

GAHC010007972022



undefined

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

Case No. : PIL/6/2022

ALL ASSAM TRANSGENDER ASSOCIATION (REPRESENTED BY ITS
GENERAL SECRETARY), ADD- PANDU CABIN, NEAR RLY B.G. OFFICE, P.O.-
PANDU, PIN-781012, DIST- KAMRUP(M)

VERSUS

1: THE STATE OF ASSAM AND 3 ORS. REPRESENTED BY THE DIRECTOR
GENERAL OF POLICE, ASSAM, POLICE HEADQUARTER, ULUBARI,
GUWAHATI-781007

2:THE SPECIAL DIRECTOR GENERAL OF POLICE (LAW AND ORDER)
POLICE HEADQUARTER ULUBARI GUWAHATI-781007

3:THE CHAIRMAN STATE LEVEL POLICE RECRUITMENT BOARD
MADHABDEVPUR REHABARI GUWAHATI-781008 (GROUND FLOOR OF
APHC BUILDING)

4:THE SOCIAL JUSTICE AND EMPOWERMENT DEPARTMENT
THROUGH ITS SECRETARY TO THE GOVT. OF ASSAM

For the Petitioner(s) : Swati B. Baruah, Advocate.

For the Respondent(s) : Mr. R.K.D. Choudhury, Deputy Solicitor General of India.
: Mr. D. Nath, Senior Government Advocate, Assam.
: Mr. D.P. Borah, Standing Counsel, Health & Family Welfare
Department.
: Mr. R.M. Das, Standing Counsel, Social Justice & Empowerment
Department.
: Mrs. R.S. Chowdhury, Advocate.

- B E F O R E -
HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

27.11.2025

(Ashutosh Kumar, CJ)

We have heard Swati Bidhan Baruah, learned Advocate for the petitioner; Mr. D. Nath, learned Senior Government Advocate, Assam for the respondent Nos.1, 2 & 3 and Mr. R.M. Das, learned Standing Counsel, Social Justice & Empowerment Department for the respondent No.4.

This PIL seeks to address the grievance of the petitioner against the Police Department, Government of Assam, in particular, having published an advertisement which they claimed to be discriminatory, for recruitment of transgender persons as Sub-Inspectors and Constables.

Today, this Court has been informed by Mr. D. Nath that against the advertisement in question, the recruitment process has been concluded. This Court was also informed by Mr. Nath that not a single transgender person had applied against the said advertisement.

Thus, without referring to the advertisement, we need to point out certain facts, which would be necessary for any future recruitment process.

In the advertisement in question, provision was made for the transgenders but the number of seats allotted were clubbed together for male candidates and transgender persons. Separate number of seats were fixed for females.

The primary concern of the petitioner was that with the clubbing of transgender with male candidates, the female transgenders would have been required to undergo the rigors of the male candidates, which

was discriminatory.

The concern of the petitioner, therefore, was 2(two) folds: viz. that there should be some allocation of seats for the transgender persons and within such allocated number of seats, it should be opened for the candidates to apply as a male transgender or a female transgender so as to be subjected to the same rigor as a binary male and female, respectively, in the process of recruitment.

Mr. Nath, learned counsel for the State submits that this would relate to the policy decision of the State. Unless a policy is framed, the Director General of Police or the recruitment body cannot go for such separate allocation, which would amount to reservation. What would be the percentage of reservation would have to be based on empirical data regarding the number, their social and economic status and other factors.

However, during the course of hearing of this petition, we have been told that in accordance with the Transgender Persons (Protection of Rights) Rules, 2020, a State Level Transgender Protection Cell has been constituted on 14.10.2022 by the Assistant Inspector General of Police (R), Assam under the Chairmanship of the Director General of Police, Assam.

The transgenders in the State of Assam are provided with identity cards, making them eligible for specialized privileges, like medical facilities, ration cards, etc. Since the Supreme Court in the year 2014 recognized transgender persons as a third gender, the Governments of the States were directed to provide them with all kinds of reservation in education and employment, treating them as socially and educationally backward class.

Mr. Das, learned Standing Counsel, Social Justice & Empowerment Department has submitted that a proposal has been mooted to recognize the transgender community as a socially and educationally backward class, which will be placed before the State Cabinet for approval. After the Cabinet approves the proposal, the transgender persons will receive reservation in education and employment as per the norms in both the cases.

Once the proposal receives the assent of the State Cabinet, it would be the bounden duty of the recruiting bodies to allocate special number of seats. While doing so, special care would be required to be taken with respect to the kind of rigors that the members of transgenders would be subjected to. It would only be appropriate, which we say by way of suggestion, that male transgender would be subjected to the rigors like male candidates and female transgenders be subjected to the rigors of the female candidates. It would only be in keeping with the Transgender Persons (Protection of Rights) Rules, 2020, whose object and reasons are to provide for protection of rights of transgender persons and their welfare and for matters, which are connected therewith and incidental thereto.

The Government is obligated to initiate welfare measures of persons of transgender community. Steps have to be taken to secure full and effective participation of transgender persons for their inclusion in society and access to their employment. The obligation of the state in that regard has been more than retreated in case of ***Novtej Singh Johar & Ors. -Vs- Union of India :: (2018) 10 SCC 1*** and in ***National Legal Services Authority -Vs- Union of India & Ors. :: (2014) 5 SCC 438***.

There is no doubt that there is, today, the recognition of the gender identity of the transgenders which lies at the heart of the fundamental right to dignity but special measures are still lacking for providing them the access to employment. It is only then that the transgenders can also be included in the mainstream of the society.

On this aspect, Mr. D. Nath, learned Senior Government Advocate, Assam and Mr. Das, learned Advocate representing the Social Justice & Empowerment Department shall apprise this Court, by the next date, as to the future course of action, especially with respect to the status of male and female transgenders and steps to make the recruitment process in future to be inclusive for them. This Court would also like to be informed that whether the proposal for reservation in favour of transgenders in education and employment has received the approval of the Cabinet.

List this matter again for further consideration on **11.02.2026** along with PIL No.74/2018 and PIL No.2/2022.

JUDGE

CHIEF JUSTICE

Comparing Assistant