by the Appointing Authority for any specified period not exceeding the period of two years:

Provided further that the period of probation may be curtailed or dispensed with in any case for good and sufficient reasons by the Appointing Authority:

(2) *A member of the Service placed on probation under sub-rule (1) shall be confirmed against a permanent vacancy subject to the following conditions:-*

(a) *he has completed the period of probation to the satisfaction of the Appointing Authority in accordance with sub-rule (1);-*

(b) *he has successfully undergone the training and passed the departmental examination, if any, prescribed by the Government under Rule 18.*

(3) *A member of the cadre of Additional Commissioner of Taxes or Joint Commissioner of Taxes or Deputy Commissioner of Taxes or Senior Superintendent of Taxes shall be confirmed against a permanent vacancy as and when available and subject to satisfactory performance.*

(4) *If confirmation of a member is delayed on account of his failure to qualify for such confirmation he shall lose his position in order of seniority vis-a-vis such of*

his juniors as might be confirmed earlier than he. His seniority shall, however, be restored in the cadre on his confirmation subsequently.

The Assam Transport Service Rules, 2003

19. Discharge of a probationer.-A temporary or officiating member shall be liable to be discharged or reverted to the lower cadre of the service or to the original service, if-

- (1) he fails to make sufficient use of opportunities given during any training as may be prescribed by the Government from time to time or fails to render satisfactory service during his tenure of service in the cadre, and/or*
- (2) it is found on a subsequent verification that he was not initially qualified for appointment or that he had furnished any incorrect information with regard to his appoint.*

* * *

21. Probation and Confirmation.- (1) Subject to availability of permanent vacancy in the respective cadre, a member shall be placed according to his seniority on probation against permanent vacancy for a period of two years before he is confirmed against the permanent vacancy:

Provided that the period of probation may, for good and sufficient reasons, be extended by the Appointing Authority for any specified period, not exceeding a period of two years:

Provided further that the period of probation may be extended or dispensed within any case for good and sufficient reasons by the Appointing Authority.

(2) A member placed or on probation under sub-rule (1) shall be confirm against a permanent vacancy subject to the following condition :-

- (a) he has completed the period of probation to the satisfaction of the Appointing Authority in accordance with sub-rule (1),*
- b) he has successfully undergone the training and passed the departmental examination, if any, prescribed by the Government under rule 18."*

* * *

Assam Labour Service Rules, 1970

12. Probation.- Persons appointed to the service against permanent vacancies shall be on promotion for a period of two year:

Provided that the period of such probation may, for good and sufficient reasons, be extended by the appointing authority in individual cases by a period not exceeding two years:

Provided further that the Governor may reduce the period of probation to one year

for those who have already, successfully undergone the prescribed training and passed all the Departmental Examination as prescribed for the service.

(2) Every probationer shall during the period of probation successfully undergo such training as the Governor may, from time to time, prescribe and shall appear at and pass the Departmental Examination prescribed for the service conducted by the Commission.

(3) Where a cadre consists of both permanent and temporary posts appointment on probation against permanent vacancies in the respective cadres shall be according to the order of seniority as determined under Rule 15.

(4) All persons appointed against temporary post in a cadre shall also be allowed to undergo the training and appear at and pass the Departmental Examinations. prescribed for the service.

13. Discharge of a Probationer. - *A probationer shall be liable to be discharged from the service –*

(a) if he fails to make sufficient use of the opportunities given during the training or otherwise fails to give satisfaction, during or at the end of the period of probation; or

(b) if he fails to pass the Departmental Examinations unless the Governor permits him to sit for re-examination in the subject or subjects in which he failed or

(c) if on any information received relating to his nationality age, health, character and antecedents the Government is satisfied that the probationer is ineligible or otherwise unfit for being a member of the service; or (d) if he fails to comply with any of the provisions of these rules.

14. Confirmation.- *Where a probationer has completed his period of probation to the satisfaction of the Governor, he shall be confirmed in the Cadre to which he is appointed, if:-*

(1) he has passed the Departmental Examinations completely and has successfully undergone the training, if any,

(b) two respectable persons (not related to the candidate) who are well acquainted with him.

55) Thus, from the above, it is seen that in all the four service rules, except under the Assam Police Service Rules, the period of probation is 2 years, which is extendable to a further period of two years, however, with some variation to the language used in the said rules. Insofar as Assam Police Service Rules is concerned, there is no upper limit for the extension of probation.

56) Referring to the Rules, the learned senior counsel/ counsel

appearing for the appellants have submitted that there are no material on record to show that the condition precedent for discharging the appellants under Rule 20(c) of the Assam Civil Service Rules; Rule 16(b) of the Assam Police Service Rules, 1966; Rule 19(ii) of the Assam Taxation Service Rules; Rule 19(2) of the Assam Transport Service Rules; and Rule 13(c) of the Assam Labour Service Rules existed. Per contra, the learned senior counsel for the State had submitted that on a perusal of the records of all the 52 writ petitioners which were produced before the learned Single Judge in sealed cover, the learned Single Judge had recorded due satisfaction of availability of sufficient materials so justify the discharge of the appellants. It was further submitted that the appellants were all probationers and service of none of them were confirmed by order passed by competent authority. It is also submitted that the principle of "deemed confirmation" did not apply in the case of the appellants in light of their respective service rules. Therefore, the appellants had no right to continue in service and as such, their fundamental rights had not been violated. Moreover, it was further submitted that the discharge orders must be construed to be non-stigmatic even if it has reference to the words like "suspension", "FIR", etc.

57) It may be mentioned that on a complaint being filed by a complainant, *inter alia*, stating that she was approached by the FIR named accused, demanding money in lieu of appointment by APSC, she had lodged FIR, which was registered as Dibrugarh P.S. Case No. 936/2016. In connection with the said case, the following charge-sheet and supplementary charge-sheets were filed:-

- a. Charge-sheet dated 24.01.2017.
- b. Supplementary charge-sheet – I dated 28.07.2017.
- c. Supplementary charge-sheet – II dated 04.01.2018.

- d. Supplementary charge-sheet – III dated 19.04.2018.
- e. Supplementary charge-sheet – IV dated 25.04.2018.
- f. Supplementary charge-sheet – V dated 07.06.2018.
- g. Supplementary charge-sheet – VI dated 14.09.2018.
- h. Supplementary charge-sheet – VII dated 18.09.2018.
- i. Supplementary charge-sheet – VIII dated 02.09.2018.
- j. Supplementary charge-sheet – IX dated 12.06.2019.
- k. Supplementary charge-sheet – X dated 26.08.2019.
- l. Supplementary charge-sheet – XI dated 20.11.2021.
- m. Supplementary charge-sheet – XII dated 19.01.2024.
- n. Supplementary charge-sheet – XIII dated 20.06.2024.
- o. Supplementary charge-sheet – XIV dated 12.09.2024.

On whether the period of probation of the appellants was over when they were discharged from service:

58) The learned Single Judge had held that the services of 60 persons were discharged during the probation period. The said finding has been contested by the appellants.

59) It is not in dispute that those appellants who had cleared their CCE-2013, were appointed in the year 2015 and those appellants, who had cleared their CCE-2014, were appointed in the year 2016. It has been submitted that the discharge orders in respect of the appellants were issued on 08.09.2017, 21.01.2019, etc.

60) The learned Single Judge, in para-5 of the impugned judgment and order has quoted three different forms of discharge orders, which were passed in respect of all the persons who were discharged from service. On a perusal thereof, the following is noted:

1. In the first discharge order quoted in the impugned judgment is in respect of one Sri Bhaskar Dutta Das, the appellant in W.A. 119/2020, belonging to ACS-JG. In the said order, it has been mentioned that he

was appointed on probation by notification dated 12.08.2015, and thereafter, his service was placed at the disposal of the Revenue and D.M. Department, and vide notification dated 28.02.2017, he was posted as the Circle Officer/ Assistant Settlement Officer. Thus, except for referring the appointment of the said appellant as probationer, elsewhere in the said discharge order dated 08.09.2017, the appellant in W.A. 119/2020 has not been referred to as a probationer, but as a regularly posted officer.

2. The second discharge order vide notification dated 30.11.2018, is in respect of the appellant in W.A. 98/2020, Smt. Pallabi Sharma, APS (Probationer). Thus, in the said discharge order, the appellant is not found to be referred to as a regularly posted police officer.
3. The third discharge order vide notification dated 21.01.2019, is in respect of the appellant in W.A. 14/2022, Smti. Suranjita Hazarika. In the said order, her initial temporary appointment as District Transport Officer is mentioned. After referring to the successful completion of the induction and training. However, it has also been mentioned that she had been appointed and working as District Transport Officer. It is also mentioned therein that sanction for prosecuting her was issued at the request of the Superintendent of Police, Dibrugarh. However, while discharging her, she is again referred to as "probationer".

61) One of the points urged on behalf of the appellants was that the tenure of the appellants as probationers under the relevant service rules was completed before their respective discharge orders were issued. Countering the said point, the learned senior counsel for the State had submitted that the principle of deemed confirmation does not arise under the service rules

applicable for the appellants, as the Governor must record his satisfaction that the appellants are found fit to be confirmed in service, and such satisfaction must be recorded in writing and order of confirming the service of the concerned appellants must be issued before the appellants became a member of their respective service rules.

62) Under the relevant service rules, the prescribed period of probation and period upto which such probation period are extendable as well as provision for confirmation are as follows:-

1. Under Rules 22(1) of the Assam Civil Services Rules, the probation period is two years, subject to extension, not exceeding two years.
2. As per the provisions of Rule 15(1) of the Assam Police Service Rules, the probation period is two years, subject to extension for good and sufficient reasons. There is no maximum period for extension of probation.
3. Rule 21 of Assam Taxation Service Rules, 1995 the probation period is two years, subject to extension, not exceeding two years.
4. Rule 22 of Assam Labour Service Rules, 1989, the probation period is two years, subject to extension, not exceeding two years.
5. As per the provisions of Rule 21(1) of the Assam Transport Service Rules, the probation period is two years, subject to extension, not exceeding two years.

63) The learned senior counsel for the appellant in W.A. 196/2020, had referred to a notification dated 15.09.2017, issued by the competent authority in the name of the Governor of Assam, and it was submitted those appellants who were in Assam Police Service (Junior Grade), were given regular

posting. The note at the ending part of the said order reads as follows:-

“The above posting of APS Junior Grade (DR-2015 Batch), have completed probationary period of 2 (two) years and are exempted from mandatory posting in the Battalions for period of 4 (four) months as per OM No. HMA3229/99/Pt/22 dated 30/08/2004, as their services are urgently required in the field and in the specialized agencies (CID, Border, V&AC, CM’s Vigilance, STF, SB) due to shortage of officers.”

64) As there is a reference to the OM dated 30.08.2004, in the above referred notification, it is deemed appropriate to quote below the contents of the said OM dated 30.08.2004:

“Office Memorandum

In partial modification of this Department’s O.M. No. HMA.29/99/Pt/(illegible) dated 25.9.2003, the period of compulsory posting in respect of newly recruited Assam Police Service, Junior Grade Officers in Armed Police Battalions after completion of Prescribed Probation period of 2 (two) Years is reduced from 1 year 4 (four) months with immediate effect.

This cancels this Department’s O.M. No. HMA.29/99/pt/21 dated 25.8.04.

*Sd. P.P. Barooah
Joint Secy. To the Govt. of Assam
Home (A) Department.”*

65) The learned senior counsel for the State has strenuously submitted that merely because all the appellants had successfully completed their respective induction training and other training programmes, or they may have been given second pay-increment, or may have been allowed to hold a regular post, would not mean that their period of probation was over.

66) Though the learned senior counsel for the State has disputed that the appellants were still probationers, but it is also not in dispute that under their respective service rules, as probationers, the appellants were entitled to only one increment. However, in their affidavit-in-opposition, the State respondents have not specifically denied the respective appellants had

received their second pay-increment, which under the they would have been entitled to only after their respective service being confirmed. It was shown on behalf of the appellants that all the appellants, while handing over their charge, described their status as ACS (Junior Grade), APS (Junior Grade), ATxS (Probation), ATrS (Probation) and ALS (Probation), as the case may be, but while receiving charge, their temporary status were not mentioned. Thus, it is apparent that as per the materials available on the record, the appellants were given regular posting. Some of the appellants had also been transferred to various departmental offices. This fact has also not been controverted.

67) If the submissions made on behalf of the State is accepted, while dealing with the appellants, the competent authorities of the State appear to have made several common mistakes, if it can be called so, viz., (i) granting second pay increment, which requires bills to be prepared, scrutinized by the Office of the Accountant General and concerned Treasury before higher pay is released; (ii) allowing taking over charge from the appellants as probationers, but handing over next charge to them without referring them to be probationers; (iii) transferring the appellants as a regular member of service to different departmental offices/ posts. This, in the considered opinion of the Court, is not likely to happen unless the Government was not treating the appellants as a regular member of service. It is not the projection by the State respondents that some inadvertent mistake had happened, which is unlikely, as several officials of the appropriate Government must have handled the service records of the appellants herein.

68) In the aforesaid context, while the presumption available under Section 114, Illustration (e) of the Evidence Act, 1872 [now section 119, Illustration (e) of the Bharatiya Sakshya Adhiniyam, 2023] is that all judicial and

official acts are regularly performed. By the said provision of law, while it can be accepted that on granting second pay-increment, by giving regular posting and on being transferred to departmental offices, the position of the appellants had been altered from the status of probationers to the status of a regular employee, in the absence of any other cogent and admissible materials on record, it cannot be presumed that the status of the appellants remained as probationers. The above referred point is found to have been pleaded in the writ petition and referred to in the impugned judgment. However, the said point has not determined by the learned Single Judge.

69) Be that as it may, as it was submitted by the learned senior counsel for the State that by notifications issued by the competent authority, the probation of the appellants were extended, which is disputed by the appellants and the same is discussed hereinbelow.

70) It may be stated that the learned senior counsel for the appellants had referred to the affidavit-in-opposition filed on behalf of the State respondents, wherein the State respondents had annexed copy of notifications dated 30.12.2017 and 20.01.2018, to project that the probation period of some of the appellants were extended. It was urged that by annexing those notifications, an attempt has been made to over-ride the notification dated 15.09.2017, which has been claimed to *ex facie* illegal. It may be mentioned that the contents of the note appearing in the notification dated 15.09.2017 has been quoted hereinbefore.

71) In this case, the concerned appellants have specifically pleaded in their respective writ petitions that the said notification dated 30.12.2017 and 20.01.2018 were not served on them. It was also stated that the copy of the same is marked to 17 (seventeen) recipients other than the concerned

appellants. However, by referring to the RTI reply received by some of the said 17 recipients, which are available in some of the memorandum of appeals, it has been successfully demonstrated by the appellants that none of the other named authorities to whom the said notification were marked, had been served with a copy of the said two notifications. The authorities who have not received the said notification includes, amongst others, the Assam Government Press, which publishes the Assam Gazette and the Departmental Heads, under whom those appellants are serving.

72) The State has not produced even a copy of the dak-register to show service of the said two notifications to the recipients as well as on the appellants. Moreover, a copy of the Gazette where the said two notifications were published have also been produced. Thus, the inevitable presumption is that the said two purported notifications dated 30.12.2017 and 20.01.2018, were a post-dated manufactured document, intended only to make-out a case against the appellants and to prejudice the Court, whereas no such notification had actually been issued. If such an important notification, which has immense impact on the service career of the appellants has not been served on the concerned appellants, there can only be two presumptions. Firstly, that though the Government had no intention to serve it on the concerned appellants and thereby making the same effective and implementable on the concerned appellants. The second presumption is that the said notifications have been manufactured and shown to be issued on a back-date to create a document in defence.

73) Accordingly, the Court is constrained to hold that the State respondents have failed to establish that the said two notifications dated 30.12.2017 and 20.01.2018 had been served on the concerned appellants.

Thus, it is resultantly held that the said notification has not been made applicable to the concerned appellants so as to prevent the said notification being immediately put to challenge. Thus, the act of the State respondents in preparing those two highly questionable notifications dated 30.12.2017 and 20.01.2018, and yet not serving them to the concerned appellants or any other intended recipients is nothing but an act which indicates of malice in law, which vitiates the said two notifications as *ex facie* illegal and thus void *ab-initio* and therefore, not enforceable against the concerned appellants so as to alter their position from a confirmed employee of the State to being reverted back to the position of a probationer.

74) It may be mentioned that the case of *G. Ramaswamy (supra)*, cited by the learned senior counsel for the respondent is distinguishable on facts. In the said case, by virtue of the names appearing in the approved select list of sub-inspectors fit for promotion, the petitioners before the High Court had contended that they were entitled to promotion, which was negated, as their services were not confirmed in the post of inspectors. In this case, the appellants are not seeking promotion. They are merely assailing their discharge from service and by conduct of the Government, the appellants have been able to demonstrate that they were being treated by the Government as a confirmed employee.

75) In the case of *Pratap Singh (supra)*, the Supreme Court of India had referred to the decision in the case of *Dharam Singh (supra)*, and held that as the appellant was appointed only against a temporary post, they cannot be treated as confirmed employee and in the case of *Dharam Singh (supra)* and *Satya Narayan Athya (supra)*, it was held that deemed extension would mean that the person would be deemed to continue as a probationer. In this case, the

distinguishing fact is that the appellants have successfully demonstrated that they were allowed to hold substantive post.

76) In the case of *Wasim Beg (supra)*, the Supreme Court of India had examined the issue of probation and had held that there can be three views: (a) whether an employee at the end of the probationary period automatically gets confirmation in the post or whether an order of confirmation or any specific act on the part of the employer confirming the employee is necessary, will depend upon the provisions in the relevant service rules relating to probation and confirmation; (b) where rules provide for a maximum period of probation beyond which the probation cannot be extended, at the end of the maximum probationary period there will be deemed confirmation of the employee unless the rules provide to the contrary; and (c) however, even when the rules provide a maximum period of probation, if there is a further provision in the rules for continuation of such probation beyond the maximum period, the Courts have made an exception and said that there will be no deemed confirmation in such cases and the probation period will be deemed to be extended. However, in the said case though the termination was held to be bad, but considering the financial condition of the corporation and that despite the order of the High Court, the appellant did not join, monetary compensation was ordered. But as mentioned hereinbefore, the distinguishing fact is that the appellants have successfully demonstrated that they were allowed to hold substantive post.

77) In the case of *Durgabai Deshmukh Memorial Sr. Secondary School (supra)*, Rule 105(2) of the Delhi School Education Rules, 1973 contemplated maximum probation period of two years. Rule 105(1) merely exempted a minority institution from seeking prior approval of the Director for

extension of the period of probation “by another year”. Under those facts, the High Court had held that the maximum period of probation is two years, which was approved by the Supreme Court of India. However, it was also held that mere continuation of services of a probationer beyond the period of probation does not lead to deemed confirmation in service. In this case, the distinguishing factor is that the appellants were not only allowed to hold substantive posts but they were also granted second pay-increment, which they would not have been entitled to without being confirmed in service.

78) In the case of *Ved Priya (supra)*, amongst others, it has been observed that the termination order was innocuously worded. Nonetheless, it was held that it was for the first respondent to produce evidence to prove that the High Court had punished him. In this case, the distinguishing fact is that even the learned Single Judge, upon perusal of the files of all the writ petitioners found that they were involved in colossal fraud. Under such circumstances, it has been held herein that the discharge order was the “foundation” and was not the “motive”. Moreover, in the first and third form of discharge order, which has been extracted in the judgment of the learned Single Judge, the foundational facts were evident. It must be held that the appellants have been able to prove that their respective discharge orders were punitive.

79) In the case of *Prabhu (supra)*, cited by the learned senior counsel for the State, the respondent was appointed as a member of the State Board of Maharashtra Secondary and Higher Secondary Education. The Government, taking note of his failures as supervisor of examination centre, leading to mass-copying in examination, and based on information received from the University of Marathwada, held that his continuance as a member was not conducive to the proper functioning of the Board. He was issued a show

cause notice and the Government was not satisfied with his reply and thus, his membership was cancelled. It is under the said facts that the Supreme Court had held that his continuance would be more harmful to the society and that it shook the conscience of the public. However, the said decision does not help the State respondents because the said respondent was removed after issuing a show cause notice, giving him an opportunity to submit his reply, which was not done in this case.

Effect of statement made by some of the appellants before the police:

80) The copies of charge-sheet, and supplementary charge-sheet nos. I to XIV are available in the memo of these appeals. By referring to the contents of those charge-sheets, it has been submitted by the learned senior counsel/ counsel for the appellants that the list of documents appended thereto does not include copy of statement by any of the appellants-accused before the police or any "confessional statement" made before the Magistrate having jurisdiction that they had paid bribe to any person to clear APSC examination and to obtain jobs. Therefore, when the alleged statement were made by 23 writ petitioners (i.e. 22 appellants herein) before the police, admitting their complicity in illegally obtaining jobs through APSC, natural questions which remains unanswered are:-

1. Why copies of those relevant statements made by 23 writ petitioners were not annexed to the affidavit-in-opposition, additional affidavit-in-opposition that were filed in various writ petitions by the State?
2. A corollary question is whether the State respondents never desired to put the present appellants to notice about their so-called statements made before the police for reasons best known to them?

3. Has any "real prejudice" been suffered by the appellants by the perusal of those "statements" allegedly made by some of the appellants before the police, by the learned Single Judge, on being produced in a seal cover?

81) To the question nos. 1 and 2, the State respondents have not given any cogent and acceptable answers. No document has been annexed to the affidavit-in-opposition and additional affidavit filed by the State respondents to show that the so-called statements made the 23 writ petitioners (22 appellants herein) were placed before the competent authority, based on which a decision was taken that the appellants were not found suitable for their confirmation in service.

82) The State respondents has not been able to dispel the contention of the appellants that such statements by 23 appellants, by which they had purportedly admitted their complicity in the offence, are not appended to the charge-sheet and supplementary charge-sheet nos. I and XIV submitted before the learned Trial Court.

83) The Court is conscious of the fact that the Constitutional Courts do have the power to call for the records from the concerned State respondents and to examine the same. However, in the opinion of the Court if based on those records, of which the respondents have no access, is relied upon for the purpose of passing adverse orders against them, rules of natural justice demands that the appellants herein should have been put to notice before acting upon reports of police investigation. It is not the case of the State respondents that the statements made by 23 writ petitioners contained any important State secrets which may affect the peace and security of the Country or would have adversely affected India's bilateral relationship with any other

Country, or it would have hampered further investigation of the case by any premature disclosure. Under such circumstances, when the trial of cases against the appellants have already begun, the Court does not find the reason for the State to conceal the so-called statements by the 22 appellants herein (23 writ petitioners) from those very appellants.

84) In the case of *Amit Kumar Sharma (supra)*, the Supreme Court of India had observed and held as follows:

22. *Material prejudice has been caused by the process which has been followed of disclosing the information of vacancies and the board proceedings to AFT in a sealed cover. In Khudiram Das v. State of W.B., (1975) 2 SCC 81, this Court held that the test for determining if material must be disclosed is whether in all "reasonable probability", the material would influence the decision of the authority. Ruling in the context of preventive detention, a Four-Judge Bench of this Court observed: (SCC p. 97, para 15)*

"15. Now, the proposition can hardly be disputed that if there is before the District Magistrate material against the detenu which is of a highly damaging character and having nexus and relevancy with the object of detention, and proximity with the time when the subjective satisfaction forming the basis of the detention order was arrived at, it would be legitimate for the Court to infer that such material must have influenced the District Magistrate in arriving at his subjective satisfaction and in such a case the Court would refuse to accept the bald statement of the District Magistrate that he did not take such material into account and excluded it from consideration. It is elementary that the human mind does not function in compartments. When it receives impressions from different sources, it is the totality of the impressions which goes into the making of the decision and it is not possible to analyse and dissect the impressions and predicate which impressions went into the making of the decision and which did not. Nor is it an easy exercise to erase the impression created by particular circumstances so as to exclude the influence of such impression in the decision-making process. Therefore, in a case where the material before the District Magistrate is of a character which would in all reasonable probability be likely to influence the decision of any reasonable human being, the Court would be most reluctant to accept the ipse dixit of the District Magistrate that he was not so influenced and a fortiori, if such material is not disclosed to the detenu, the order of detention would be vitiated, both on the ground that all the basic facts and materials which influenced the subjective satisfaction of the District Magistrate were not communicated to the detenu as also on the ground that the detenu was denied an opportunity of making an effective representation against the order of detention."
(emphasis supplied)

23. In *T. Takano v. SEBI*, (2022) 8 SCC 162, a two-Judge Bench of this Court held that the all relevant information must be disclosed. In this case, the issue for consideration before this Court was whether an investigation report under Regulation 9 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 must be disclosed to the person to whom a notice to show cause is issued. SEBI had not disclosed the investigation report. It was the contention of SEBI that it had not relied on the investigation report to issue the show-cause notice. The two-Judge Bench observed that disclosure of information to the parties to the adjudication serves three purposes:

- (i) *Reliability* : The possession of information by both the parties can aid the courts in determining the truth of the contentions;
- (ii) *Fair trial* : There is a legitimate expectation that parties are provided all the information for them to effectively participate in the proceedings;
- (iii) *Transparency and accountability* : It is necessary that the adjudication is not opaque but transparent. Transparency aids in establishing accountability.

The observations on disclosure of information and its impact on transparency are extracted below: [*T. Takano v. SEBI* (supra) SCC p. 186, paras 28-29]

“28.3. ... Keeping a party bereft of the information that influenced the decision of an authority undertaking an adjudicatory function also undermines the transparency of the judicial process. It denies the party concerned and the public at large the ability to effectively scrutinise the decisions of the authority since it creates an information asymmetry.

29. The purpose of disclosure of information is not merely individualistic, that is to prevent errors in the verdict but is also towards fulfilling the larger institutional purpose of fair trial and transparency. Since the purpose of disclosure of information targets both the outcome (reliability) and the process (fair trial and transparency), it would be insufficient if only the material relied on is disclosed. Such a rule of disclosure, only holds nexus to the outcome and not the process. Therefore, as a default rule, all relevant material must be disclosed.”
(emphasis in original)

24. This Court observed that the right to disclosure is not absolute. Portions that involve information on third parties or confidential information on the securities market may be withheld by SEBI. The Court directed that the Board is duty-bound to disclose parts of the investigative report that concern the specific allegations that have been levelled in the show-cause notice. However, the Court also observed that it does not entitle a person to whom the notice is issued to receive unrelated sensitive information. The Court held that it must first be *prima facie* established by SEBI that the disclosure of the information would affect third-party rights. Once a *prima facie* case of sensitivity is established, the onus would then shift to the appellant to prove that the information is necessary to defend his case appropriately. The conclusions are extracted below: (*T. Takano* case SCC pp. 202-203, paras 62-63)

* * *

62.5. The right to disclosure is not absolute. The disclosure of information may affect other third-party interests and the stability and orderly functioning of the securities market. The respondent should *prima facie* establish that the

disclosure of the report would affect third-party rights and the stability and orderly functioning of the securities market. The onus then shifts to the appellant to prove that the information is necessary to defend his case appropriately; and

62.6. Where some portions of the enquiry report involve information on third parties or confidential information on the securities market, the respondent cannot for that reason assert a privilege against disclosing any part of the report. The respondents can withhold disclosure of those sections of the report which deal with third-party personal information and strategic information bearing upon the stable and orderly functioning of the securities market.

63. The Board shall be duty-bound to provide copies of such parts of the report which concern the specific allegations which have been levelled against the appellant in the notice to show cause. However, this does not entitle the appellant to receive sensitive information regarding third parties and unrelated transactions that may form part of the investigation report.” (emphasis in original)

25. *The elementary principle of law is that all material which is relied upon by either party in the course of a judicial proceeding must be disclosed. Even if the adjudicating authority does not rely on the material while arriving at a finding, information that is relevant to the dispute, which would with “reasonable probability” influence the decision of the authority must be disclosed. A one-sided submission of material which forms the subject-matter of adjudication to the exclusion of the other party causes a serious violation of natural justice. In the present case, this has resulted in grave prejudice to officers whose careers are directly affected as a consequence.*

26. *The non-disclosure of relevant material to the affected party and its disclosure in a sealed cover to the adjudicating authority (in this case AFT) sets a dangerous precedent. The disclosure of relevant material to the adjudicating authority in a sealed cover makes the process of adjudication vague and opaque. The disclosure in a sealed cover perpetuates two problems. Firstly, it denies the aggrieved party their legal right to effectively challenge an order since the adjudication of issues has proceeded on the basis of unshared material provided in a sealed cover. The adjudicating authority while relying on material furnished in the sealed cover arrives at a finding which is then effectively placed beyond the reach of challenge. Secondly, it perpetuates a culture of opaqueness and secrecy. It bestows absolute power in the hands of the adjudicating authority. It also tilts the balance of power in a litigation in favour of a dominant party which has control over information. Most often than not this is the state. A judicial order accompanied by reasons is the hallmark of the justice system. It espouses the rule of law. However, the sealed cover practice places the process by which the decision is arrived beyond scrutiny. The sealed cover procedure affects the functioning of the justice delivery system both at an individual case-to-case level and at an institutional level. However, this is not to say that all information must be disclosed in the public. Illustratively, sensitive information affecting the privacy of individuals such as the identity of a sexual harassment victim cannot be*

disclosed. The measure of non-disclosure of sensitive information in exceptional circumstances must be proportionate to the purpose that the non-disclosure seeks to serve. The exceptions should not, however, become the norm.

85) Mindful of the said judgment, though this Court had called for investigation reports by orders passed previously, the Court is of the considered opinion that when the appellants are struggling with their discharge from service and they are also facing criminal trial, it would not be fair to open sealed cover file and peruse materials linked with police investigation, as the State would get ample opportunity during trial to rely on the materials collected during investigation. Therefore, the sealed cover envelope is ordered to be returned.

86) Thus, under the circumstances, when criminal trial is already proceeding against all the appellants, was it was necessary for the Government to rely on alleged statement made by 23 writ petitioners (22 appellants herein), which was not produced along with charge-sheet and supplementary charge-sheet nos. I to XIV. Thus, the State Government is deemed to be aware of the provisions of Section 25 and 26 of the Evidence Act, 1872, which bars such statement to be proved against the accused. Therefore, to overcome such a bar, the said inadmissible document was produced before the learned Single Judge in a sealed cover, without giving copies thereof to the appellants. Accordingly, the Court is of the unhesitant opinion that reliance of the learned Single Judge in respect of police papers and reports, which were produced in a sealed cover is found to have adversely prejudiced the appellants as they were not provided with a reasonable opportunity to rebut any of the documents which was contained in the sealed cover, to which they were not put to notice. Even if copies of those office files cannot be provided for some reason, yet the counsel for the appellants could have been allowed an opportunity to peruse those

documents and then only those documents should have been relied upon for deciding the batch of writ petitions.

87) Under such circumstances and in view of the decision of the Four-Judge Bench of the Supreme Court of India in the case of *Khudiram Das v. State of W.B.*, (1975) 2 SCC 81, where it was held that the test for determining if material must be disclosed is whether in all “reasonable probability”, the material would influence the decision of the authority, which was followed by the Supreme Court of India in the case of *Amit Kumar Sharma (supra)*, the Court is inclined to hold that those finding by the learned Single Judge, that are based on 52 office files produced in sealed cover is not sustainable, being contrary to the case laws discussed above, which is found to vitiate the impugned judgment.

88) Another important legal issue which arises for consideration in these appeals areas to whether the impugned judgment is vitiated for having relied on the so called “statement” made by some of the appellants before the police.

89) In this regard, it may be mentioned that in paragraph 44 of the impugned judgment, it has been mentioned to the effect that the office files, which were produced before the learned Single Judge contained statements made by a section of the appellants before the police admitting to their complicity in the illegal activity to which they were beneficiaries. On examining the cause title of the appellants herein, it is seen that the 23 (twenty-three) writ petitioners (corresponding to 22 appellants herein), whose statement in referred therein, are the appellants in W.A. nos. 118/2020, 110/2020, 47/2021, 277/2021, 159/2020, 163/2020, 206/2020, 58/2021, 213/2020, 219/2021, 93/2022, 185/2020, 96/2022, 180/2020, 85/2021, 139/2020, 22/2023, 14/2022,

154/2020, and 279/2021.

90) In the considered opinion of the Court, the learned Single Judge, while perusing the so-called "statement" of the said appellants alleged to have been made before the police, had failed to appreciate the question of admissibility of those statements in the light of the provisions of Sections 25 and 26 of the Evidence Act, 1872, which bars such statement to be proved against the said appellants. The said two provisions are quoted below:-

25. *Confession to police-officer not to be proved. - No confession made to a police-officer shall be proved as against a person accused of any offence.*

26. *Confession by accused while in custody of police not to be proved against him.- No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate shall be proved as against such person.*

Explanation - In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882 (10 of 1882).

91) It is seen that admittedly, only 23 (twenty-three) writ petitioners [i.e. 22 appellants herein] gave their statement before the police, allegedly admitting their complicity in paying bribe to obtain service through APSC. Thus, it becomes an undisputed point that remaining 39 (thirty-nine) writ petitioners had not made any such statement before the police. Therefore, based on the inculpatory statements made by 23 persons, can presumption be drawn that the remaining 39 writ petitioners had also paid bribe to illegally get service through APSC.

92) By virtue of the provisions of Section 25 and 26 of the Evidence Act, 1872, a statement made by an accused cannot be proved against said accused. There are also well settled legal parameters as to how much of the statement made by the co-accused would bind the other co-accused. In this

case, it would not be relevant to examine that question.

93) Therefore, another question would arise as to whether inculpatory statements allegedly made by 23 writ petitioners can be made the basis for this Court to take a view not only against the concerned appellants, but also to draw adverse inference against the other appellants, not making such statement. In this regard, this Court is of the unhesitant opinion that firstly, any "statement" made by an accused before the police within the meaning of Section 161 Cr.P.C., cannot partake the character of a "confession". It is not the case of the State that after giving statement before the police, those 23 writ petitioners were produced before the Magistrate for recording their respective confession under Section 164 Cr.P.C. The statement made by an accused before the police, when such accused is in police or judicial custody, cannot be proved against the accused. Therefore, the reliance on the so-called inculpatory statement of few of the accused, in the opinion of the Court, cannot be used to presume that those particular appellants and/or all the remaining appellants have paid bribe to the then Chairman of the APSC to get their appointments through APSC. Such a presumptions impermissible even while exercising jurisdiction under Article 226 of the Constitution of India.

94) Therefore, in order to see as to what materials were disclosed by the State in connection with the writ proceedings before the learned Single Judge, the Court has meticulously gone through the documents appended to the present set of memorandums of appeals. However, as mentioned hereinbefore, it is seen that the State respondents have not brought on record the so-called statement of the accused. As per the observations made in paragraph nos. 43 to 48 of the impugned judgment, heavy reliance has been made on the 52 (fifty-two) office files placed before the learned Single Judge,

which contains, amongst others, report of investigation in Dibrugarh P.S. Case No. 936/2016. Based on the police investigation, it has been held in para-47 of the impugned judgment that "... *there are cogent materials on which the respondent authority derived satisfaction that the selection process through which the petitioners came to be selected and eventually appointed was tainted by fraud.*" In para-48 of the impugned judgment, it has been held that "... *Irregularities attributed against each of the petitioners are minuted, reinforced by statements made before the Investigating Officer by such petitioners, as available in the records, admitting to their complicity. Having gone through the police reports, the prima facie view of this Court is that the same commends itself to acceptance.*"

95) Therefore, from the hereinbefore referred observations made in the impugned judgment, only 19 (nineteen) writ petitioners had allegedly made inculpatory statement before the police about their complicity in fraud. However, it has not been disclosed in the impugned judgment regarding the materials appearing against the remaining 29 (twenty-nine) writ petitioners, based on which satisfaction of the Court has been arrived at that the police investigation "*commends itself to acceptance.*" In this case, the specific materials appearing against each of the appellants in those 52 office files find no mention in the impugned judgment. The allegations against the appellants are made save and except a general statement appearing in paragraph-43 of the impugned judgment. The relevant paragraphs- 43 and 44 of the impugned judgment are quoted below:

43. Applying the above principles to the present cases to ascertain the circumstances and the foundational facts leading to the discharge of the petitioners from service during the probation period, the original office files containing the notes on arrest and suspension of the petitioners as well as the

notes on the decision-making process involving consultations with and approval accorded by high governmental authorities, are perused. The office files called for by this Court covers each of the 52 (fifty-two) writ petitioners and, to be precise, the following Office File No. (i) AAP148/2017 pertains to Bhaskar Dutta Das (A-11), Bhaskar Deva Sarma (A-12) and Amrit Jyoti Sharma (A-13); (ii) AAP 380/2017 in respect of Dipak Khanikar (A-14), Dwithun Borgayary (A-17), Debojit Bora (A-20), Pallabi Sarma Choudhury (A-22), Anirudhya Roy (A-24), Himangshu Choudhury (A-25), Kunal Das (A-27), Kamal Debnath (A-30), Badrul Islam Choudhury (A-32), Geetali Doley (A-34), Rajarshi Sen Deka (A-35), Rumi Saikia (A-36) and Nisha Moni Deka (A-37); (iii) AAP 150/2018 in respect of Moon Mazoomder (A-47), Monika Teronpi (A-48), Srabanti Sengupta (A-49), Leena Krishna Kakati (A- 50), Barnali Das (A-51), Deepshikha Phukan (A-52), Dhrubajyoti Chakraborty (A-55), Manzuoor Elahi Laskar (A-56), Saibur Rahman Barbhuiyan (A-57), Ganesh Chandra Das (A-58), Susovan Das (A-59), Utpal Bhuyan (A-60) and Mustafa Ahmed Barbhuiyan (A-65); (iv) AAP 91/2018 in respect of Hrituraj Gogoi (A-43) and Joydev Mahanta (A-45); (v) HMA924/2017 in respect of Hemanta Saikia (A-15), Jayanta Kr. Nath (A-16), Sabbira Imran (A-18), Harshajyoti Bora (A-21), Jotindra Pd. Baruah (A-26), Dilip Kumar Kalita (A-29), Kaushik Kalita (A-42), Gulshan Daolagupu (A-61), Pallavi Sharma (A-53), Bhargav Phukan (A-62) and Kavita Das (A-66); (vi) FTX 115/2017 in respect of Sunayana Aidew (A-33), Vikas Kr. Pincha (A-38), Manas Protim Haloi (A-39), Barnali Devi (A-44), Rhituraj Neog (A-63) and Nipan Kr. Pathak (A-64); (vii) TMV 299/2016 in respect of Prasanjit Kr. Ghosh (A-46); (viii) TMV 298/2016 in respect of Suranjita Hazarika (A-54), and (ix)/(x) GLR 169/2017 and GLR 169/2017/Pt-I in respect of Raju Saha (A-19) and Jyotirmoy Adhikary (A-31). The grounds of arrest and the materials collected against the petitioners are contained in the aforesaid office files. Broadly, investigations revealed that the petitioners were involved in securing job by adopting unlawful means in collusion with the arrested accused person, Sri Rakesh Kr. Paul, the then Chairman of APSC, and other arrested members of the Assam Public Service Commission and officials and agents connected therewith. During the course of investigations, written answer-scripts of the APSC Combined Competitive Examination were seized from the Confidential Examination Branch of APSC as well as from the house of Sri Rakesh Kr. Paul. The handwriting samples of the arrested accused persons as well as that of the petitioners were obtained and sent to the Forensic Science Laboratory for examination. It revealed that the answer-scripts were not printed in the Government Press. Also, the signatures of Invigilators in the answer-scripts were found to be fake and mismatched with the Invigilators who were on duty on the respective day of examination in the particular Examination Hall. These fake answer-scripts were written again by the petitioners after completion of the examination and the same were replaced with the original answer-sheets in

connivance with Sri Rakesh Kr. Paul and his other arrested associates.

44. Without entering into any legal argument as to its admissibility, which is for the appropriate for a to decide, the office files also contains statements made by a section of the petitioners before the police admitting to their complicity in the illegal activity to which they were beneficiaries. The statements of such petitioners found in the office files are that of Hrituraj Gogoi (A-43), Joydev Mahanta (A-45), Barnali Devi (A-44), Moon Mazoomder (A-47), Monika Teronpi (A-48), Srabanti Sengupta (A-49), Leena Krishna Kakati (A-50), Barnali Das (A- 51), Deepshikha Phukan (A-52), Dhrubajyoti Chakraborty (A-55), Manzuoor Elahi Laskar (A-56), Saibur Rahman Barbhuiyan(A-57), Ganesh Chandra Das (A-58), Susovan Das (A-59), Utpal Bhuyan (A-60), Mustafa Ahmed Barbhuiyan (A-65), Vikas Kr. Pincha (A-38), Manas Protim Haloi (A-39), Rhituraj Neog (A-63), Nipan Kr. Pathak (A-64), Suranjita Hazarika (A-54), Raju Saha (A-19) and Jyotirmoy Adhikary (A-31). The statements are basically with regard to their appearance in the APSC Mains Examination and making payment of money ranging between 25 to 40 lakhs to Sri Rakesh Kr. Paul, through his agents, for getting selection by the APSC and for securing job.

96) It would be apposite to refer to the observations of the Constitution Bench of the Supreme Court of India on the "issue of criminal antecedents" in paragraph nos. 121 and 122 of the case of *Manoj Narula (supra)*, which are extracted hereinbelow:-

Issue of criminal antecedents

121. *The expression "criminal antecedents" or "criminal background" is extremely vague and incapable of any precise definition. Does it refer to a person accused (but not charged or convicted) of an offence or a person charged (but not convicted) of an offence or only a person convicted of an offence? No clear answer was made available to this question, particularly in the context of the presumption of innocence that is central to our criminal jurisprudence. Therefore, to say that a person with criminal antecedents or a criminal background ought not to be elected to the Legislature or appointed a Minister in the Central Government is really to convey an imprecise view.*

122. *The law does not hold a person guilty or deem or brand a person as a criminal only because an allegation is made against that person of having committed a criminal offence – be it in the form of an off-the-cuff allegation or an allegation in the form of a First Information Report or a complaint or an accusation in a final report under Section 173 of the Criminal Procedure Code or even on*

charges being framed by a competent Court. The reason for this is fundamental to criminal jurisprudence, the rule of law and is quite simple, although it is often forgotten or overlooked – a person is innocent until proven guilty. This would apply to a person accused of one or multiple offences. At law, he or she is not a criminal – that person may stand 'condemned' in the public eye, but even that does not entitle anyone to brand him or her a criminal. Consequently, merely because a first information report is lodged against a person or a criminal complaint is filed against him or her or even if charges are framed against that person, there is no bar to that person being elected as a Member of Parliament or being appointed as a Minister in the Central Government.

97) Though the above observations were made by the Constitution Bench of the Supreme Court of India while examining the issue regarding purity of elections, but it has been reiterated in the said judgment that “presumption of innocence is central to our criminal jurisdiction.”

98) However, the Court would hasten to add that the principle of presumption of innocence would not come in the way of the Government to discharge a probationer on the ground that he is not found suitable for becoming a member of service. But if the Government is *prima facie* satisfied regarding complicity of such probationer on fraud, then even the probationer would become entitled to protection under Article 311 of the Constitution of India.

99) In light of the discussions above, it is held that the decision of the learned Single Judge to hold on the basis of the statements made before the police by 22 appellants herein that the appellants have illegally obtained service in lieu of money is not sustainable, because any statement made by an accused before the police cannot be proved against them as per the mandate of Sections 25 and 26 of the Evidence Act, 1872.

100) Moreover, under such circumstances, and in view of the decision

of the Four-Judge Bench of the Supreme Court of India in the case of *Khudiram Das v. State of W.B.*, (1975) 2 SCC 81, where it was held that the test for determining if material must be disclosed is whether in all "reasonable probability", the material would influence the decision of the authority, which was followed by the Supreme Court of India in the case of *Amit Kumar Sharma (supra)*, the Court is inclined to hold that those finding by the learned Single Judge, that are based on 52 office files produced in sealed cover is not sustainable, being contrary to the case laws discussed above, which is found to vitiate the impugned judgment.

101) The learned senior counsel for the appellant had cited the case of *Khatri & Ors.(IV) (supra)*, to press his point that case diary can be called for by the Court under Article 32 and 226 of the Constitution of India and perused. The said case related to blinding of under-trial prisoners, which when came to light, was under investigation. The Supreme Court had called for reports of investigation and a question arose as to whether there was any legal bar for the Supreme Court of India to peruse those documents. In that case, referring to the power of the Court under Section 172 of the Cr.P.C. to call for the case diary, and taking note of the fact that the Supreme Court was examining the matter in light of right to life under Article 21 of the Constitution of India, it was held that as the case diary was relevant for the enquiry, there was no bar to peruse the same. The said case does not help the appellant. Firstly, the manner in which investigation was being carried out was not the issue before this Court. The learned Single Judge has not been able to show as to whether the police report was relevant for the issue raised by the appellants in the writ petition. If the State had any intention to rely on the police reports, the State was not prevented by any judicial order of the Court not to file it along with their

affidavits. However, the State had refrained from producing it though they had been granted sufficient opportunity. Thus, when police reports are called for while deciding bail application, the case diary and investigation reports are the most relevant papers. Similarly, when the Constitutional Courts are in seisin of cases where there was an extra-judicial killing, or death of an under-trial prisoner, then the police diary becomes relevant. But police investigation reports cannot be said to be relevant, when in a writ petition, the State had got sufficient opportunity to bring it on record by way of affidavit-in-opposition, but chose not to do so. Thus, the State respondents cannot be allowed to take a u-turn and then claim that those police investigation reports, produced in sealed cover, would not prejudice the appellants. If such a practice is encouraged, then in many cases, the State, who is one of the largest litigants in the Country would start a practice of non-disclosure of material facts in their affidavit and take the petitioners/ appellants by surprise by producing materials adverse to private litigants in a sealed cover. Such a procedure would lead to a travesty of justice and cannot be approved of.

102) None of the decisions cited by the learned senior counsel for the appellants are found to be authority on the point that statement made before the police by an accused is sufficient to establish fraud during selection and/or pre-appointment process.

On legality of discharge order:

103) It is a well settled and acceptable proposition that if existence of fraud is the motive, then the employer may hold that the concerned probationer is not suitable for regularisation in service.

104) In none of the discharge orders shown to the Court from the

available records, it is found that the authority competent to discharge the appellants have stated that the appellants were not found suitable for being made a member of service. Out of three discharge orders, referred to in paragraph-5 of the impugned judgment and order, the impression of the Court on a perusal of the first and third discharge orders is that it conveys stigma against the concerned appellants to whom those discharge orders were issued. The second discharge order, though appears to be innocuously worded, contains a reference that the said officer is under suspension. If the appellants who have been discharged by such discharge orders apply subsequently for entering into service, any employer would ask those appellants to produce the suspension order. Then there is remote chance of any further employment window for those appellants.

105) In this case, the Court is of the view that the finding recorded in para 43 to 45 and 47 and 48 of the impugned judgment that the police investigation was not the "motive", but the "foundation" to discharge the appellants from service.

106) The said paragraphs 43 and 44 have been quoted hereinbefore. Now paragraphs 45 to 48 of the judgment and order of the learned Single Judge are quoted below:-

45. *The office files, as indicated above, chronologically records the events taking place, following information received from the Dibrugarh Police as regards arrest of the petitioners in connection with Dibrugarh P.S. Case No.936/2016. From the decision calling for detailed reports from the Dibrugarh Police for taking further action, to receiving such reports in connection with the arrest of the petitioners, to the decisions to withdraw the services of the petitioners pending action to be taken by the Personnel (A) Department, Government of Assam, to obtaining the views of the Judicial Department before taking final decision and to obtaining the approval accorded by the Chief Minister of Assam, together with the views of the Advocate General, Assam, before the petitioners were discharged from service by orders of*

the Governor of Assam, the same finds recorded in the respective office files.

46. *Clearly, the allegations of irregularities on the part of the petitioners are not allegations of any irregularities, negligence, inefficiency and misconduct taking place during discharge of their duties post-recruitment or after having been appointed to public offices. The allegations against the petitioners in indulging in gross irregularities and fraud, involving payment of illegal gratifications, for securing appointments to public offices are apparently of pre- recruitment period, that is, before they were appointed to public offices. In the understanding of this Court the element of misconduct, which reverberates in the submissions made on behalf of the petitioners, is attributable only in respect of a period subsequent to a valid initial appointment. Not a single citation could be placed on behalf of the petitioners for the proposition that irregularities committed during the recruitment process and/or before appointments had been made and/or before a person is born into a cadre/service, would constitute misconduct. A vain attempt was made when reliance was placed in paragraph 37 of Palak Modi to say that the use of unfair means in the evaluation test/confirmation test would certainly constitute misconduct. Reliance so placed vis-à-vis the facts and circumstances in the present cases, is altogether out of context. In Palak Modi the private respondents therein had already been appointed as Probationary Officers way back on 05.05.2006. In due course, the State Bank of India informed that they were due for confirmation in service and, therefore, they are to appear in the test proposed to be conducted on 27.02.2011. The private respondents appeared in the test held on 27.02.2011 but their names did not figure in the result declared on 10.05.2011, primarily on the ground that the Institute of Banking Personnel Selection, which body was entrusted with the task of preparing the examination papers and evaluating the answer-sheets, submitted a Report to the Bank that some candidates including the private respondents were suspected to have used unfair means. Thus, paragraph 37 of Palak Modi, which makes mention that use of unfair means during "evaluation test/confirmation test" would constitute misconduct, was only in respect of test conducted for the purpose of confirmation in service. No law was laid down in Palak Modi that misconduct can also be stretched back to a period prior to entering into service and for illegalities and irregularities committed during the selection process. As misconduct cannot be a pre-recruitment phenomena, the very bedrock of the submissions made on behalf of the petitioners that the impugned action being founded on misconduct, therefore, the principles of natural justice and/or the provisions of Article 311 of the Constitution could not have been dispensed with, in the considered opinion of this Court, does not hold any water.*

47. *Indeed, there can be no hiding from the fact that the arrest and the materials collected against the petitioners following the FIR dated 27.10.2016, registered as Dibrugarh P.S. Case No.936/2016, had set the ball rolling. The investigation reports*

of Dibrugarh Police were the foundational facts, the gravity of which was considered by the Government of Assam in the Personnel (A) Department, which eventually resulted in the impugned orders being passed, preceded by consultations with the concerned Departments, obtaining the views of the Judicial Department and with approval of the highest governmental authority. The impugned actions are only in respect of an identifiable group/section of the candidates who had appeared in the Mains Examination. The identifiable group are only those candidates where their duplicate answer-sheets, after substituting with their original answer-sheets, were recovered from the Confidential Examination Branch of APSC as well as from the house of the then Chairman Sri Rakesh Kr. Paul. This identifiable group alone were discharged from service and against whom charge-sheets have been filed. They are the 52 (fifty two) writ petitioners herein and another 8 (eight) candidates who are not before this Court. Allegations are with regard to criminal conspiracies resulting in tampering with the examination process for the benefit of the petitioners herein. Investigations have revealed that the petitioners had indulged in unfair means for getting selected by paying bribe or on extraneous considerations, but certainly not on account of merit. There are cogent materials on which the respondent authority derived satisfaction that the selection process through which the petitioners came to be selected and eventually appointed was tainted by fraud. Irregularities in the selection and appointment of the petitioners being found at the threshold itself, can it be said that the State action was not bona fide in discharging the petitioners from service and was it not the solemn duty of the State to take the impugned action for maintaining sanctity and in reposing faith in the system and public offices in relation to the affairs of the State Government. Can it be said that it was not open to the State Government to act on the disturbing revelations emanating from the police investigations with regard to grave illegalities being discovered involving the petitioners during the selection process, which illegalities occurred well before they had entered into service. To reiterate, the discharge of the petitioners from service was not on account of any alleged misconduct after appointment but on discovery of fraud at the point of their very entry into service. There is a clear dividing line between a challenge made to an order of discharge on grounds of misconduct during post-recruitment period and a challenge made to an order of discharge on grounds of irregularities and illegalities finding place relatable to a pre-recruitment period. Whereas the former would invariably invite compliance of audi alteram partem rule of natural justice and/or compliance of the protection guaranteed under Article 311 of the Constitution, the latter can fall within the category of exceptions to the rule of audi alteram partem, particularly, if there are reliable materials to reach a satisfaction that, insofar as the petitioners are concerned, the examination process and their selection was vitiated. Going back to Parshotam Lal Dhingra and Samsher Singh, it is only when termination is seen to be founded on manifest

misconduct, it would be a punishment and will go to violate Article 311 of the Constitution in the absence of any enquiry. However, as observed above, the arguments on misconduct being the foundation, are wholly misplaced and misconceived, inasmuch as, discharge of the petitioners from service are not founded on the phenomena of misconduct, as is understood in service jurisprudence.

48. *The Dibrugarh Police Reports, following investigations, are part of the records and a compilation of the same has also been furnished before this Court by Mr. D.K. Mishra, learned Senior Counsel, during the course of hearing. It is seen that the illegalities and irregularities discovered in the selection had been scrutinised and investigated upon in respect of each of the writ petitioners. The detailed police investigations enabled to pick out the candidates who had unlawfully benefited. A mere perusal of the police reports leaves no room for doubt as to the thoroughness with which the investigation was carried out. Irregularities attributed against each of the petitioners are minuted, reinforced by statements made before the Investigating Officer by such petitioners, as available in the records, admitting to their complicity. Having gone through the police reports, the prima facie view of this Court is that the same commends itself to acceptance. The question is, could such selection in respect of the petitioners be acted upon in the matter of public employment. Also, whether the State respondent could have acted upon the police reports to eventually discharge the petitioners from service. No law is cited on behalf of the petitioners to support a view that there is legal embargo in acting upon police reports, as seen to be done in the present cases. On the contrary, the decisions in Krishan Yadav and O. Chakradhar goes to support a contention that police reports can be acted upon. This Court, therefore, would hold that the orders of discharge, which are the subject-matter of challenge in the present cases, do not suffer from any legal infirmity only on a contention that the impugned orders are based on foundational facts emanating from the reports of the Dibrugarh Police. Orders of discharge from service founded on police reports are one thing and orders founded on misconduct are altogether a different aspect or proposition. What is relevant in the present cases is to ascertain whether the orders of discharge were founded on misconduct, as understood in service jurisprudence. This has already been answered in the negative in the preceding paragraphs of this judgment.*

107) The learned senior counsel for the State has emphatically and strenuously submitted that any order of simpliciter discharge/ removal from service does not carry any stigma and in such cases, provisions of Article 311 does not apply in other words, it was submitted that the discharge orders are

always non-stigmatic, for which he has placed reliance on the case of. In order to supplement his submissions that, the learned senior counsel for the State has cited the following cases, viz., (i) *R.S. Dhaba (supra)* (para 2-4), (ii) *M.P. Hasta Shilpa Vikas Nigam Ltd. (supra)* (para 2, 3& 5), (iii) *Hukam Chand Khundia (supra)* (para 2), (iv) *K.V. Krishnamani (supra)* (para-4), (v) *Registrar, High Court of Gujarat (supra)* (para 2-4, 11, 15, 23, 24, 26, 30-34, 36, 37, 39, 41, 43 & 44), (vi) *Sekhar Roy (supra)* 11 & 13-15), (vii) *Parshotam Lal Dhingra (supra)* (para-5, 11, 26 & 28), (viii) *Samsher Singh (supra)* (para 63, 65), (ix) *Naresh Kumar (supra)*, and (x) *Bihari Lal Sidhana (supra)*. However, in para-50 of the case of *Gujarat Steel Tubes Ltd. (supra)*, the Supreme Court of India has held that “... it is beyond dispute that the form of the order of the language in which it is couched is not conclusive. The court will lift the veil to see the true nature of the order.” Therefore, the Court has the power to see the true nature of the discharge order by lifting the veil.

108) In the case of *Palak Modi (supra)*, the ratio that has been laid down by the two-Judge Bench is to the following effect:

25. *The ratio of the above noted judgments is that a probationer has no right to hold the post and his service can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post held by him. If the competent authority holds an inquiry for judging the suitability of the probationer or for his further continuance in service or for confirmation and such inquiry is the basis for taking decision to terminate his service, then the action of the competent authority cannot be castigated as punitive. However, if the allegation of misconduct constitutes the foundation of the action taken, the ultimate decision taken by the competent authority can be nullified on the ground of violation of the rules of natural justice.”*

109) In the impugned judgment, the case of *Chandra Prakash Shahi (supra)* had been referred to. The relevant paragraphs 2 and 28 to 30 of the said judgment are extracted below:-

2. *What is "motive"; what is "foundation"; what is the difference between the two; these are questions which are said to be still as baffling as they were when Krishna Iyer, J. in Samsher Singh v. State of Punjab, (1974) 2 SCC 831: AIR 1974 SC 2192, observed as under:*

"Again, could it be that if you summarily pack off a probationer, the order is judicially unscrutable and immune? If you conscientiously seek to satisfy yourself about allegations by some sort of inquiry you get caught in the coils of law, however, harmlessly the order may be phrased. And so, this sphinx-complex has had to give way in later cases. In some cases the rule of guidance has been stated to be 'the substance of the matter' and the 'foundation' of the order. When does 'motive' trespass into 'foundation'? When do we lift the veil of 'form' to touch the 'substance'? When the court says so. These 'Freudian' frontiers obviously fail in the workaday world...."

13. *Following the decision of Parshotam Lal Dhingra case, AIR 1958 SC 36, this Court in State of Bihar v. Gopi Kishore Prasad, AIR 1960 SC 689, held that if the services of a probationer are terminated on the basis of an inquiry into the allegations of misconduct and inefficiency, the order would be punitive. It was pointed out that in the case of a probationer, it is always open to the Government to hold an inquiry merely to assess the merits of the employee to find out whether he was fit to be retained in service and confirmed. In another case relating to a probationer, namely, in State of Orissa v. Ram Narayan Das, AIR 1961 SC 177, where the services were governed by Rule 55-B of the Civil Services (Classification, Control and Appeal) Rules which provided that where the services of a probationer were intended to be terminated either during the period of probation or at the end of that period for any fault or on account of his unsuitability, he would be apprised of the grounds of unsuitability and would also be afforded an opportunity to show cause against it before orders are passed against him, it was held that the termination order would not become punitive merely because of an antecedent inquiry but the real object or purpose of the inquiry had to be found out whether it was held merely to assess the general unsuitability of the employee or it was held into charges of misconduct or inefficiency etc. In Ranendra Chandra Banerjee v. Union of India, AIR 1963 SC 1552, which again was a case relating to a probationer, it was held that on account of Rule 55-B of the Civil Services (Classification, Control and Appeal) Rules if the inquiry was held for the limited purpose of finding out whether the employee was fit to be retained or not, the said inquiry would not make the order punitive as the inquiry could not be related to any misconduct of the employee. This view was reiterated in Jagdish Mitter v. Union of India, AIR 1964 SC 449. In Madan Gopal v. State of Punjab, AIR 1963 SC 531, the order by which the services of the employee were terminated was an order simpliciter in nature, which was innocuously worded, but it was held by this Court that the form of the order was not decisive and the Court could go behind that order to find out whether it was founded upon the misconduct of the employee.*

28. *The important principles which are deducible on the concept of "motive" and "foundation", concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the*

period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for his further retention in service or for confirmation, an inquiry is held and it is on the basis of that inquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an inquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that inquiry, the order would be punitive in nature as the inquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of "motive".

29. *"Motive" is the moving power which impels action for a definite result, or to put it differently, "motive" is that which incites or stimulates a person to do an act. An order terminating the services of an employee is an act done by the employer. What is that factor which impelled the employer to take this action? If it was the factor of general unsuitability of the employee for the post held by him, the action would be upheld in law. If, however, there were allegations of serious misconduct against the employee and a preliminary inquiry is held behind his back to ascertain the truth of those allegations and a termination order is passed thereafter, the order, having regard to other circumstances, would be founded on the allegations of misconduct which were found to be true in the preliminary inquiry.*

30. *Applying these principles to the facts of the present case, it will be noticed that the appellant, who was recruited as a Constable in the 34th Battalion, Pradeshik Armed Constabulary, U.P., had successfully completed his training and had also completed two years of probationary period without any blemish. Even after the completion of the period of probation under para 541 of the U.P. Police Regulations, he continued in service in that capacity. The incident in question, namely, the quarrel was between two other Constables in which the appellant, to begin with, was not involved. When the quarrel was joined by few more Constables on either side, then an inquiry was held to find out the involvement of the Constables in that quarrel in which filthy language was also used. It was through this inquiry that the appellant's involvement was found established. The termination was founded on the report of the preliminary inquiry as the employer had not held the preliminary inquiry to find out whether the appellant was suitable for further retention in service or for confirmation as he had already completed the period of probation quite a few years ago but was held to find out his involvement. In this situation, particularly when it is admitted by the respondent that the performance of the appellant throughout was unblemished, the order was definitely punitive in character as it was founded on the allegations of misconduct.*

110) Therefore, even if for the time-being, the contention of the learned senior counsel for the State is accepted that the discharge orders of the appellants are innocuous, yet, the contents of the office files, which had been

produced before the learned Single Judge and referred to in the impugned judgment, makes it clear that the contents of the office files constituted the foundation to discharge the appellants and not the motive. Therefore, on lifting the veil, the observations made by the learned Single Judge in paragraphs 43 to 48 of the impugned judgment leads to the only conclusion that the State Government at the highest level had arrived at a conclusion that the appellants had secured jobs allegedly on the basis of colossal fraud, then there can be no other conclusion other than that the same formed the "foundation" to discharge the appellants.

111) Therefore, even assuming that the appellants were probationers, yet when their discharge order is based on foundational facts, and the materials available against them was not the motive to pass discharge orders against the appellants, the appellants are found entitled to the protection envisaged under Article 311 of the Constitution of India. In this case, the Government has not recorded its satisfaction in writing as to why it is not reasonably practicable to hold such inquiry. Clause (b) to second proviso to Article 311(2) is an exception and not a rule and therefore, the same must be scrupulously followed, which was not done in this case, which is found to vitiate all the discharge orders.

112) This is not a case where the appropriate Government had taken a decision that in light of the allegations against the appellants, they are not found suitable for extension of their probation. A least no such decision was placed during the course of hearing of the batch of writ petitions wherein the judgment impugned in this appeal were passed. Then it could have become a "motive" and not the "foundation". Only thereafter, question would have arisen as to whether the period of probation of the appellants under different service rules would be continuing or the probation period was over and the principle of

“deemed confirmation” would apply. At this stage, the said issue appears to be academic.

113) In this case, there is nothing in the impugned judgment that the competent authorities in the State had passed an order to dispense with the enquiry in the manner as envisaged under Proviso (b) to Sub-article (2) of Article 311 of the Constitution of India. At least the learned Single Judge did not find it in the office files placed before the Court and no such document has been filed in any of the affidavit-in-opposition filed on behalf of the State respondents in the writ proceedings. Therefore, it has to be presumed that the appropriate Government has not passed any order to record its satisfaction in terms of Proviso (b) of Sub-article (2) of Article 311 of the Constitution of India.

114) The provisions of Article 311 of the Constitution of India is quoted below:-

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. - (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply—

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not

expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

115) A Special Bench of 7 Judges of the Supreme Court of India, in para-13, 43 and 70 of the case of *Moti Ram Deka & Ors. v. The General Manager, North East Frontier Railway & Ors., 1963 SCC OnLine SC 87: AIR 1964 SC 600*, has observed and held as follows:

13. *Article 309 provides that subject to the provisions of the Constitution, Acts of the appropriate legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State. This clearly means that the appropriate legislature may pass Acts in respect of the terms and conditions of service of persons appointed to public services and posts, but that must be subject to the provisions of the Constitution which inevitably brings in Article 310(1). The proviso to Article 309 makes it clear that it would be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and prescribing the conditions of service of persons respectively appointed to services and posts under the Union or the State. The pleasure of the President or the Governor mentioned in Article 310(1) can thus be exercised by such person as the President or the Governor may respectively direct in that behalf, and the pleasure thus exercised has to be exercised in accordance with the rules made in that behalf. These rules, and indeed, the exercise of the powers conferred on the delegate must be subject to Article 310, and so, Article 309 cannot impair or affect the pleasure of the President or the Governor therein specified. There is thus no doubt that Article 309 has to be read subject to Articles 310 and 311, and Article 310 has to be read subject to Article 311. It is significant that the provisions contained in Article 311 are not subject to any other provision of the Constitution. Within the field covered by them, they are absolute and paramount. What then is the effect of the provisions contained in Article 311(2)? Article 311(2) reads thus:*

“No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.”

We are not concerned with the cases covered by the proviso to this article in the present appeals. It may be taken to be settled by the decisions of this Court that since Article 311 makes no distinction between permanent and temporary posts, its protection must be held to extend to all government servants holding permanent or temporary posts or officiating in any of them. The protection afforded by Article 311(2) is limited to the imposition of three major penalties contemplated by the Service Rules viz. dismissal, removal or reduction in rank. It is true that the consequences of dismissal are more serious than those of removal and in that sense, there is a technical distinction between the two but in the context dismissal, removal, and reduction in rank which are specified by Article 311(2) represent actions taken by way of penalty. In regard to temporary servants, or servants on probation, every case of termination of service may not amount to removal. In cases falling under these categories, the terms of contract or service rules may provide for the termination of the services on notice of a specified period, or on payment of salary for the said period, and if in exercise of the power thus conferred on the employer, the services of a temporary or probationary servant are terminated, it may not necessarily amount to removal. In every such case, courts examine the substance of the matter, and if it is shown that the termination of services is no more than discharge simpliciter effected by virtue of the contract or the relevant rules, Article 311(2) may not be applicable to such a case. If, however, the termination of a temporary servant's services in substance represents a penalty imposed on him or punitive action taken against him, then such termination would amount to removal and Article 311(2) would be attracted. Similar would be the position in regard to the reduction in rank of an officiating servant. This aspect of the matter has been considered by this Court in several recent decisions, vide Jagdish Mitter v. Union of India [Civil Appeal No. 718 of 1962 decided on 20-9-1963]; State of Bihar v. Gopi Kishore Prasad [AIR 1960SC689]; State of Orissa v. Ram Narayan Das [AIR 1961 SC 177]; S. Sukhbans Singh v. State of Punjab [AIR 1962 SC 1711]; and Madan Gopal v. State of Punjab [AIR 1963 SC 531]. This branch of the law must, therefore, be taken to be well-settled.

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43. *At the conclusion of his judgment, the learned C.J. has observed that "in every case, the Court has to apply the two tests mentioned above, namely (1) whether the servant had a right to the post or the rank, or (2) whether he has been visited with evil consequences of the kind hereinbefore referred to". It would be noticed that the two tests are not cumulative, but are alternative, so that if the first test is satisfied, termination of a permanent servant's services would amount to removal because his right to the post has been prematurely invaded. The learned C.J. himself makes it clear by adding that if the case satisfies either of the*

two tests, then it must be held that the servant had been punished and the termination of his services must be held to be wrongful and in violation of the Constitutional rights of the servant. It would thus be noticed that the first test would be applicable to the cases of permanent servants, whereas the second test would be relevant in the cases of temporary servants, probationers and the like. Therefore, we do not think, the learned Additional Solicitor-General is justified in contending that all the observations made in the course of this judgment in regard to permanent servants considered together support his contention. Besides, if we may say so, with respect, these observations are in the nature of obiter dicta and the learned Additional Solicitor-General cannot rely solely upon them for the purpose of showing that Rule 148(3) or Rule 149(3) should be held to be valid as a result of the said observations.

* * *

70. *With this background let me now scrutinize the leading judgment of this Court on the subject, namely, Parshotam Lal Dhingra v. Union of India [(1958) SCR 828]. That was a case of reversion of government servant was officiating in Class II Service as Assistant Superintendent, Railway Telegraphs, to his substantive post in Class III Service. This Court, speaking through Das, C.J., gave an exhaustive treatment to the scope of Article 311(2) of the Constitution, particularly with reference to the meaning of the expressions "dismissed", "removed" or "reduced in rank" found therein. A careful reading of the judgment shows that this Court has heavily relied upon Rule 49 of the Civil Services (Classification, Control and Appeal) Rules, and its explanation, and attempted to give a legal basis for the said provisions. On that basis, having considered the different aspects of the problem, the Court has laid down the following two tests, at p. 863, to ascertain whether a person is dismissed or removed within the meaning of Article 311 of the Constitution; (1) whether the servant had a right to the post or the rank, or (2) whether he has been visited with evil consequences of the kind herein before referred to i.e. loss of pay and allowances, loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion. If an officer had a right to a post or rank and if the termination of his services deprived him of that right, the said termination would be dismissal or removal as punishment. So too, if the termination had the effect of the officer being visited with evil consequences, then whatever may be the phraseology used for putting an end to his services, it would be dismissal as punishment. The motive operating on the mind of the authority concerned or the machinery evolved or the method adopted to put an end to his services are not relevant in considering the question whether he was dismissed, if he had a right to the office or if he had been visited with evil consequences, though the said circumstances may have some relevance as other decisions of this Court disclose, in ascertaining whether he was*

discharged with a stigma attached to him. While conceding that this decision does not in terms specifically lay down that even in the case of a person holding a permanent post, if there was an appropriate term in the conditions of service that his services could be terminated by notice, Article 311 of the Constitution would not be attracted, it is contended that the raison d'etre of the decision and some passages therein lead to that conclusion. Some of the passages relied upon may be extracted:

At p.p. 857-858:

“It has already been said that where a person is appointed substantively to a permanent post in government service, he normally acquires a right to hold the post until under the rules, he attains the age of superannuation or is compulsorily retired and in the absence of a contract, express or implied, or a service rule he cannot be turned out of his post unless he is guilty of misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the service rules read with Article 311(2).”

At p.862:

“As already stated if the servant has got a right to continue in the post, then, unless the contract of employment or the rules provide to the contrary, his services cannot be terminated otherwise than for misconduct, negligence, inefficiency or other good and sufficient cause.”

These passages certainly lend support to the argument of the learned counsel, but the qualifying clauses on which reliance is placed are only incidental observations. The main principles relevant to the present enquiry were laid down by the Court clearly and precisely at p. 860, thus:

“Shortly put, the principle is that when a servant has right to a post or to a rank either under the terms of the contract of employment, express or implied, or under the rules governing the conditions of his service, the termination of the service of such a servant or his reduction to a lower post is by itself and prima facie a punishment, for it operates as a forfeiture of his right to hold that post or that rank and to get the emoluments and other benefits attached thereto.”

The following observation further pinpoints the principle:

“One test for determining whether the termination of the service of a government servant is by way of punishment is to ascertain whether the servant, but for such termination, had the right to hold the post.”

This decision, therefore, clearly lays down, without any ambiguity, that if a person has a right to hold office under the service rules or under a contract, the termination of his services would attract Article 311 of the Constitution. It also lays down that a person holding a substantive lien on a permanent post has a right to such office. It does not say, expressly or by necessary implication, that even. If a

person is deprived of such a right, it will not be punishment, unless it is inflicted for misconduct in the manner prescribed by the service rules.

116) The State has not been able to satisfy the Court from any provision of law or any judicial pronouncement that Article 311(2), second proviso (b) is not required to be followed if the officer is on probation.

On principles of natural justice:

117) The learned senior counsel for the State, on the point that it is not always the mandatory requirement to give an opportunity of hearing to the officer, who is on probation, had submitted that in this case, the appellants had secured their respective appointment through illegal and fraudulently means and therefore, it can be said that they did not otherwise qualify during the CCE-2013 and CCE-2014. Therefore, at the time of appointment, such an appointment is void *ab-initio*, and consequently, no violation of principles of natural justice can be claimed.

118) In support of his submissions, the learned senior counsel for the State has cited the following cases, viz., (i) *Krishan Yadav & Ors. v. State of Haryana and Ors.*, (1994) 4 SCC 165 (para 9-22), (ii) *State of M.P. v. Shyama Pardhi*, (1996) 7 SCC 118 (para 3-6), (iii) *Union of India v. O. Chakradhar*, (2002) 3 SCC 146 (para 3-8 & 10-12), (iv) *Ashok Kumar Sonkar v. Union of India*, (2007) 4 SCC 54 (para 3, 4, 26-32, 34), (v) *State of Chhattisgarh & Ors. v. Dhirjo Kumar Sengar*, (2009) 13 SCC 600 (para 1-5, 17-19, 23), (vi) *Sachin Kumar & Ors. v. Delhi Subordinate Service Selection Board & Ors.*, (2021) 4 SCC 631 (para 34, 41-43, 45, 47, 48, 49), (vii) *Rita Mishra v. Director, Primary Education, Bihar*, 1987 SCC OnLine Pat 159 [para 9, 10, 13, 15, 16, 17A, 18, 25A – 28, 30, 44, 46(5) 49, 50], (viii) *Lovely Singha v. State of Assam*, 2020 SCC

OnLine Gau 4958 (para 15, 16, 21), (ix) *Naresh Kumar v. State (NCT of Delhi)*, 2022 SCC OnLine Del 4002 (para 13, 19, 20, 23, 24, 27, 30, 31, 38, 39, 43, 44).

119) In this regard, it would be appropriate to refer to the observations made by the Constitution Bench of the Supreme Court of India in the case of *Delhi Transport Corporation v. D.T.C. Mazdoor Congress*, 1991 Supp (1) SCC 600, cited by the learned senior counsel for the appellants in WA 14/2022. Para 230 -232, 295, 299, 300, 302, thereof are quoted below:-

“230. *There is need to minimise the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however high-placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual whims and fancies. It is trite to say that individuals are not and do not become wise because they occupy high seats of power, and good sense, circumspection and fairness does not go with the posts, however high they may be. There is only a complacent presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History does not support it and reality does not warrant it. In particular, in a society pledged to uphold the rule of law, it would be both unwise and impolitic to leave any aspect of its life to be governed by discretion when it can conveniently and easily be covered by the rule of law.*

231. *The employment under the public undertakings is a public employment and a public property. It is not only the undertakings but also the society which has a stake in their proper and efficient working. Both discipline and devotion are necessary for efficiency. To ensure both, the service conditions of those who work for them must be encouraging, certain and secured, and not vague and whimsical. With capricious service conditions, both discipline and devotion are endangered, and efficiency is impaired.*

232. *The right to life includes right to livelihood. The right to livelihood therefore cannot hang on to the fancies of individuals in authority. The employment is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income, the right to work becomes as much fundamental. Fundamental rights can ill-afford to be consigned to the limbo of undefined premises and uncertain applications. That will be a mockery of them.*

295. *In E.P. Royappa v. State of Tamil Nadu Bhagwati, J. (as he then was) held that Article 14 is the genus while Article 16 is a specie. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. "equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and*

doctrinaire limits. From a positivistic point of view, equality is antithetical to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. In Maneka Gandhi case it was further held that the principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence. In Ramana case it was held that it is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions namely, rational relation and nexus the impugned legislative or executive action would plainly be arbitrary and the guarantees of equality under Article 14 would be breached. Wherever, therefore, there is arbitrariness in State action whether it be of legislature or of the executive or of an "authority" under Article 12, Article 14, "immediately springs into action and strikes down such State action". In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the constitution.

299. *The Maneka Gandhi case is also an authority on the proposition that the principles of natural justice is an integral part of the guarantee of equality assured by Article 14 of the Constitution. In Union of India v. Tulsiram Patel this court held that the principles of natural justice have thus come to be recognised as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this court to the concept of equality which is the subject matter of that article. Shortly put, the syllogism runs thus: "violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of the State action, it is a violation of Article 14, therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to the legislation and State action but also where any tribunal, authority or body of men, not coming within the definition of 'state' in Article 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such a matter fairly and impartially. "*

300. *In Moti Ram Deka case this court already held that "the rule making authority contemplated by Article 309 cannot be validly exercised so as to curtail or affect the rights guaranteed to public servants under Article 311 (2). Article 311 (2) is intended to afford a sense of scrutiny to public servants who are*

substantively appointed to a permanent post and one of the principal benefits which they are entitled to expect is the benefit of pension after rendering public service for the period prescribed by the Rules. It would, we think, not be legitimate to contend that the right to earn a pension to which a servant substantively appointed to a permanent post is entitled can be curtailed by Rules framed under Article 309 so as to make the said right either ineffective or illusory. Once the scope of Article 311 (1) and (2) is duly determined, it must be held that no rule framed under Article 309 can trespass on the rights guaranteed by Article 311. This position is of basic importance and must be borne in mind in dealing with the controversy in question. "

* * *

302. *Article 14 is the general principle while Article 311 (2) is a special provision applicable to all civil services under the State. Article 311 (2) embodies the principles of natural justice but proviso to clause (2) of Article 311 excludes the operation of principles of natural justice engrafted in Article 311 (2) as an exception in the given circumstances enumerated in three clauses of the proviso to Article 311 (2) of the Constitution. Article 14 read with Articles 16 (1) and 311 are to be harmoniously interpreted that the proviso to Article 311 (2) excludes the application of the principles of natural justice as an exception; and the applicability of Article 311 (2) must, therefore, be circumscribed to the civil services and be construed accordingly. In respect of all other employees covered by Article 12 of the Constitution the dynamic role of Article 14 and other relevant articles like Article 21 must be allowed to have full play without any inhibition, unless the statutory rules themselves, consistent with the mandate of Articles 14, 16, 19 and 21 provide, expressly such an exception."*

120) Therefore, as the Constitution Bench of the Supreme Court of India has interpreted that Article 14 of the Constitution of India is the general principle while Article 311(2) is an exception, it is incumbent on part of the State to show that the requirement of three clauses of second proviso of Article 311(2) of the Constitution of India has been scrupulously complied with, which the State has failed to demonstrate.

121) None of the cases cited by the learned senior counsel for the State has either overruled and/or in any way diluted the decision in the case of *Delhi Transport Corporation (supra)*.

122) In the case of *Krishan Yadav (supra)*, the Supreme Court of India,

having noticed large scale anomalies and illegalities in the selection process at the behest of higher-ups, had scrapped the entire selection process. In the case of *Shyama Pardhi (supra)*, the selected candidates did not possess the requisite educational qualification for appointment and therefore, the training undergone was held to be illegal and the appointments were held to be violative of the statutory rules.

123) In the case of *O. Chakradhar (supra)* the question considered by the Supreme Court was whether the selection made by the Railway Recruitment Board for appointment to the post of Junior Clerk-cum-Typist was vitiated due to manipulations and irregularities. Their Lordships took into consideration the report of the CBI and upheld the cancellation of selection by recording the following observations – “*The nature and extent of illegalities and irregularities committed in conducting a selection have to be scrutinized in each case so as to come to a conclusion about future course of action to be adopted in the matter. If the mischief played is so widespread and all-pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notices to each selectee. The only way out would be to cancel the whole selection. Motive behind the irregularities committed also has its relevance.*”

124) In the case of *Dhirjo Kumar Sangar (supra)*, the respondent had claimed that he was adopted son of his projected father, but instead of proving adoption, he had produced a succession certificate. The Joint Director had rejected his application for compassionate appointment, despite which, the Deputy Director, who is a rank lower than the Joint Director had issued appointment order on compassionate ground. Accordingly, on such facts, which

are distinguishable from the facts of the present appeals, it was held that the appointment was illegal and principle of *audi alteram partem* was not required to be followed.

125) In the case of *Commodore Commanding, Southern Navel Area, Kochi v. V.N. Rajan*, (1981) 2 SCC 636, the Supreme Court of India had expressed its agreement with the Division Bench of the Kerala High Court that the respondent was only a temporary Govt. servant and that even as a temporary Govt. servant, he is entitled to the protection of Article 311(2) of the Constitution, where termination involves a stigma or amounts to punishment. Following the said ratio, the Single Bench of this Court [constituted by one of us (*K.R. Surana, J*)] had interfered with the termination order passed by the RWD Department in the case of *Md. Imran Hussain Barbhuiya v. The State of Assam & Ors.*, WP(C) 4266/2023, decided on 31.07.2023.

126) The case of *Devendra Kumar (supra)*, is also not found to help the State respondents because in that case, the Supreme Court had referred to the maxim of *sublato fundamento cadit opus* (a foundation being removed, the superstructure falls) and *jus ex injuria non oritur* (a person claiming any right arising out of his own wrongdoing cannot be permitted to urge that their offence cannot be subjected to inquiry, trial, or investigation. In the said case, the person was terminated on the ground that fraud/ misrepresentation/ suppression of information sought by employer or furnishing false information regarding his criminal antecedents while seeking appointment, led to termination of the appellant from service without holding any enquiry. Thus, it was held that "... *Suppression of material information sought by the employer or furnishing false information itself amounts to moral turpitude and is separate and distinct from the involvement in a criminal case.* ..."There is no quarrel with

the said legal proposition because it is normal in any recruitment process that on giving false information, service can be terminated. The services of the appellants were not terminated on the said ground.

127) The case of *Biharilal Sidhana (supra)*, also does not help the State respondents as the service of the respondent was terminated under Rule 5(1) of the CCS (Temporary Service) Rules, 1965. In the said case, the Supreme Court of India had observed that mention in the termination order that the employee was under suspension, did not amount to stigma as this is the only way to describe him in the termination order. In the said case, while prosecution was pending the services of the respondent was terminated and on his acquittal in the criminal case, he prayed for reinstatement. However, in the present case, on lifting the veil, the undeniable fact is that the reasons for discharging the appellants were the foundation and not the motive.

128) The case of *S. Janaki Iyer (supra)*, was cited to impress upon the Court that on account of non-supply of the police investigation reports, which were produced before the learned Single Judge, no prejudice has been caused to the appellants. However, on a perusal of para-19 of the said judgment, it is observed that the Supreme Court of India had taken note of the fact that the preliminary enquiry report that was not furnished to the appellant was never made the basis for coming to a conclusion in regular departmental inquiry with regard to the guilt of the appellant. Thus, after conclusion of the preliminary enquiry, charge-sheet was issued to the appellant and thereafter a regular inquiry was held. This is something that is missing in this case, because neither any preliminary inquiry report nor any other report is found to have been furnished to the appellants. Moreover, the police investigation report, which contains purported statements made by some of the appellants, admitting their

complicity in the offence is not made a part of documents appended to the charge-sheet. Therefore, going by the principle laid down in the case of *S. Janaki Iyer (supra)*, the appellants are found to have suffered real prejudice.

129) The case of *Rajesh Kohli (supra)*, cited to show that reference to unsatisfactory service, while terminating the services, cannot be termed as a stigma. The said case would not help the State respondents as the appellant therein, who was the judicial officer, his service was terminated during probation, which was assessed not solely on the basis of the real performance, but also on the probity as to how one has conducted himself. It is reiterated that in this case, on a perusal of the records, learned Single Judge found complicity of the appellants in colossal fraud. Therefore, in the present case, the service of appellants was terminated as a measure of punishment. It has been held that the discharge of the appellants was not by way of a simpliciter discharge. Paragraph 11 and 18 thereof, which are relevant are quoted below:

“11. The petitioner also submitted that his service was terminated on the ground of an alleged misconduct, namely, pendency of a criminal complaint and his alleged behaviour with subordinate staff and, therefore, the said order of termination of service was in the nature of a punishment by casting a stigma on the petitioner and therefore illegal and without jurisdiction as no opportunity of hearing was given to the petitioner prior to passing of the order of his termination. He also submitted that since he was granted increments by the respondent, it is proved that the respondents were satisfied with his service and, therefore, the order terminating his service is without jurisdiction.

18. During the period of probation an employee remains under watch and his service and his conduct is under scrutiny. Around the time of completion of the probationary period, an assessment is made of his work and conduct during the period of probation and on such assessment a decision is taken as to whether or not his service is satisfactory and also whether or not on the basis of his service and track record his service should be confirmed or extended for further scrutiny of his service if such extension is permissible or whether his service should be dispensed with and terminated. The services rendered by a judicial officer during probation are assessed not solely on the basis of judicial performance, but also on

the probity as to how one has conducted himself."

130) The case of *Krishna Kanta Debbarma (supra)*, also does not help the State respondents as the respondent therein remain unauthorisedly absent from training and therefore, he was discharged from temporary service as per Rule 746(K) of Police Regulations of Bengal, 1943.

131) The case of *Amarbir Singh (supra)*, decided by Five-Judge Bench of the Punjab & Haryana High Court was partly upheld by the Supreme Court of India in the case of *Joginder Pal (supra)*. In the said case, the earlier judgment of the Punjab & Haryana High Court was set aside and case of 57 petitioners was remanded back by the Supreme Court of India. This case is in sequel to the decision rendered in the case of *Inderpreet Singh Kahlon (supra)*, *Joginder Pal (supra)* and *Amarbir Singh (supra)*, decided by the Supreme Court of India. In the said case, the tainted and the non-tainted candidates were segregated. There is no quarrel with the unique facts presented in that case. However, the issue involved in the said cases of *Inderpreet Singh Kahlon (supra)*, *Joginder Pal (supra)* and *Amarbir Singh (supra)*, has not arisen for decision in the present case in hand.

132) In the case of *Sachin Kumar & Ors. (supra)*, owing to the irregularities and malpractice during selection process, the entire process was cancelled.

133) The case of *Rita Mishra and Ors. (supra)*, cited by the learned senior counsel for the State respondents, was approved by the Supreme Court of India in the case of *Devendra Sharma (supra)*, which has already been discussed hereinabove. Question which arose in the case of *Rita Mishra and Ors. (supra)*, was whether a public servant is entitled to a writ of mandamus for the payment of salary to him for work done despite the fact that his letter of

appointment was forged, fraudulent or an illegal one. The answer was the negative. It was also held that a writ of mandamus issues only to enforce an unqualified established right and not where the petitioners' claim has to be first adjudicated and thereafter established. It was also held that the writ jurisdiction would non-suit the petitioners where the stand of the respondent State is that the claim of the petitioners was based on a punishable crime like forgery or fraud, which cannot be gone into the writ jurisdiction. There is no quarrel with the said legal proposition. However, in the said case, the issue raised did not involve the protection of Article 311(2) of the Constitution of India, to which the present appellants are found entitled to.

134) In the case of *Lovely Sinha (supra)*, the initial appointment of the appellant was not preceded by any process of selection and thus, the appointment was *dehors* the statutory rules of recruitment and appointment and thus, held void *ab-initio*. In respect of some others, the appointments were not terminated and on the said ground, prayer was made for the recalling of termination of the services of the appellants, which was disallowed on the ground that the appellant cannot claim negative equality when Article 14 of the Constitution of India only embraces positive equality. There is no quarrel with the said well settled legal proposition.

135) In the case of *Naresh Kumar (supra)*, while the petitioner was working on probation, an FIR under Section 307 IPC was registered against him. His probation period was extended up to the maximum period of two years, which was up to 08.07.2013, but by an order dated 05.07.2013, his service was terminated and in his termination order, reference to FIR was made. On analysis of materials available on record, the Division Bench of the Delhi High Court rejected the plea of the petitioner on the ground that there was nothing in the

termination order that can give rise to the presumption that the same was placed on the criminal complaint and was not a simpliciter termination. The said case does not help the State respondent as in this case the registration of criminal proceeding against the appellants is found to be the foundation and not the motive of termination.

136) There are other cases cited, but they are also not found to help the appellants and therefore, no purpose would be served to burden this order with discussions on those.

137) The Court is unable to accept the contention of the learned senior counsel for the appellants in W.A. Nos. 96/2022, 333/2021, 219/2020, 206/2020, 50/2021, 58/2021, 111/2020, that the investigation was tainted and there was unexplained delay in investigation and that though there were incriminating materials against other persons, but they were not arrayed as accused. In this regard, the Court is of the considered opinion that the manner in which investigation is carried out was never the subject matter of challenge in the writ petition and therefore, this issue cannot be examined in these set of intra-court appeals. Moreover, in the cases, where the stand of the learned senior counsel for the State respondents is to justify the discharge orders, the principle of negative equality cannot be applied in favour of the appellants *vis-a-vis* those alleged persons who are situated similar to the appellants, but not proceeded with. No purpose would be served to burden this judgment and order in discussing case laws on non-applicability of principles of negative equality.

138) In light of the discussions above, the Court is inclined to hold as follows:

1. The finding by the learned Single Judge, *inter alia*, holding the

appellants to be involved in securing job by adopting unlawful means in collusion with the then Chairman of APSC, other arrested members of the APSC and officials and agents connected therewith are based on the grounds of arrest and the materials collected against the petitioners, which are contained in the office files covering all the 52 writ petitioners which indicates existence of materials that are the "foundation" for discharging the appellants and those foundational facts have been brought on record by calling for the detailed report from the Dibrugarh Police for taking further action. Under such circumstances, without disputing the stand of the State respondents that the discharge orders, despite referring to "suspension" in some cases and "arrest" and "suspension" in a few cases are not stigmatic, it is open to the Court to lift the veil to find out as to whether the discharge order is a simpliciter discharge or it is punitive and stigmatic. Therefore, the finding of the learned Single Judge that the appellants had secured employment as probationer due to colossal fraud, the discarding of misconduct as a pre-recruitment phenomenon is found to be contrary to the requirement of Article 311(2) of the Constitution of India and thus, unsustainable.

2. The finding of the learned Single Judge in accepting the statement made by 23 out of the 52 writ petitioners, purportedly admitting to their complicity in the illegal activity to which they were beneficiaries, had failed to consider two legal issues. First relates to bar under section 25 and 26 of the Evidence Act, 1872 to prove statements made by an accused before the police and second, relates to presumption of guilt of remaining 29 out of 52 writ petitioners, based on inculpatory

statements made by co-accused.

3. The learned Single Judge had failed to appreciate that the competent authorities of the State respondents had not passed any order as envisaged under proviso (b) to the second proviso of Article 311(2) of the Constitution of India, which requires that where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry, which vitiates the impugned judgment and order.
4. The learned Single Judge had failed to consider that initially 60 candidates were found to have indulged in colossal fraud to secure appointment through APSC. Out of those 60 candidates, the services of 57 candidates were discharged. However, out of those 60 candidates, 3 candidates had purportedly granted status of approver, their services were not discharged. However, against those 3 candidates, disciplinary proceedings have been drawn up. Such discrimination is not found supported by any law in force or approved by any judicial pronouncement of a Constitutional Court. Therefore, the discriminatory process against the appellants herein, which has not been taken into consideration by the learned Single Judge, is also found to have vitiated the impugned judgment and order.
5. As the reasons to terminate the appellants, according to the impugned judgment is the participation of the appellants in colossal fraud, the learned Single Judge had failed to take into consideration that the termination of the appellants, though projected to be probationers, in substance represents a penalty imposed on the

appellants and/ or punitive action taken against them and such an action has been held by the Supreme Court of India in para-13 of the case of *Moti Ram Deka (supra)*, decided by a Special Bench of 7 Judges to attract Article 311(2) for their termination/ removal. Moreover, it was further held that Article 311 makes no distinction between permanent and temporary post. The same is found to vitiate the impugned judgment.

6. The learned Single Judge had failed to consider the relevant provisions of confirmation of a probationer as laid down in the respective service rules for the appellants because except for the Assam Police Service, all other applicable service rules envisages a probation period of 2 (two) years, extendable as provided therein and therefore, by the time the appellants were discharged from service, they had already completed their normal tenure of probation. Therefore, the appropriate Govt. will have to take a decision in terms of the applicable service rules as to which of the appellants have not completed their probation period.
7. Although in paragraph 42 of the impugned judgment, it has been noted that if the termination from service is sought to be founded on misconduct, negligence, inefficiency or other disqualification then it is a punishment and the requirements of Article 311 must be complied with and further observing that where the form of the order is just a facade of dismissal for misconduct, justice would require the Court, before which the order is put to challenge, to go behind the form to ascertain the true character of the order. However, the learned Single Judge had failed to appreciate that in these cases, the investigation report of

Dibrugarh PS Case No. 936/2016 was a live link to the order of discharge and therefore, the said investigation report was a "motive" and not the "foundation" to discharge the appellants.

8. In para 45 of the impugned judgment, it has been mentioned that in the office files, for all the writ petitioners which were placed before the learned Single Judge, there were chronological record of information of the events which had taken place following information received from the Dibrugarh Police as regards the appellants in connection with Dibrugarh PS Case No. 936/2016 including decision calling for detail reports from the Dibrugarh Police for taking further action, receiving of such reports in connection with arrest of the writ petitioners to the decision to withdraw the services of their service pending action to be taken by the Personnel (A) Department, Govt. of Assam to obtaining reviews of the Judicial Department before taking final decision and to obtaining of approval accorded by the Chief Minister of Assam together with views of the Advocate General, Assam before they were discharged from service by orders of the Governor of Assam, which is a clear indication that those were the "motive" to discharge the appellants and were not the "foundation" to discharge the appellants, as such, the finding at paragraph 48 of the impugned judgment holding that the impugned orders are based on foundational facts emanating from the reports of the Dibrugarh Police is not sustainable. Nonetheless, the procedure adopted by the learned Single Judge to peruse the office files without any disclosure being made to the appellants in course of hearing, thereby not providing the appellants any opportunity to rebut makes the order bad in law as no

opportunity of hearing was provided to the appellants.

9. In light of various decisions of the Supreme Court of India, as discussed hereinbefore, wherein it has been held that the protection of Article 311(2) was available also to a probationer and in light of the fact that nothing was placed on record to show that the authorities had passed any specific order to as required under Clause (b) of second proviso of Article 311(2) of the Constitution of India, the reliance on the decision of the Supreme Court of India in the case of *Palak Modi (supra)*, *Parshotam Lal Dhingra (supra)* and *Samsher Singh (supra)* is not sustainable. Article 311 does not create any distinction between a confirmed/ regular member of service and a probationer.
10. The finding at paragraph 49 of the impugned judgment, that the arguments on the effect of the provisions of Article 311 of the Constitution does not require to gone into when the foundational facts as revealed from the police reports were duly taken into consideration is also not sustainable and the case of *Inderpreet Singh Kahlon (supra)* and *Joginder Pal (supra)* was wrongly applied.

139) At this stage, it may be mentioned that the case of *Pradip Kumar Banerjee (supra)*, was cited by the learned senior counsel for the State respondents to highlight that to what extent interference in intra-court appeal is permissible. We are in respectful agreement with the observations made by the Supreme Court of India in the said case. However, in this case, the judgment of the learned Single Judge is found to be vitiated on several counts discussed hereinbefore and thus, this is not a case of mere substitution of the opinion of the Division Bench over the discretion exercised by the learned Single Judge and thus, the said case would have not application in this case.

140) Accordingly, the appeal is partly allowed by setting aside the impugned judgment and order dated 18.03.2020, passed by the learned Single Judge in W.P.(C) 4198/2019 and 48 connected writ petitions. Resultantly, the appellants are found entitled to the following reliefs:-

1. The discharge orders in respect of all the appellants herein, which have been impugned in the connected writ petitions, viz., W.P.(C) 4198/2019 and 48 connected writ petitions are set aside. However, this relief is subject to the following:
 - i. Those appellants, who have completed their initial probation period of 2 (two) years, and by taking into consideration the maximum extendable probation period under their respective service rules, i.e. Rule 22(1) of the Assam Civil Services Rules; Rule 21(1) of the Assam Taxation Service Rules; Rule 21(1) of the Assam Transport Services Rules; and Rule 12 of the Assam Labour Services Rules are liable to be reinstated within a period of 50 (fifty) days from the date of this judgment and order.
 - ii. For those appellants whose period of probation have not been completed by taking into consideration the initial probation period and the maximum extendable probation period under their respective service rules referred hereinbefore, the competent authorities are directed to pass such appropriate order(s) as may be deemed fit and appropriate, considering the finding rendered in this judgment and order, as well by taking into account all the relevant factors as may be permissible in law. This exercise shall be done by the competent authorities of the respective Departments within a period of 50 (fifty) days from the date of this judgment and order.

- iii. The notifications dated 30.12.2017 and 20.01.2018, are held to be *ex facie* illegal and thus void *ab-initio* and therefore, not enforceable against the concerned appellants so as to alter their position from a confirmed employee of the State to being reverted back to the position of a probationer.
- iv. It is clarified that this judgment and order shall not come in the way of the competent authorities in the Govt. to initiate departmental/disciplinary proceedings against the appellants, in such way and manner as they may be so advised. However, the State respondents should make an endeavour to complete the departmental proceeding within an outer limit of 90 (ninety) days from the date of its initiation.
- v. For the period the appellants were not in service, i.e. from the date of discharge till the date of reinstatement, the appellants would not be entitled to any back wages. However, the monetary benefits for the said period shall be calculated notionally for the purpose of pensionary benefits, etc. and for calculating the current pay from the date they are prospectively reinstated in service.
- vi. It would be open to the competent authority in the Govt. to keep the appellants without any posting till the departmental/disciplinary proceeding, if any, instituted against them are brought to its logical conclusion and alternatively, it would also be open to the competent authorities to post the appellants at such place from where they will not be able to influence the witnesses in the criminal proceeding already being tried against them.

- vii. If there are any appellants whose probation period has not been completed, they would not become entitled to be reinstated in service. However, in respect of those appellants, the competent authorities in the Govt. shall pass appropriate orders to withdraw their respective discharge order already passed and to substitute the said discharge orders with a simpliciter discharge order of not having found them fit for confirmation so that no stigma would be attached against them.
- viii. It is made clear that the observation made by the learned Single Judge in the impugned judgment and order as well as by this order shall not prejudice any of the appellants or to the State in any manner whatsoever, including in trial of criminal cases registered against the appellants.
- ix. Under such circumstances, the parties are left to bear their own cost.
- x. This judgment and order shall operate prospectively from the date of this order.

141) The implementation of this order shall remain in abeyance for a period of 30 (thirty) days from the date of this order, thereby giving the State a window of such time to do the needful in terms of this order.

142) The appellants shall serve a certified copy of this order to the respondents to bring this judgment and order to their notice.

143) The records, which were called for by this Court in a sealed cover by order dated 29.09.2023, is returned un-opened and thus, un-perused by the Court. The Court Master shall hand over the same to the learned Senior Government Advocate, who had produced the same.

144) Before parting with the records, it would be appropriate to put on record the appreciation towards very able assistance rendered by the learned senior counsel/learned counsel who have made their submissions in these appeals.

JUDGE

JUDGE.

Comparing Assistant