

(2023) 09 GAU CK 0056

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 8220, 8422, 8423, 8668, 8841, 8845, 9198, 9377, 9388 Of 2019, 1931, 2315, 5013 Of 2020

Arunima Gogoi

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 29-09-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 142
Assam Public Services (Direct Recruitment to Class-III and Class-IV) Rules, 1997 — Section 2(a), 3, 3(2), 3(2)(i), 3(2)(ii), 3(2)(iii), 3(2)(iv), 4, 4(1), 4(2), 4(3), 4(4), 4(5), 5, 5(1)(a), 5(3), 6, 6(2), 6(5), 12, 12(1), 12(2), 13, 16
Assam Fiscal Responsibility and Budget Management Act, 2005 — Section 1(3), 2(a), 5, 7, 7(1)(a), 7(1)(b), 7(1)(c), 7(1)(d), 7(1)(e), 7(1)(f), 7(1)(g), 7(2), 7(3), 8, 8(2)
Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 — Section 4

Citation : (2023) 09 GAU CK 0056

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : U. K. Nair, R. Singh, B. Gogoi

Final Decision : Disposed Of

Judgement

1. In all the thirteen writ petitions before this Court, the petitioners herein who were appointed as the Grade-IV employees by the Joint Director of Health Services/Directors of Health Services, Assam were removed by the respective removal orders which have been put to challenge before this Court.

2. Taking into account the reasons assigned by the State respondents in their stand being parimateria, the thirteen writ petitions are taken up for disposal by the instant common judgment and order. Before adjudicating as regards the legality and validity of the order of removal of the petitioners in the instant batch of writ petitions, this Court finds it relevant to take note of the respective facts in each of the writ petition on the basis of which the petitioners challenged their removal by the respondent authorities. For the sake of brevity and to avoid prolixity, this Court would not be repeating the overlapping facts.

3. In the instant writ petition, forty six writ petitioners have assailed their respective removal orders. The date of the impugned removal orders is 24.02.2020 and the contents of said removal orders are similar.

4. The petitioners in the instant writ petition claim that there was an advertisement dated 04.12.2004 issued by the Joint Director of Health Services, Dibrugarh for filling up of few vacant posts of Grade-IV under the establishment of Joint Director of Health Services, Dibrugarh and the Office of the Malaria Officer Dibrugarh. In the said advertisement, the eligibility criteria was mentioned that the candidates must have passed Class VIII examination and the minimum age was 18 years and the maximum age limit not more than 36 years. It was also mentioned that there would be relaxation for SC/SC candidates. It was also mentioned that the applications must reach the Office of the Joint Director of Health Services, Dibrugarh on or before 20.12.2004.

5. It further transpires from the said advertisement enclosed to the writ petition that the copy of the said advertisement was sent to the Editor of the Assamese Daily newspaper "Asom Spandan", Dibrugarh for information and publication of the said advertisement in the next issue at "Asom Spandan" as well as also to the Office Notice Board. It is however not known whether such advertisement was at all published in the newspaper in question. The petitioners herein applied pursuant to the said advertisement and were issued respective appointment orders during the month of February, 2005 and March, 2005.

6. From a perusal of the said appointment orders enclosed as Annexure-2 (Colly) to the writ petition, it is seen that the petitioners were appointed as Grade-IV employees subject to discharge without notice and without assigning any reason on purely temporary basis against vacant sanctioned posts under the establishment of the Joint Director of Health Services, Dibrugarh with pay scale and other allowances.

7. The petitioners thereupon joined their services and received their regular salaries. On 27.04.2018, an advertisement containing an Order was published from the Office of the Directorate of Health Services, Assam. In the said Order, it was mentioned that a Screening Committee was constituted by the Director of Health Services, Assam in pursuance to the Government letter No.HLA1007/2016/184 dated 27.03.2017 and the Joint Director of Health Services of the Districts were requested to appear before the Screening Committee along with Grade-IV employees, with all relevant documents in original w.e.f. 12.06.2017 to 19.06.2017, in the Office of the Director of Health Services, Assam, Guwahati. Upon verification of the documents, they were found to be not genuine and some of the employees remained absent. It was also mentioned in the said Order that the Director of Health Services, Assam again directed the respective Joint Director of Health Services of the Districts to issue Show Cause notice on behalf of the Director of Health Services, Assam who were found not genuine and absent and directed to appear before the Screening Committee from 12.03.2018 to 17.03.2018, with all relevant records/documents

for final compilation of the records. It was mentioned in the said Order that as per the direction of the Government, the interest of public service and for natural justice, one last and final opportunity was given to those who remained absent as well as also those whose documents were found not genuine to report to the Office of the Director of Health Services, Assam w.e.f. 30.04.2018 to 20.05.2018 from 11 AM to 4 PM to prove their genuineness, failing which necessary steps shall be initiated as per the Rule and after the expiry of the said period, they shall be treated as non-genuine. It is under such circumstances, the said order was published in the newspaper on 27.04.2018.

8. As the instant writ petition pertains to the Dibrugarh District, it is seen that the names of 68 persons were mentioned in the said advertisement. It further reveals from the records that the Petitioners herein approached this Court by filing a writ petition being WP(C) No.3051/2018, apprehending that they would be terminated as per the notice dated 27.04.2018 which was published in the newspaper. When the said writ petition was taken up by this Court on 18.05.2018, the learned Additional Advocate General appearing on behalf of the State submitted that vide notice dated 27.04.2018, another opportunity was given to everyone to furnish additional documents, if so required. The learned Additional Advocate General, Assam submitted during the course of the hearing in the said writ proceedings that when the screening process gets completed, individual decision for each employees will be taken with due intimation to the affected employees and only thereafter, if anyone is found to be in non-genuine category, appropriate order would be issued. This Court disposed of the said writ petition directing the petitioners to avail the opportunity to prove the bonafide of their appointments so that the authority can reach to an appropriate conclusion on their service status. It was further observed that if anyone is found to be non-genuine amongst the persons, the Authority shall indicate the precise deficiency and afford opportunity to the affected employees before any adverse action is taken.

9. Thereupon, it is further seen from the records that individual Show Cause Notices were issued to the Petitioners and replies were also filed by the Petitioners. The record further shows that a communication dated 06.06.2019 was issued by the Director of Health Services, Assam addressed to the Joint Director of Health Services, Assam informing about the list containing the names of Grade-IV staff whose appointment have been found to be not genuine by the Scrutiny Committee and directing the Joint Directors to issue individual Show Cause Notices and consequently Show Cause Notices were issued to individual petitioners. Under such circumstances, 11 writ petitions were filed before this Court. All these writ petitions were disposed of vide an order dated 31.07.2019 on the basis of an affidavit filed by the Director of Health Services, Assam wherein it was stated that a decision has been taken by the Health Department to withdraw the impugned Show Cause notices and to issue fresh Show Cause notices mentioning the specific deficiency found against each illegal fake employee including the Petitioners so that each Show Cause employee gets an

opportunity to know his/her deficiency and to respond effectively. In the said affidavit filed by the Director of Health Services, Assam, it was also mentioned that directions have been issued on 05.07.2019 to the Joint Director of the Health Services of the concerned Districts who issued the impugned Show Cause notices to withdraw those Show Cause notices and to issue fresh one indicating specific deficiency. It is on the basis of the said stand taken by the Health Department, the 11 writ petitions were disposed of vide an order dated 31.07.2019. Subsequent thereto, the Joint Director of Health Services, Dibrugarh again issued Show Cause notices on 17.08.2019 stating inter alia as to why the services of Petitioners should not be terminated basing on the reports of the Scrutiny Committee. The Petitioners were required to prove the genuineness of their appointment failing which necessary orders for termination from services would be issued. The Petitioners thereupon submitted replies drawing the attention of the Joint Director of Health Service to the orders passed by this Court whereby there was a direction to state the deficiency in the appointments of the petitioners. It was also mentioned that the Petitioners be supplied with the Screening Committee's report so that an effective reply could be submitted.

10. The Joint Director of Health Services, Dibrugarh thereupon issued removal orders on 07.11.2019 informing the Petitioners that they have been removed from service by the Director of Health Services, Hengerabari. The orders of removal dated 07.11.2019 was put to challenge by the Petitioners in WP(C) No.8271/2019 and this Court vide an order dated 26.11.2019 had set aside the orders of removal dated 07.11.2019 on the ground that the Show Cause notices were issued to the Petitioners without intimating the precise deficiency found against them by the concerned Scrutiny Committee and the orders for removal were not in conformity with the earlier orders of this Court dated 25.05.2019 passed in WP(C) No.3350/2018 as well as the order dated 31.07.2019 passed in WP(C) No.4167/2019. This Court further gave the liberty to the Health and Family Welfare Department as well as the Director of Health Services to take appropriate steps against the Petitioners after issuing necessary Show Cause notices to the Petitioners intimating the deficiencies found by the Scrutiny Committee against them.

11. It is further seen from the records that pursuant to the order dated 26.11.2019 passed in WP(C) No.8271/2019, the Petitioners approached the Joint Director of Health Services, Dibrugarh on 04.02.2019 praying before him to allow them to join their duties. However, the said Petitioners were debarred from joining. Under such circumstances, the Petitioners filed the representations before the Director of Health Services on 05.12.2019 however the Respondent Authorities did not allow the Petitioners to join their duties for which another writ petition was filed by the Petitioners being WP(C) No.9167/2019. The said writ petition was disposed of vide an order dated 21.01.2020 by this Court with a direction to the Joint Director of Health Services, Dibrugarh to allow the Petitioners to join their services from 22.01.2020 itself. Further to that, this Court vide the said order directed the Health and Family Welfare Department to

issue Show Cause notices to the Petitioners in terms with the earlier orders passed by this Court and the Petitioners were directed to file reply to such Show Cause notices within the time limit which is specified by the Respondents.

12. The records further show that the Petitioners thereupon were issued Show Cause notices indicating the various deficiencies in their appointments and asking the Petitioners to submit their replies within 3 (three) days from the date of issuance of the said Show Cause Notice. The Petitioners thereupon submitted replies. Vide similar orders dated 24.02.2020, all the Petitioners herein were removed from their services. Being aggrieved, the Petitioners have therefore assailed the respective orders of removal dated 24.02.2020 by way of the instant writ petition.

WP(C) No.8220/2019

13. 76 petitioners have joined together in filing the instant writ petition challenging their respective removal orders all dated 26.10.2019. The claim of the petitioners herein is that an advertisement was issued in the Daily Newspaper "Asomiya Khobor" on 03.01.2005 by the Joint Director of Health Services, Goalpara. In the said advertisement, it was mentioned that applications were invited in Standard Form for 70 posts of Grade-IV under the establishment of Joint Director of Health Services, Goalpara in the pay scale of Rs.2450-3670 per month plus other allowances as admissible under the Rules. The eligibility criteria set out in the advertisement was that the applicants must have read up to Class VIII and the minimum age was 18 years and the maximum age 36 years as on 01.01.2005. The upper age limit was relaxable for 5 years for SC/ST(P)/ST(H).

14. It is the case of the petitioners in the instant writ petition that on the basis of the said advertisement, the petitioners applied and were issued respective appointment orders during the period from October, 2005. The petitioners upon being issued the appointment orders, joined their services, and continued to render their services and received their due salaries.

15. At this stage, this Court finds it relevant to take note of that the contents of the appointment orders which were similar in content stipulated that, subject to discharge without notice and without assigning any reason, the petitioner were appointed temporarily as Grade-IV employees against sanctioned vacant posts with a pay scale and other allowances as admissible as per rules. The petitioners herein after their appointments continued to render their services and they received salaries. Subsequent thereto, the facts of the instant case are similar to the facts of WP(C) No.1931/2020 as narrated in paragraph Nos.7 to 13 hereinabove save and except the difference in the respective dates and the proceedings initiated by the petitioners. Be that as it may, all the petitioners in the instant writ petition were terminated on the basis of respective termination letters dated 26.10.2019, the contents being similar. Before proceeding to the next case, this Court finds it relevant to take note of a pertinent aspect. In the

advertisement dated 03.01.2005, the total posts advertised was 70, the Notice published in the newspaper of the non-genuine appointments were 83 and the number of present petitioners are 76.

WP(C) No.2315/2020

16. 92 petitioners have joined together to file the instant writ petition assailing their respective removal orders dated 25.02.2020 issued by the Joint Director of Health Services, Sivasagar. The petitioners in the instant writ petition claim that they participated in a selection process and they were selected against the various advertised posts in Grade-IV. Nothing however have been mentioned as to when such selection proceedings was initiated and when they were appointed initially.

17. It is the case of the petitioners that they were issued appointment letters during the year 2004-05 by the Joint Director of Health Services, Sivasagar. The said appointment orders are also not part of the records. This Court finds it relevant to mention that though the petitioners stated that they were appointed pursuant to some selection process but some of the documents enclosed to the writ petition show that some of the petitioners were initially appointed on contractual basis by the Joint Director of Health Services, Sivasagar and their services were extended from time to time. The documents also show that the Joint Director of Health Services, Sivasagar had also regularized the services of the petitioners some time in the year 2011. It is relevant to note that the materials on record do not disclose on what basis the services of the petitioners were regularized in the year 2011, in as much as, it is a well settled principle of law that regularization is not a source of recruitment, but it is upon the scheme approved and adopted by the Government to regularize the services of those persons who were irregularly appointed. Be that as it may, the said petitioners continued to render their services and were receiving their salaries without any problems till the development which took place, the details which have been mentioned in paragraph Nos.7 to 13 hereinabove. For the sake of brevity, the same are not reiterated again. It is however relevant to mention that the petitioners herein were terminated on the basis of their respective orders of removal dated 25.02.2020 issued by the Joint Director of Health Services, Sivasagar.

WP(C) No.5013/2020

18. The case of the petitioner herein is that her father-in-law vide a Registered Deed of Gift bearing No.2056 dated 27.11.1981, gifted the land wherein Porbatia Sub-Centre was constructed. On the basis of the said donation so made by the father-in-law of the petitioner, the petitioner was given an appointment on 09.12.2004. It is relevant to take note of that pursuant to the appointment of the petitioner on 09.12.2004, an enquiry was also initiated by the Deputy Commissioner, Sivasagar to ascertain whether in view of the land donated, the petitioner was given the appointment on 09.12.2004. The Deputy Commissioner,

Sivasagar vide the communication dated 08.09.2010 had confirmed that the father-in-law of the petitioner had in fact donated the plot of land for construction of Porbatia Sub-Centre. Subsequent thereto, the Deputy Commissioner, Sivasagar again vide the letter dated 04.11.2011 had requested the Joint Director of Health Services, Sivasagar to take a suitable decision with regard to the appointment of the petitioner. The Deputy Secretary to the Government of Assam, Health and Family Welfare (A) Department vide the letter dated 09.11.2013 had also directed the Director of Health Services of Assam that the petitioner was seeking employment in lieu of the land so donated by her father-in-law for construction of the Porbatia Sub-Centre and for which their family had not sought for any compensation. In the said letter, the prayer of the petitioner along with the relevant papers to the Deputy Commissioner, Sivasagar was forwarded by the Deputy Secretary to the Government of Assam, Health and Family Welfare Department. Thereafter, the Director of Health Services, Assam vide the letter dated 13.09.2013 had forwarded all the relevant documents of the petitioner to the Deputy Commissioner, Sivasagar so as to enable him to take necessary action as per Rules as desired by the Government. Since then, it is the case of the petitioner, the File pertaining to the petitioner had been pending before the Deputy Commissioner, Sivasagar for final consideration. Without the said consideration being made, the petitioner herein was removed vide the order dated 25.02.2020 which has been assailed in the instant proceedings.

WP(C) No.9388/2019

19. The petitioner herein has assailed the order of removal dated 25.10.2019. It is the case of the petitioner that the petitioner was appointed on contractual basis by the Joint Director of Health Services, Morigaon vide letter bearing No.2013-14/4658 dated 30.06.2013 and was directed to join the Office of N.H.R.M. Unit, Morigaon under the Joint Director of Health Services, Morigaon as a contractual Grade-IV staff. Subsequent thereto, the Joint Director of Health Services, Morigaon intimated the Director of Health Services, Assam to regularize the services of the petitioner after the approval of the District health Society under the Chairmanship of the Deputy Commissioner vide the communication dated 18.07.2013. The petitioner, thereupon was regularized vide the order dated 26.07.2013 by the Director of Health Services, Assam. Subsequent thereto, the Joint Director of Health Services, Morigaon had issued a show cause notice to the petitioner along with five others dated 11.06.2019 stating inter-alia that from the letter dated 14.05.2019 received from the Director of Health Services, the services of the petitioner have been found to be fake by the Screening Committee, Director of Health Services, Assam, and as such, the petitioner was directed to show cause why the services of the petitioner should not be terminated. The said show cause notice was withdrawn in view of the stand taken by the Director of Health Services in WP(C) No.3046/2018. Subsequent thereto, on 18.08.2019, the Director of Health Services, Assam, Hengrabari issued communications to all the Joint Directors of Health Services to issue show cause notice to fake Grade-IV employees citing specific deficiencies

mentioned against the names individually in the remark column. To the said communications, list of fake Grade-IV employees were enclosed. In so far as the petitioner is concerned, in the remark column it was mentioned that neither the relevant documents are available in the Office of the Director of Health Services nor there was any SIU approval. Thereupon, the petitioner along with five others were issued fresh show cause notices on 09.08.2019 thereby directing the petitioner herein to produce (1) the SIU approval letter from the Government and (2) the approval letter from DHS, Assam regarding appointment. The petitioner, thereupon, submitted a reply. Subsequent thereto, the Director of Health Services, Assam vide a communication dated 17.10.2019 informed the Joint Director of Health Services, Morigaon stating inter-alia that 6 numbers of Grade-IV/Sweeper employees including the petitioner were detected to be fake by the Screening Committee, Director of Health Services, Assam and further they could not establish the genuineness of their appointment for which they were required to be removed from the services with immediate effect and the Joint Director of Health Services, Morigaon was directed to issue the removal order individually and to submit compliance report. Pursuant thereto, the impugned order dated 25.10.2019 was issued thereby removing the petitioner from Government service.

WP(C) No.9377/2019

20. The petitioner herein has challenged the removal order dated 04.10.2019. It is the case of the petitioner that he was appointed in the cadre of Grade-IV vide order dated 07.04.2008 by the Director of Health Services, Assam and his service was placed at the disposal of the Joint Director of Health Services, North Lakhimpur. The appointment order dated 07.04.2008 which is Annexure-1 to the writ petition was issued by the Director of Health Services, Assam. In the said order, there is a mention about the order of the Government approval vide letter No.HLA971/2002/89 dated 17.12.2005. It was also mentioned that the petitioner would be governed by the New Pension Rules. The approval of the Finance (SIU) Department vide letter No.U/ONoFSI.253/05 dated 28.11.2005 was also mentioned. After the appointment of the petitioner, the Director of Health Services, Assam vide an order dated 14.06.2013 placed the petitioner's services under the disposal of the Joint Director of Health Services, Barpeta against the vacant post of Grade-IV by transferring the petitioner.

21. It further reveals from the records that the petitioner issued a show cause notice on 16.08.2019 wherein the deficiency in the appointment of the petitioner stated therein was that the original appointment letter was not found. It is not known from the records as to whether the petitioner furnished the original appointment letter or assigned any reason for his not able to furnish the original appointment letter issued to him. But from the reply to the said show cause notice dated 16.08.2019 transpires that the petitioner has only raised issues as regards non-furnishing of the minutes of the Screening Committee Meeting for which the petitioner submitted that he be furnished the minutes of the Screening

Committee Meeting and thereupon shall submit a reply. Thereupon, vide an order dated 04.10.2019, the petitioner was removed from service on the ground that the Screening Committee had detected that his appointment was fake and the petitioner could not establish the genuineness of his appointment.

WP(C) No.9198/2019

22. Both the petitioners in the instant writ petition have assailed their respective removal orders dated 18.11.2019. The petitioner No.1 had claimed that he was appointed on 10.02.2005 by the Joint Director of Health Services, Dibrugarh and he was transferred to Sivasagar vide an order dated 25.06.2010 and finally he was transferred to Tinsukia vide an order dated 22.12.2010. It is relevant to mention that the transfer order of the petitioner No.1 was issued by the then Director of Health Services, Assam.

23. The petitioner No.2 claims that he was appointed on 02.01.2010 by the Joint Director of Health Services, Baksa. Thereupon, the petitioner No.2 was transferred from Baksa to Tinsukia vide an order dated 15.12.2012.

24. Both the petitioners were issued show cause notices on 16.08.2019 by the Joint Director of Health Services, Tinsukia. In the said show cause notice, the petitioners were directed to prove the genuineness of their appointments by submitting the approval by the Director of Health Services, Assam as well as the approval of the Finance (SIU) Department. Both the petitioners submitted their respective replies wherein there was no mention as regards the query so made in the show cause notice. It is, however, relevant to take note of that in both replies which were parimateria in content, the claim of both the petitioners is that they were appointed in the Health Department under the Joint Director of Health Services against the sanctioned vacant posts and have been drawing salary against the said posts. It is, therefore, the case of the petitioners in their reply that the petitioners having joined their services as well as their continuance in the said posts would demonstrate that the same have been approved by all concerned in the past. Thereupon, the Joint Director of Health Services, Tinsukia issued the respective impugned removal orders dated 18.11.2019 by removing the petitioners from the services with immediate effect.

WP(C) No.8999/2019

25. The petitioners herein have assailed their respective orders of removal dated 05.11.2019. The case of the petitioners herein are that the petitioner Nos.1 to 17 were appointed against vacant posts in Grade-IV under the Joint Director of Health Services, North Lakhimpur. The appointment letters which have been enclosed as Annexure-I (Colly), show that those appointment letters were issued after obtaining some approval of the Government, the reference to which have been made in the letters of appointment. The petitioner No.18 was initially appointed by the Joint Director of Health Services, Nagaon on 24.04.2008, and thereafter, he was transferred to the establishment of Joint Director of Health Services, North Lakhimpur vide order dated 04.03.2014. The petitioner Nos.19,

20 & 21 were appointed on various dates by the Joint Director of Health Services, Baksa and thereafter they were transferred to North Lakhimpur on the basis of some orders. The petitioner No.22 was appointed vide an order dated 26.08.2005 by the Joint Director of Health Services, Tinsukia and thereafter vide an order dated 05.08.2012, the said petitioner was transferred to the establishment of Joint Director of Health Services, North Lakhimpur. The petitioner No.23 was appointed vide the order dated 13.03.2008 by the Joint Director of Health Services, Karbi Anglong and thereafter he was transferred to the establishment of the Joint Director of Health Services, North Lakhimpur vide the order dated 01.06.2013. The petitioner No.24 was appointed vide the order dated 09.02.2005 by the Joint Director of Health Services, Dibrugarh and thereupon he was transferred to North Lakhimpur vide the order dated 21.11.2011. The petitioner No.25 was appointed vide the order dated 15.03.2008 by the Joint Director of Health Services, Cachar and thereupon he was transferred to the establishment of Joint Director of Health Services, North Lakhimpur vide the order dated 24.09.2013. The petitioner Nos.26, 27, 28 & 29 were appointed on various dates by the Joint Director of Health Services, Sivasagar and thereupon they were transferred to the establishment of the Joint Director of Health Services, North Lakhimpur. The petitioner Nos.30 & 31 were appointed on various dates by the Joint Director of Health Services, Goalpara and thereupon they were transferred to the establishment of Joint Director of Health Services, North Lakhimpur. The petitioner No.32 was appointed vide the order dated 21.04.2008 by the Joint Director of Health Services, Jorhat and he was thereafter transferred to the establishment of Joint Director of Health Services, North Lakhimpur. The petitioner No.33 was appointed vide order dated 13.03.2008 by the Joint Director of Health Services, Karbi Anglong and thereupon he was transferred to the establishment of the Joint Director of Health Services, Lakhimpur, North Lakhimpur.

26. Each of the petitioners were issued similar show cause notices on 30.08.2019 thereby directing them to prove their genuineness to their appointments on the reason stated in their respective show cause notices. Each of the petitioners thereupon submitted their respective replies which are also parimateri in content thereby asking for a copy of the Screening Committee report. It was also stated that each of the petitioners were appointed in the Health Department in the cadre of Grade-IV against sanctioned posts and have been drawing their salary against the said posts since their date of appointment. It was further mentioned that their joining in the services as well as their continuance in the said posts go to demonstrate that the same had the approval of all concerned in as much as the posts were duly sanctioned posts. Further to that, it was mentioned that there was no objection whatsoever raised with respect to their services and drawing of salary, and hence in view of the same, the appointments made in their favour cannot be said to be ingenuine and/or doubtful.

27. Pursuant to the submission of the said show cause replies, the Director of Health Services vide a communication dated 31.10.2019 issued to the Joint

Director of Health Services, Lakhimpur informed that 53 numbers of Grade-IV employees under his jurisdiction were detected to be fake by the Scrutiny Committee of the Director of Health Services and further they could not establish the genuineness of their appointments and hence they are required to be removed from their services with immediate effect. The Joint Director of Health Services, Lakhimpur was directed to issue the removal orders individually and to submit the compliance report. Thereupon, the respective removal orders have been issued to each of the petitioners for which the instant writ petition has been filed.

WP(C) No.8845/2019

28. Four writ petitioners have joined together to file the instant writ petition thereby assailing their respective orders of removal dated 25.10.2019.

29. It is the case of the petitioners herein that the petitioner No.1 was appointed on 14.06.2006 by the Joint Director of Health Services, Goalpara and thereupon he was transferred to Morigaon vide order dated 14.08.2012. The petitioner No.2 was appointed as a casual employee in the year 2009 by the Joint Director of Health Services, Morigaon. Thereupon his services was regularized vide order dated 06.04.2013. From the materials on record, nothing could be seen as to when the petitioner No.3 was appointed and by whom. However, from the order issued by the Director of Health Services, it transpires that on 10.04.2013, the services of the petitioner No.3 who was working as a Grade-IV employee under the control of the Joint Director of Health Services, Morigaon was regularized from the date of the said letter. As regards the petitioner No.4, it is also not known as to when he was appointed. But from the Annexure-4 to the writ petition, it transpires that the petitioner No.4 was transferred from the Office of the Joint Director of Health Services, Lakhimpur to the Officer of the Joint Director of Health Services, Morigaon by an order of the Director of Health Services, Assam dated 20.07.2013.

30. It reveals from the records that each of the petitioners were issued show cause notice on 09.08.2019 asking them to prove the genuineness of their appointments and to submit the necessary documents from the date of the notice. It is not known as to whether the petitioners have submitted replies to the said show cause notices issued to them. Be that as it may, all the petitioners herein were removed from the Government services vide separate orders dated 25.10.2019.

WP(C) No.8841/2019

31. Seven petitioners have joined together and have filed the instant writ petition challenging their respective orders for removal from their service. It transpires from the writ petition that it is the case of the petitioners that pursuant to a valid selection process, the petitioners were selected against various advertised posts in Grade-IV. However, neither particulars as regards such selection process was mentioned nor any materials produced.

32. Be that as it may, the petitioner No.1 was appointed on 05.12.2005 by the Joint Director of Health Services, Goalpara and hereupon he was transferred to Kamrup (metro) vide order dated 11.01.2013. The petitioner No.2 was appointed on 05.12.2005 by the Joint Director of Health Services, Goalpara and thereafter he was transferred to Kamrup (Metro) vide order dated 26.05.2015. The petitioner No.3 was appointed on 03.04.2008 by the Joint Director of Health Services, Goalpara and he was transferred to Kamrup (Metro) vide order dated 22.11.2013. The petitioner No.4 was appointed on 31.03.2012 by the Joint Director of Health Services, Baksa and thereupon he was transferred to Kamrup (metro) vide order dated 23.04.2013. The petitioner No.5 was appointed on 05.02.2005 by the Joint Director of Health Services, Dibrugarh and thereafter he was transferred to Goalpara vide order dated 11.11.2011, and thereupon, to Kamrup (Metro) vide order dated 04.05.2013. The petitioner No.6 was appointed on 05.12.2005 by the Joint Director of Health Services, Jorhat and thereupon he was transferred to Kamrup (Metro) vide order dated 17.05.2013. The petitioner No.7 was appointed on 23.10.2009 by the Joint Director of Health Services, Goalpara and thereupon he was transferred to the Office of the Additional Director of Health Services (R) LA Region, Assam, Guwahati vide the order dated 23.11.2010.

33. It further transpires from the records that the petitioners herein were issued respective show cause notices to prove the genuineness of their appointments and to submit the various documents as stated in their notices. The petitioners also submitted their respective replies stating inter-alia that they were appointed in the Health Department by the Joint Director of Health Services against sanctioned vacant posts and have been drawing salary against the said posts. The joining in the services, the continuance in the said posts as well as the salary being paid would clearly shows that the petitioners were genuinely appointed. It further reveals that thereupon the petitioners were removed from services by the impugned removal orders dated 31.10.2019 and 19.11.2019.

WP(C) No.8668/2019

34. Ten writ petitioners have joined together and filed the instant writ petition assailing their respective removal orders dated 04.10.2019.

35. The petitioners herein claimed that pursuant to a valid selection process, the petitioners were selected against various advertised posts in Grade-IV. However, neither particulars as regards such selection process was mentioned nor materials were produced. The petitioner Nos.1, 2, 3 & 4 claimed that they were appointed by the Joint Director of Health Services, Baksa and on 02.02.2008, 25.01.2008, 04.02.2008 and 04.02.2008 respectively and they were subsequently transferred to the establishment of the Joint Director of Health Services, Barpeta. The petitioner Nos.5, 6 & 7 were appointed by the Joint Director of Health Services, Dibrugarh on 02.02.2005, 08.02.2005 and 08.02.2005 respectively and thereupon transferred to the establishment of the Joint Director of Health Services, Barpeta. The petitioner No.8 and the petitioner

No.9 were appointed by the Joint Director of Health Services, Sivasagar on 07.04.2008 and 14.02.2005 respectively and thereupon they were transferred to the establishment of Joint Director of Health Services, Barpeta. The petitioner No.10 was appointed by the Joint Director of Health Services, Nalbari on 24.01.2006 and thereupon was transferred to the establishment of the Joint Director of Health Services, Barpeta on 12.07.2013.

36. It reveals from the records that the petitioners pursuant to their appointments and transfer continued to render their services and were receiving their salaries. Each of the petitioners were issued separate show cause notices thereby asking them to prove the genuineness of their appointments. The petitioners submitted their respective replies whereby they sought for a copy of the members of the Screening Committee report and also stated that they were appointed in the Health Department under the Joint Director of Health Services against sanctioned vacant posts and have been drawing salary against the said posts. The joining to the services, the continuance thereof as well as the salary being paid would clearly demonstrate that the appointments of the petitioners had the approval of all concerned. Thereupon, the petitioners have been issued the removal orders, all dated 04.10.2019 and it is for this reason, the petitioners have approached this Court.

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37. Four writ petitioners have joined together and have filed the instant writ petition assailing their respective orders of removal dated 21.10.2019. The claim of the petitioners herein is that pursuant to a valid selection process, the petitioners were duly selected against the advertised posts in Grade-IV cadre, however, neither any particulars as regards the selection process were mentioned nor any materials were produced. The petitioner Nos.1, 2 & 3 were appointed by the Joint Director of Health Services, Dibrugarh on the basis of appointment orders dated 05.02.2005, 07.02.2005 and 23.10.2005 respectively. Thereupon, the petitioner Nos.1, 2 & 3 were transferred to the establishment of the Joint Director of Health Services, Tinsukia. The petitioner No.4 was appointed on 24.04.2011 by the Joint Director of Health Services, Tinsukia.

38. It reveals from the records that the petitioners herein were issued show cause notices on 16.08.2019 mentioning the deficiencies in their appointments. The petitioners submitted their respective replies whereby they sought for a copy of the Scrutiny Committee report and also stated that they were appointed in the Health Department under the Joint Director of Health Services against sanctioned vacant posts and have been drawing salary against the said posts. The joining to the services, the continuance thereof as well as the salary being paid would clearly demonstrate that the appointments of the petitioners have the approval of all concerned. Thereupon, the petitioners were removed from their services vide the respective orders of removal all dated 21.10.2019 which have been impugned in the instant proceedings.

39. The instant writ petition was filed by the five writ petitioners challenging inter-alia their respective orders of removal dated 21.10.2019 by the Joint Director of Health Services, Golaghat. The petitioners herein claim that pursuant to a valid selection process, the petitioners were selected against various advertised posts in Grade-IV. The petitioner Nos.1 & 2 were appointed on 17.03.2008 under the establishment of the Joint Director of Health Services. Thereupon, the petitioner No.1 was transferred to the establishment of the Joint Director of Health Services, Golaghat vide the order dated 19.08.2010 and the petitioner No.2 was also transferred to the establishment of the Joint Director of Health Services, Golaghat vide the order dated 01.03.2011. The petitioner Nos.3, 4 & 5 were appointed as claimed by the petitioners by the Joint Director of Health Services, Sivasagar vide the orders dated 03.04.2008, 03.04.2008 and 26.02.2009 respectively and subsequently they were transferred to the establishment of the Joint Director of Health Services, Golaghat vide orders dated 17.12.2011, 25.02.2011 and 25.02.2011 respectively.

40. This Court further finds it relevant at this stage to take note of that in the case of the petitioner No.1, the appointment letter was issued by the Joint Director of Health Services, Dibrugarh on 17.03.2008. In the said appointment letter, there is a mention that the same was issued as per the approval of the Director of Health Services, Assam vide letter No.HSE/APPTT/33/07/45284 dated 30.07.2007. It was also mentioned that there was an approval from the Finance (SIU) Department vide letter No.U.O. No.FSI/02/06 dated 03.08.2006 and No.U.O.No.FSI/321/06 dated 16.12.2006. The petitioner No.1 thereafter joined on 21.03.2008. On 19.08.2010, the petitioner No.1 was transferred to the establishment of the Joint Director of Health Services, Golaghat. As regards the petitioner No.2, the appointment letter was also issued by the Joint Director of Health Services, Dibrugarh on 17.03.2008 and the contents pertaining to the approval of the Director of Health Services, Assam and the Finance (SIU) Department's approval are the same as that of the petitioner No.1. The petitioner No.2 thereafter was transferred by the Director of Health Services, Assam vide an order dated 01.03.2011 and placed at the disposal of the Joint Director of Health Services, Golaghat. The petitioner No.3 was appointed by the Director of Health Services, Assam on 03.04.2008 as could be seen from the appointment letter. In the said appointment letter there is a mention that that said appointment was made in pursuance of the Governments letters No.HLA.1111/2002/Pt-I/93 dated 15.09.2006 and No.HLA.1111/2002/Pt-I/171 dated 04.01.2007. Upon the petitioner No.3 being appointed vide the appointment letter dated 03.04.2008, the services of the petitioner No.3 was placed at the disposal of the Joint Director of Health Services, Sivasagar. Subsequent thereto, on 17.12.2011, the petitioner No.3 was transferred by the Director of Health Services, Assam and his services were placed at the disposal of the Joint Director of Health Services, Golaghat. The petitioner No.4 was also appointed by the Director of Health Services, Assam on 03.04.2008 and the

contents of the said appointment letter are the same to the contents of the appointment letter of the petitioner No.3. Subsequent thereto, vide an order dated 25.02.2011, the Director of Health Services, Assam transferred the services of the petitioner No.4 and placed her at the disposal of the Joint Director of Health Services, Golaghat. The petitioner No.5 was appointed by the Joint Director of Health Services, Sivasagar vide an order dated 26.02.2009. In the appointment letter, it was mentioned that the said appointment was made in pursuance of the Government approval vide letter No.HLA.1134/05/Pt-IV/27 dated 13.06.2008 and the Director of Health Services, Assam letter No.HSE/Gr-IV/207/Pt.08/1184 dated 21.01.2009. Subsequent thereto, the Director of Health Services, Assam transferred the petitioner and placed his services at the disposal of the Joint Director of Health Services, Golaghat vide an order dated 25.02.2011. It is the claim of the petitioners that pursuant to the appointment and transfer, they continued to render their services and were receiving their salaries. The petitioners further in the pleadings have mentioned about the various steps being taken by the Health Department, the details of which have already been mentioned in paragraph Nos.7 to 13 of the instant judgment and for the sake of brevity and to avoid prolixity, this Court refrains from repeating. Be that as it may, the petitioners were issued individual show cause notices, all dated 14.08.2019 thereby directing the petitioners to prove genuineness as per the observation made by the Screening Committee during the screening at the Director of Health Services, Assam which was mentioned in the office letter dated 07.08.2019. At this stage, this Court finds it relevant to take note of that on 07.08.2019, all the petitioners were issued show cause notices. In the show cause notice issued to the petitioner No.1, it was mentioned that there was no record of the Director of Health Services' approval and no SIU approval of the Government. It was further mentioned that date of joining of the petitioner No.1 was 21.03.2008 and the salary was drawn from 01.09.2010. In the case of the petitioner No.2, it was mentioned that there was no record of Director of Health Services' approval and no SIU approval of the Government and the petitioner No.2 was also informed her date of joining was 19.03.2008 and the salary was drawn from 01.07.2011. In the case of the petitioner No.3, it was mentioned that that there was no available record found in the Directorate of Health Services, Assam regarding his appointment dated 03.04.2008, the transfer order dated 17.12.2011 and the release order dated 04.01.2012. It was further mentioned that the date of joining of the petitioner No.3 was 24.04.2008 and the salary was drawn w.e.f. 01.01.2012. In the case of the petitioner No.4, it was mentioned that there was no available records found in the Director of Health Services, Assam regarding her appointment order dated 03.04.2008 issued by the Director of Health Services, Assam, the transfer order dated 25.02.2011 from Sivasagar and the release on 29.02.2011. It was mentioned that the date of joining of the petitioner No.4 was 24.04.2008 and the salary was drawn w.e.f. 01.03.2011. In the case of the petitioner No.5, it was mentioned that there was no records of Director of Health Services' approval and no SIU approval of the Government. The petitioner No.5 had joined on 27.02.2009 and salary was drawn from

01.09.2011. It is however, relevant to take note of that in each of the show cause notices dated 07.08.2009, it is seen that the petitioners had started to draw salary after issuance of their respective transfer order by the Director of Health Services, Assam. The record reveals that the petitioners herein submitted their replies wherein the petitioners sought for the minutes of the meeting of the Screening Committee. The contents of the replies of each of the petitioners are similar. Thereupon, the Director of Health Services, Assam by the communication dated 17.10.2019 informed the Joint Director of Health Services, Golaghat that six numbers of Grade-IV employees under his jurisdiction were detected to be fake by the Screening Committee of the Directorate of Health Services, Assam as they could not establish their genuinenity of their appointments, and hence, they were removed from service with immediate effect. The Joint Director of Health Services, Golaghat was directed to issue removal order individually and to submit the compliance report. Pursuant thereto, on 21.10.2019, each of the petitioners was issued similar orders of removal by the Joint Director of Health Services which have been impugned in the instant writ petition.

41. Pursuant to filing of the above mentioned writ petitions, this Court had issued notices. Affidavits-in-opposition have been filed by the respondent Health Department in some of the writ petitions and to the said affidavits-in-opposition, affidavits-in replies have also been filed. It is also seen from the records that in WP(C) No.8220/2019, the respondent Health Department had filed an additional affidavit on 31.05.2023 and to the said additional affidavit, a re-joinder/affidavit-in reply was filed by the petitioners on 05.06.2023.

42. Let this Court, therefore, take into account the stand of the respondents. Taking into account the stand of the Government of Assam, Health Department being similar in all the affidavits so filed and additional pleadings have been filed in WP(C) No.8220/2019, this Court confines, for the sake of brevity, to refer to the stand of the Government in WP(C) No.8220/2019. It is the case of the respondents in the affidavits-in-opposition that a Scrutiny Committee was constituted for verification of genuineness of appointments of all Grade-IV staffs of the districts as per the Government Letter No.HLA.1007/2016/184 dated 27.03.2017. The said document had been enclosed as Annexure-3 in WP(C) No.8220/2019. From a perusal of the said document, i.e. the communication dated 27.03.2017, it transpires that there was a request issued to the Director of Health Services to release the salaries of 953 numbers Surveillance Workers whose credentials were found to be genuine vide letter/report dated 07.03.2017. The Director of Health Services was further requested to give last opportunity to those Surveillance Workers who did not appear before the Screening Committee to appear before the same once more, failing which suitable steps may be initiated for their termination and there was also a direction that notice in this connection be issued in the form of a newspaper advertisement. The Director of Health Services was also requested to complete the screening process of the remaining Surveillance Workers and start similar process to other posts also under its establishment so that genuineness could be verified.

43. Accordingly, on the basis of the said communication dated 27.03.2017, the Director of Health Services had issued an order dated 17.05.2017 constituting a Screening Committee of three officers alongwith supporting stuff for verification of appointment orders, transfer orders, service books etc. of all the Grade-IV of the districts. The verification was to be carried out from 12.06.2017 to 19.06.2017.

44. On the same date that is 17.05.2017, the Director of Health services, Assam directed all the Joint Directors of Health Services and the Additional Directors of Health Services to submit the necessary documents mentioned therein in a format before the Screening Committee and appear before the Screening Committee with one respective Dealing Assistant and all Grade-IV staff with all original documents on the dates specifically mentioned in the communication dated 17.05.2017. The contents of the said communication dated 17.05.2017 was modified vide another communication dated 03.06.2017.

45. On the date fixed, verification was carried out. Upon verification by the Screening Committee, it was found in the case of the writ petitioners in WP(C) No.8220/2019 that there was no prior approval of the Director of Health Services, Assam. There was no select list, no SIU approval from the Finance Department. Under such circumstances, the appointments of the writ petitioners in WP(C) No.8220/2019 were found doubtful as regards the genuineness of their appointment. Thereupon, Director of Health Services once again directed the Joint Directors of Health Services of concerned districts to instruct the writ petitioners in the other writ petitions to appear before the Screening Committee with their authentic documents to prove the genuineness as per the scheduled date and venue vide the letter dated 19.07.2017. During the said screening process, it was found upon verification that the appointments, transfers, service books, LPC's etc. were doubtful. Under such circumstances, the Director of Health Services vide the communication dated 17.02.2018 directed the Joint Directors of Health Services of concerned districts to instruct the writ petitioners in the instant batch of writ petitions to appear before the Screening Committee to prove the genuineness of their appointments as per the scheduled date and venue in order to further re-verify.

46. The writ petitioners in the present batch of writ petitions appeared before the Screening Committee, but they were unable to prove their genuineness. It is under such circumstances that the Screening Committee submitted the final verification report to the Government vide the Directorate Letter No.HSC/verification/GR-IV/80/2017/2842 dated 22.03.2018. It is the case of the respondent Health Department that the Screening Committee gave the writ petitioners ample opportunity to prove the genuineness of their appointments, but the writ petitioners were unable to prove the genuineness in respect to their appointments before the Screening Committee so constituted by the Director of Health Services, Assam. Accordingly, the Government of Assam vide the communication dated 05.11.2018 instructed the Director of Health Services to

give a last opportunity to the petitioners to prove their genuineness and if they failed to prove the genuineness of their appointments, their services would be dismissed/discharged immediately. Subsequent thereto, a notice was published in the newspaper "Niyamiya Barta" on 27.04.2018 with a direction to the writ petitioners in the instant writ petitions to appear before the Screening Committee to prove the genuineness of their appointments.

47. It is the further case of the respondents that some of the petitioners apprehending that they would be terminated, approached this Court by filing writ petitions, what happened thereafter have been detailed out at paragraph Nos.8 & 9 herein above.

48. The respondent Health Department directed the concerned Joint Directors of Health Services to serve fresh show cause notices to the writ petitioners mentioning the precise deficiencies vide the letter dated 18.08.2019. Thereupon, each of the writ petitioners in the batch of writ petitions were issued separate show cause notices stating precisely the deficiency in their appointments and also asked the petitioners to prove the genuineness of his/her appointment. On account of the failure of the petitioners to prove the genuineness of their appointments by producing any authentic document, all the petitioners in the instant batch of writ petitions were removed by various individual orders which have been impugned in the present batch of writ petitions.

49. It was further mentioned in the said affidavit-in-opposition that as per the Assam Directorate Ministerial Service Rules, 1973, the Director of Health Services of Assam is the Appointing Authority of Grade-III and Grade-IV posts. At this stage, this Court finds it relevant to mention that in the present batch of writ petitions, the appointments have been made by the Joint Director of Health Services barring one or two writ petitions.

50. To the said affidavit-in-opposition filed in various writ petitions, affidavit-in-reply were filed by the petitioners detailing what information the petitioners could gather under the Right to Information Act, 2005. In the said affidavit-in-reply, four documents of relevance have been enclosed, i.e. (i) the Office Memorandum dated 04.07.2005 issued by the Commissioner and Secretary to the Government of Assam, Finance Department; (ii) the communication issued by the Commissioner and Secretary to the Government of Assam, Finance Department dated 14.07.2005 in relation to dissolution of State Level Empowered Committee; (iii) the clarification dated 22.08.2005 issued by the Commissioner and Secretary to the Government of Assam, Finance Department clarifying the Finance Department's letter dated 04.07.2005 and (iv) Office Memorandum dated 30.03.2012 issued by the Government of Assam, Finance Department.

51. This Court before further proceeding to refer to the other pleadings finds it relevant to take note of the above referred documents which have been enclosed to the affidavits-in-reply. To understand and appreciate the correlation of the said

documents to the dispute involved, this Court finds it relevant to take note of a very pertinent development which has taken place contemporarily to the issuance of the said documents.

52. The State Legislature enacted the Assam Fiscal Responsibility and Budget Management Act, 2005 (for short, 'the Act of 2005'). This Act was enacted to provide for the responsibility of the State Government to ensure fiscal stability, sustainability, improve efficiency and transparency in the management of public finance of the State; enhance the ability of the resources by achieving sufficient revenue surplus; reduce fiscal deficit and remove the impediment to effective conduct of fiscal policy and prudent debt management for improving the social and physical infrastructure and human development in the State. Section 2 (a) of the Act of 2005 defined 'Administrative Approval' to mean authority to create liability and/or incur expenditure. Section 5 of the Act of 2005 dealt with the measures for Fiscal Transparency. Section 7 of the Act of 2005 is very pertinent as regards the instant dispute and taking into account its importance, the same is reproduced herein under:-

"7. Measures to ensure Fiscal Discipline.- (1) With a view to ensuring timely discharge of current liabilities, especially payment of salaries to the employees, -

(a) the State Government or the appointing authorities under it shall give appointments only against a sanctioned post which is vacant and in accordance with the laid down Rules, procedures and orders;

Explanation: The appointing authorities under this clause shall include the appointing authorities of the autonomous bodies including Public Sector Undertakings, Companies, Statutory Bodies, Trusts, Societies and Cooperatives Societies under the State Government.

(b) notwithstanding any other provision contained in any Act or Rules, no new post shall be created in any department of the State Government or in Autonomous bodies including Public Sector Undertakings, Companies, Statutory Bodies, Trusts, Societies and Cooperatives Societies, which are under the State Government, without the prior concurrence of the Finance Department;

(c) no appointment shall be made by the State Government or the appointing authorities under it in the vacancies arising out of transfer and leave of the incumbents in these posts;

(d) no appointment shall be made by the State Government or the appointing authorities under it, in a post in anticipation of it's falling vacant in future;

(e) the State Government or the appointing authorities under it shall not make more than one appointment against one vacant post;

(f) any letter of appointment to any vacant sanctioned post shall clearly indicate the identity of the post in the manner as may be prescribed;

(g) notwithstanding any other provision contained in any Act or Rules, the select

list prepared for the fresh appointments to vacant sanctioned posts shall contain names equal to the number of vacant posts notified at the time of calling for applications for filling up the posts.

(2) Before awarding any work or starting a construction work or awarding an order of supply of goods and services which create liability on the Consolidated Fund of the State, the State Government or the authorities exercising delegated financial powers shall first issue administrative approval or financial sanction, for the work or the order of supply as the case may be, in compliance with the existing Rules, procedures and guidelines and further Rules, procedures and guidelines that may be prescribed from time to time.

(3) Each Department shall maintain a register of works and order of supplies of goods and services, liabilities incurred against these works and orders of supplies, liabilities cleared and liabilities awaiting clearance, in a format as may be prescribed:

Provided that the Government may make Rules not to sanction new work if the outstanding liabilities in a Department exceed a limit as may be prescribed."

53. From a reading of the above quoted Section, it transpires that in order to ensure fiscal discipline with a view to ensuring timely discharge of current liabilities, especially payment of salaries to employees, the State Government or the Appointing Authority under it shall give appointment only against a sanctioned post which is vacant and in accordance with the laid down Rules, procedures and orders. The reference to the Appointing Authority in Section 7 (1) (a) of the Act of 2005 has been explained by an Explanation to include the Appointing Authority of Autonomous Bodies including Public Sector Undertakings, Companies, Statutory Bodies, Trusts, Societies and Cooperative Societies under the State Government. Section 7 (1)(b) of the Act of 2005 stipulates that notwithstanding any other provision contained in any Act or Rules, there cannot be a creation of a new post in any Department of the State Government or in Autonomous Bodies including Public Sector Undertakings, Companies, Statutory Bodies, Trusts, Societies and Cooperative Societies which are under the State Government without the prior concurrence of the Finance Department. Section 7 (1) (c) of the Act of 2005 stipulates that there can be no appointment made by the State Government or by the Appointing Authority under it in the vacancies arising out of transfer and leave of the incumbents in these posts. Section 7 (1) (d) of the Act of 2005 stipulates that there can be no appointment by the State Government or by the Appointing Authority under it in a post in anticipation of its falling vacant in future. Section 7 (1) (e) of the Act of 2005 stipulates that the State Government or the Appointing Authority under it shall not make more than one appointment against one vacant post. Section 7 (1) (f) of the Act of 2005 stipulates that any letter of appointment in vacant sanctioned post shall clearly indicate the identity of the post in the manner as may be prescribed. In terms with Section 7 (1) (g) of the Act of 2005 which also starts with a non-obstinate Clause stipulates that the select list prepared for fresh appointments to vacant

sanctioned posts shall contain names equal to the number of vacant posts notified at the time of calling for applications for filling up the posts. Sub-Section (2) and Sub-Section (3) of Section 7 of the Act of 2005, however, being not relevant is not discussed. It is also relevant to take note of Section 8 of the Act of 2005 which relates to offences and penalties for violating the provisions of Section 7 of the Act of 2005. Sub-Section (2) of Section 8 of the Act of 2005 not only penalizes the violator with imprisonment but also empowers recovery of the amount of financial loss.

54. This Court further finds it relevant to mention that in terms with Section 1 (3) of the Act of 2005, a notification was issued on 26.08.2005 thereby appointing 01.09.2005 as a date on which the Act of 2005 had come in force.

55. In the backdrop of the above, let this Court, therefore, discuss the four documents which have been enclosed to the affidavit-in-reply, reference to which this Court had made earlier. The Office Memorandum dated 04.07.2005 was issued by the Finance (Budget) Department of the Government of Assam. It is stated therein that the State Level Empowered Committee stood dissolved w.e.f 30.06.2005. It was mentioned that the Finance (Staff Inspection Unit) Department would look into rationalization of requirement of staff in various State Government Offices. Clause (ii) of the Office Memorandum dated 04.07.2005 stipulated that before filling up any vacant posts, the concerned Administrative Department would have to obtain prior approval of the Finance (SIU) Department and the said SIU Department would examine the justification for continuance of the post and recommend for filling up of the post or its abolition as the case may be. In terms with Clause (iii), it is only upon the recommendation of the SIU, the concerned Administrative Department would fill up the posts as per the Rules and after observing all procedures. Clause (iv) relates to a situation where there is an abolition of the post on the recommendation of the SIU and Clause (v) stipulates as regards the creation of new post or upgradation of existing post.

56. The communication dated 14.07.2005 issued by the Commissioner and Secretary to the Government of Assam, Finance Department to the various Secretaries, Commissioners and Secretaries, to the various Principal Secretaries/ Commissioners and Secretaries, Secretaries to the Government of Assam, all Commissioners of the Divisions, all Heads of the Departments, all Deputy Commissioners and all Sub-Divisional Officers clearly mentioned that the Reference Number of the Finance (SIU) Department have to be indicated while submitting the Treasuries Salary Bills of the employees who were/are appointed and joined after 04.07.2005 failing which the Treasury Officer would not entertain the claim. It was also mentioned that those employees who were appointed with the approval of the then existing State Level Empowered Committee or appointed in compliance with the Court's order before 04.07.2005, approval/appraisal number respectively of SLEC is to be indicated in the salary bill. It would further be seen from the said communication that for passing salary

bill it was made mandatory that the Finance (Budget) Department would issue list of new appointee with Finance (SIU) Department's approval/appraisal number to the Treasury Officer concerned to enable them to accept and pass salary bills in the case of new appointees. It was further stipulated that the Treasury Officers have been instructed not to pass salary bill of the new appointees without the clearance of the Finance (Budget) Department. Before proceeding further, this Court in order to draw the relevance of the necessity of the approval/appraisal member of SLEC for those appointed on the basis of SLEC approval, finds it pertinent to mention that on 06.12.1999, an Office Memorandum was issued constituting the State Level Empowered Committee and in that said Office Memorandum it was specifically mentioned that existing vacant posts cannot be filled up by direct recruitment or promotion without the approval of the SLEC. This Court would deal with Office Memorandum in detail at a later stage.

57. The communication dated 22.08.2005 again issued by the Commissioner and Secretary to the Government of Assam, Finance Department relates to a clarification on the Finance Department OM dated 04.07.2005. The said clarification relates to how the Treasury Officers should function while passing any salary bill. It was mentioned that no post whether existing or new should be filled up without the clearance from the Finance (SIU) Department so that the new appointees do not face any difficulty in drawing the salary.

58. The Office Memorandum dated 30.03.2012 issued by the Finance Department to the Government of Assam relaxes the rigours imposed vide the Office Memorandum dated 04.07.2005 to the extent that for existing vacant sanctioned Grade-I, Grade-II and Grade-III posts except all posts of teachers of Elementary Schools and drivers, the Seniormost Secretary of the concerned Head of the concerned Administrative Department was given the authority to issue prior approval for filling up of duly created and retained vacant sanctioned post, however, strictly in compliance with the provisions of the Act of 2005, the Reservation Act relating to SC/ST/PH/Women and other relevant Acts and Rules, the judgment of the Supreme Court in the case of State of Karnataka vs. Uma Devi, reported in (2006) 4 SCC 1 and other judgments so referred to. It is further relevant to take note of that all such posts can only be filled up after issuing advertisement in the newspapers as laid down. Though the relaxation has been given in respect of Grade-I, Grade-II and Grade-III posts except teachers of Elementary Schools and drivers, the rigors of the Office Memorandum dated 04.07.2005 however continues to apply in respect to Grade-IV posts of all designations/descriptions as well as the posts of drivers and teachers of Elementary Schools. This can be seen from Clause 7 from the Office Memorandum dated 30.03.2012.

59. In the backdrop of the above, let this Court now consider the Additional Affidavit filed by the respondent Health Department as well as the Rejoinder Affidavit so filed by the petitioners in WP(C) No.8220/2019.

60. The Additional Affidavit was filed by the Director of Health Services on 31.05.2023. In the said Additional Affidavit, it was mentioned that the Government of Assam had constituted the State Level Empowered Committee (SLEC) comprising of the Chief Secretary to the Government of Assam as Chairman; Commissioner & Secretary, Finance Department as Member; Commissioner & Secretary, Planning and Development Department of Assam as Member and the Secretary, Personal Department as Member Secretary to optimize the utilization of the services of the Government employees. The said Committee was formed on 06.12.1999. The Office Memorandum forming the constitution of SLEC has been enclosed as Anenxure-8 to the Additional Affidavit. A perusal of the said Office Memorandum would show that the said Committee, i.e. the SLEC was conferred with certain authority to examine the requirement of actual number of staff based on workload on each Department/Office and determine the shortage/surplus Government employees in any Department; to examine if the requirement can be met by rationalizing the existing staff, if necessary, by re-deployment of the existing staff from any Department/Office; to examine which are the posts which cannot be kept vacant and cannot be manned by re-deployment, and accordingly, to recommend to fill up the posts and the Committee was required to complete the work relating to the actual number of staff based on workload in each Department/Office and determine the shortage/surplus Government employees in any Department by 31.03.2000. It was also mentioned in the said Office Memorandum that existing posts including those which may fall vacant in future will not be filled up either by direct recruitment or by promotion without the approval of the SLEC. Therefore, in view of the said Office Memorandum without the approval of the SLEC there could not be any direct recruitment or promotion to the existing vacant posts prior to the abolition of the SLEC dated 30.06.2005.

61. It was further mentioned in the said additional affidavit that the Office Memorandum dated 06.12.1999 was circulated to all the Principal Secretaries/ Secretaries/Commissioner & Secretaries to the Government of Assam of all Departments vide communication dated 07.12.1999 issued by the Commissioner & Secretary to the Government of Assam, Finance Department as well as all Deputy Commissioners and Sub-Divisional Officers vide WT Message dated 22.12.1999. At this stage, it is relevant to mention that as per the claim of the petitioners in WP(C) No.1931/2020; WP(C) No.8220/2020; WP(C) No.2315/2020; WP(C) No.5013/2020; WP(C) No.9198/2019 and some of the petitioners in WP(C) No.8669/2019 and 8423/2019, they were appointed during this period when the SLEC was in existence. It is also relevant to take note of that no details as reagrds the SLEC permission or approval as was required in terms with the Office Memorandum dated 06.12.1999 have been placed on record or there is any averment also that these petitioners were appointed pursuant to the permission/approval given by the SLEC.

62. Be that as it may, it is also relevant to take note of that in the additional affidavit there is a reference made to a letter dated 11.04.2002 issued by the

Government in the Health and Family Welfare Department whereby it is seen that the Director of Health Services, Assam as well as the Director of Health Services (Family Welfare) were issued directions not to issue any appointment order(s) until further orders even in respect to cases against which permission of the SLEC and the approval of the Minister, Health and Family Welfare, Assam have been obtained. The said direction which was issued by the communication dated 11.04.2002 was further conveyed by the Director of Health Services, Assam to all the Joint Directors of Health Services of the districts, the Additional Director of Health Services, etc. vide the letter dated 22.05.2002. The letter dated 11.04.2002 has been enclosed as Annexure-D to the additional affidavit and the communication issued by the Director of Health Services, Assam to the various Joint Director of Health Services including the Additional Director of Health Services dated 22.05.2002 have been enclosed as Annexure-E.

63. A further perusal of the Additional Affidavit shows that it is the case of the respondents that for appointment of Grade-III and Grade-IV staff under the Health and Family Welfare Department, Government of Assam there are no specific Service Rules. Under such circumstances, the Assam Public Services (Direct Recruitment to Class-III and Class-IV) Rules, 1997 (for short, 'the Rules of 1997') was required to be followed for selection and appointment in the Grade-III and Grade-IV posts in the districts.

64. Before further proceeding to analyze the dispute, this Court finds it relevant to take into account the various provisions of the said Rules of 1997. A perusal of the Rule 3 of the Rules of 1997 would show that the said Rules of 1997 shall apply only to those Class-III, both technical and non-technical and Class-IV posts where there are no Service Rules/Executive Orders regulating the recruitment and conditions of service and are not within the purview of the Assam Public Service Commission. Sub-Rule (2) of Rule of 3 of the Rules of 1997 further specifies that the said Rules of 1997 shall not apply to various situations enumerated in Clauses (i) to (vi) of Sub-Rule (2) of Rule 3.

65. Rule 4 relates to direct recruitment. A perusal of Rule 4 shows that the direct recruitment shall be made on the basis of the recommendation made by the Selection Committee in accordance with the procedure provided in the said Rule. Sub-Rule (1) of Rule 4 stipulates that before the end of each year, the Appointing Authority shall make an assessment regarding the existing vacancies and the likely numbers of vacancies to be filled by direct recruitment during the next twelve months and shall intimate the same to the Selection Committee together with the details for the reservation for the reserved categories as provided under Rule 16 and also about carrying forward of such reservation. Sub-Rule (2) of Rule 4 is of relevance taking into account the dispute involved in as much as a duty is cast upon the Appointing Authority to advertise the vacancies giving details about the reservations for reserved category and other necessary particulars by displaying the advertisement in the Office Board of the Office of the Appointing Authority. In addition to that the copies of the advertisement shall

also have to be sent to the various offices to display in their respective Notice Board. Clause (a), (b), (c) & (d) of Sub-Rule (2) of Rule 4 of the Rules of 1997 stipulates where the advertisement has to be displayed. It is further seen that in terms with Sub-Rule (3) of Rule 4, the Selection Committee shall after conducting necessary test/interview prepare a combined list of successful candidates in order of merit and furnish to the Appointing Authority a copy of the combined merit list of candidates recommended by it in the order of preference found suitable for recruitment. Sub-Rule (4) of Rule 4 stipulates that the select list shall remain valid for 12 months from the date of recommendation of the Selection Committee. In terms with Sub-Rule (5) of Rule 4 of the Rules of 1997 in the event the Selection Committee is unable to recommend sufficient numbers of candidates to fill up all the vacancies for the year, it shall in consultation with the Appointing Authority repeat the procedure as mentioned in Rule 6 for recommending a subsequent list in the year.

66. Rule 5 stipulates the constitution of Selection Committee. It is interesting to note that Sub-Rule (3) of Rule 5 stipulates that the Administrative Department shall issue an instruction as regards the minimum essential qualifications for direct recruitment to the post or posts and the age limit of the candidates; the minimum essential experience, if any for the post or posts; whether there would be written test and if so, the name of the papers and the maximum marks for each paper; whether there will be a typing test and if so the maximum marks for the typing test; and whether there will be interview and if so the maximum marks for the interview.

67. This Court further finds it relevant to take note of Rule 6 of the Rules of 1997 which stipulates the selection procedure. In terms with Sub-Rule (2) of Rule 6, it has been mentioned that the selection shall be made on the basis of merit by taking into account the performance in the written test, typing test and interview with reference to the mode of selection as laid down by the Government instructions issued by the administrative department under the provision of Sub-Rule (3) of Rule 5 with due regards to the reservation for the Schedule Caste, Schedule Caste (Plain), Schedule Caste (Hill), OBC, MOBC etc. as per the provision of the Assam Schedule Caste and Schedule Tribe (Reservation of Vacancies in Services and Posts) Act, 1978 and the Rules framed thereunder. It is further seen from Sub-Rule (5) of Rule 6 that the combined merit list so prepared taking into account the reservation of SC, ST(P), ST(H), OBC, MOBC etc. had to be published under the signatures of the Chairman, Member Secretary and all other members of the Selection Committee and a copy of which shall be displaced on the Notice Board of the departmental officer who is a Member Secretary. The said combined merit list had upon been signed shall be then forwarded to the Appointing Authority. The appointment thereupon have to be made strictly in order of merit as per the combined merit list with due regards to the reservation as provided for the SC, ST(P), ST(H), OBC, MOBC.

68. This Court further finds it relevant to take note of the status of the employee

upon being appointed. This is relevant taking into consideration the appointment letters which were issued in favour of the petitioners, some of which are enclosed to the writ petitions. The same could be seen from a perusal of Rule 12 and Rule 13 of the Rules of 1997. In terms with Rule 12 (1), a person appointed by direct recruitment shall be employed in such manner as the Appointing, Authority may decide and in terms with Sub-Rule (2) of Rule 12, a person can be transferred or posted within the State of Assam or outside Assam, or to any other department of the Government, a body corporate, in the affairs of which the Government may be substantially interested and in such case, the person so appointed shall not have any option against such posting or transfer. Rule 13 stipulates that upon appointment, the direct recruitee would be entitled to pay and allowances, leave, pension, discipline and other conditions of service as per the general rules and orders of the Government for the time being in force. Therefore, from a perusal of Rules 12 & 13 of the Rules of 1997, it is seen that upon a direct recruit being appointed on the basis of the Rules, enters to the services and posts in connection with the affairs of the Government of Assam and also becomes entitled to the pay and allowances, leave, pension and is also regulated by the discipline and other conditions of services by the general rules and/or orders of the Government for the time being in force. At this stage, it is pertinent to note that the orders of appointment of the petitioners some of which are enclosed to the writ petitions strangely stipulate that the petitioners who were appointed could be discharged without notice and without assigning any reason.

69. This Court further finds it relevant to observe another relevant aspect, i.e. except in WP(C) No.8220/2019 and WP(C) No.1931/2020, wherein some semblance of a selection process have been mentioned, there is no mention in the other writ petitions about any particulars of the selection process. It is under such circumstances alleged in the Additional Affidavit that prior to the alleged selection and appointment of the writ petitioners in WP(C) No.8220/2019 and WP(C) No.1931/2020 which pertains to Goalpara and Dibrugarh districts respectively and the verification of the records in the Directorate, nothing could be found that prior to the initiation of the selection process the Joint Directors of Health Services of the two districts sought for any approval from any State Level Empowered Committee as mandated in the Office Memorandum dated 06.12.1999. It was mentioned that in order to seek the SLEC approval, the Joint Director of Health Services had to move the proposal to the Director of Health Services, Assam and Government in the Health and Family Welfare Department. But there is no such record available in the Directorate that the then Joint Directors of Health Services of Goalpara and Dibrugarh sought for SLEC approval prior to conducting the selection. It was also mentioned that although the appointments were made to the petitioners in WP(C) No. 8220/2019 and WP(C) No.1913/2019 by the then Joint Directors of Health Services, Goalpara and Dibrugarh respectively, however no such power for appointment was delegated by the Director of Health Services to the said two Joint Directors of Health Services for issuing the appointment letters in terms with Rule 2 (a) of the Rules

of 1997. It was mentioned that there was no records available in the Directorate to show that any instructions as regards the essential qualifications, age limits of the candidates, minimum essential experience, mode of selection was prescribed by the then Director of Health Services to the concerned Joint Directors of Health Services as was required under Sub-Rule (3) of Rule 5 of the Rules of 1997. It was therefore mentioned that the entire exercise of appointing the petitioners in WP(C) No.8220/2019 and WP(C) No.1931/2020 by the respective Joint Directors of Health Services were without any authority and was in complete violation of the relevant provisions of the Rule of 1997 as well as the executive instructions prescribed in the OM dated 06.12.1999 and 07.12.1999 and as such all such appointments were illegal and not sustainable in law. It was further mentioned that at that relevant point of time, there was a complete ban in making appointments and this aspect of the matter was brought to the attention by the Director of Health Services on 22.05.2002 to all the Joint Directors of Health Services. It was further mentioned that after the dissolution of the SLEC vide OM dated 04.07.2005, for the first time selection and appointment of 76 Nos. of posts of Grade-III and Grade-IV under the Health and Family Welfare Department was conducted in the month of October, 2006. The said drive was initiated pursuant to the letter of the Health and Family Welfare Department, Government of Assam dated 19.01.2006 and as per the approval of the Finance (SIU) Department dated 03.08.2006 mentioned in the letter dated 18.10.2006 issued by the Finance (Budget) Department.

70. The petitioners in WP(C) No.8220/2019 had filed an affidavit-in-reply to the Additional Affidavit. In the said affidavit-in-reply, it was mentioned that as far as the appointment to Grade-IV is concerned, it is the Joint Director of Health Services who is the Appointing Authority and the appointments even prior to 1997 and thereafter also it is the Joint Director of Health Services who was the Appointing Authority. It was further mentioned that the Rules of 1997 was never applied in any of the establishment under the Director of Health Services, Assam. Further to that, it was mentioned that as the appointments of the petitioners were well within the knowledge of all concerned authorities including the Director of Health Services, Assam and regularly budgetary provision were made for the posts held by the petitioners after their appointment, no question at any point of time was ever raised with regard to the manner in which they were appointed. It was mentioned that in the event the approval of the Director of Health Services was not there, the salaries of the petitioners could not have been released. The petitioners without any default were receiving their salaries with effect from their respective date of joining and no question or doubt in the entire service career was ever raised. As such it would be construed that the appointments of the petitioners were so effected by all required procedures. It was further mentioned that in terms of the OM dated 04.07.2005, a rationalization process was carried out in each establishment including that of the establishment of the Joint Director of Health Services, Goalpara as well as Dibrugarh and as such after the scrutiny of the posts available to the said establishments, the appointments were

given effect to. No adverse report came to be made by the Committee authorized to carry out the examination of the various posts available in the said establishments.

71. This Court has heard the learned counsels for the petitioners and the respondent Health Department. The submissions of the counsels were in terms with the specific stand taken in the pleadings as discussed above.

72. The pivotal question which arises in the present batch of writ petitions is as to whether the writ in the nature of Certiorari can be issued in the present facts interfering with the removal orders. For the purpose of deciding the same, this Court finds it relevant to take note of that except in the case of the petitioners in WP(C) No.1931/2020 and WP(C) No.8220/2019, there are no material particulars pleaded or material produced which would show that petitioners in the remaining 11 writ petitions were appointed pursuant to a selection process initiated. This Court finds it apt to reiterate that in WP(C) No.2315/2020, WP(C) No.8999/2019, WP(C) No.8845/2019, WP(C) No.8841/2019, WP(C) No.8668/2019, WP(C) No.8423/2019 and WP(C) No.8422/2019, there are certain statements made to the effect that there was a valid selection process. However, as aforesaid, there are neither any pleadings with material particulars nor any documents evidencing the same. Even the orders of appointment of the petitioners in these writ petitions do not disclose that on the basis of some selection procedure or select list, the petitioners were appointed.

73. Now coming to the cases, i.e. WP(C) No.1931/2020 and WP(C) No.8220/2019, the pleadings as well as the documents enclosed would show that some selection procedure was initiated. As already stated herein above, in respect to the petitioners in WP(C) No.1931/2020, there was an advertisement dated 04.12.2004 issued by the Joint Director of Health Services, Dibrugarh for filling up of few vacant posts of Grade-IV under the establishment of the Joint Director of Health Services, Dibrugarh and the Office of the Malaria Officer, Dibrugarh. There was no mention whatsoever in the said advertisement as to how many vacant posts were advertised. It is also not known as to whether the said advertisement was at all published in the Assamese Daily Newspaper "Asom Spandan" Dibrugarh as well as to the Office notice Board. It however reveals from a perusal of the information furnished by the Joint Director of Health Services, Dibrugarh on 15.06.2021 under the Right to Information Act, 2005 that on 17.02.2005, the Joint Director of Health Services, Dibrugarh had issued a communication to the Director of Health Services, Assam, Hengrabari whereby the select list of the candidates for recruitment to the post of Grade-IV was forwarded. From the said select list, it transpires that the names of 47 candidates were mentioned in the said select list. The statement containing the marks by the candidates who applied for the posts of Grade-IV of the Joint Director of Health Services, Dibrugarh was also enclosed. From the said statement, it reveals that 103 candidates had appeared in the said selection process. This Court further finds it relevant that the Selection Board consisted of the SDM &

HO (HE), the Additional CMO & HO (FW), Dibrugarh and the Joint Director of Health Services.

74. In respect to the selection procedure pertaining to WP(C) No.8220/2019, it is seen that an advertisement was issued in the daily newspaper "Asomiya Khabor" on 03.01.2005 by the Joint Director of Health Services, Goalpara whereby 70 posts of Grade-IV under the establishment of Joint Director of Health Services, Goalpara was advertised. From the records, it reveals that the select list was prepared of 75 candidates by the Selection Committee consisting of Joint Director of Health Services, Goalpara and two others. The said select list was prepared on 05.02.2005. It is also noteworthy to take note of that on 06.01.2022, one of the petitioners sought for information under the Right to Information Act, 2005 regarding the Government notification in relation to SIU and since when the SIU for Grade-IV employees had come into effect and when any order with respect to the SIU in the Grade-IV employees were received by the Office of the Joint Director of Health Services, Goalpara. The PIO and the SDM & HO (SH) vide the communication dated 23.05.2022 informed that the information as sought for was not received by the Office.

75. Before further proceeding to adjudicate the pivotal question, this Court finds it relevant to take note of as to whether the Rules of 1997 would be applicable for selection of Grade-IV employees in the Health Department of the Government of Assam. Although in the initial pleadings, there is no mention as regards the applicability of the Rules of 1997 either by the petitioners or the respondent Health Department, but in the Additional Affidavit filed on 31.05.2023, reference was made to the Rules of 1997 which are required to be followed for selection and appointment in the Grade-III and Grade-IV posts of the districts in the Health and Family Welfare Department. This Court has already in the previous segments of the instant judgment dealt with the Rules of 1997. Rule 3 of the Rules of 1997 stipulates the applicability of the Rules of 1997. Taking into account the relevance of Rule 3 of the Rules of 1997, the same is reproduced hereinunder:-

"3. Applications- (1) These rules shall apply only to those Class III, both technical and non-technical, and Class IV posts, where there are no Service Rules/Executive orders regulating the recruitment and conditions of service and are not within the purview of the Commission.

(2) These rules shall not apply to the following cases:-

(i) the posts, to which recruitments are made as per the existing Service Rules/Executive Order;

(ii) the posts which are within the purview of the Commission;

(iii) the posts of teachers under Education Department;

(iv) the posts of police under the Home Department;

(v) the posts on the Establishment of Raj Bhawan, Assam Legislative Assembly, High Court, Assam Public Service Commission, Lokayukta; and

(vi) the posts excluded from the purview of these rules by any general or special order by the Government.”

76. From a perusal of Rule 3 of the Rules of 1997, the same shall apply only to those Class-III and Class-IV posts where there are no Service Rules/Executive Order regulating the recruitment and conditions of service and/are not within the purview of the Commission. Sub-Rule (2) of Rule 3 specifically stipulates the cases where the said Rules of 1997 would not apply. The learned counsel for the petitioners however has failed to show that there is any Service Rules/Executive Order regulating the recruitment and conditions of service of Class-IV posts in the Health and Family Welfare Department, Government of Assam. The petitioner further has failed to show that Class-IV posts of the Health and Family Welfare Department are excluded from the purview of the Rules of 1997 by any General or Special Order by the Government. Under such circumstances, it is the opinion of this Court that the Rules of 1997 duly apply to the selection of Class-III and Class-IV posts of the Health and Family Welfare Department. It is reiterated once again that the Rules of 1997 had come into effect w.e.f 04.08.1997.

77. In the backdrop of the above, it would be seen that in 11 writ petitions, there is no whisper of any material particulars in the pleadings filed by the petitioners or any materials produced that there was a selection initiated on the basis of the Rules of 1997 or for that matter even as regards any selection as contemplated under law. However, in the writ petitions, i.e. in WP(C) No.8220/2019 and WP(C) No.1931/2020, though there are mention of initiation of a selection process and the select list being prepared, the details of which this Court has already mentioned herein above, but the said selection process initiated, the selection procedure as well as the select list so prepared are not in conformity with the Rules of 1997. This Court had arrived at the said conclusion on the basis of Rule 4 of the Rules of 1997 which stipulates how the vacancies are to be advertised and what the Selection Committee is required to do in as much as the advertisement which has been mentioned in the writ petitions were not in accordance with Rule 4 (2) of the Rules of 1997. This Court further finds it relevant that from a perusal of the select list which has been enclosed by the petitioners in WP(C) No.8220/2019 and WP(C) No.1930/2020 to their affidavits-in-reply it is seen that the constitution of the Selection Committee was also not in accordance with Rule 5 (1) (a) of the Rules of 1997 which stipulates that the composition of the Selection Committee to comprise of (i) Appointing Authority or the Seniormost Departmental Officer available in the district where the vacancies arises nominated by the Appointing Authority as the Chairman; (ii) A Departmental Officer belonging to the Office under which the vacancies arise as the Member Secretary; (iii) an Officer in the rank of EAC upto SDO to be named by the Deputy Commissioner of the district where the vacancy arises as Member; (iv) an Officer of the Department other than the Department under which the

vacancy arises as Member and (v) an Officer of the Department other than the Department under which the vacancy arises and the Department from which the Deputy Commissioner had nominated an Officer as a Member of this Committee to be named by the Appointing Authority as member. However, a perusal of the select lists enclosed to the affidavits-in-reply shows that the Selection Committee in respect to the selection of the petitioners in WP(C) No.8220/2019 comprised of three persons, i.e. the Joint Director of Health Services, Goalpara as the Chairman; SDM & HO (HE) and the Additional CMO & HO (FW), Goalpara.

78. Same is also the composition of the Section Committee in respect to the selection of the petitioners in WP(C) No.1930/2020.

79. This Court further finds it relevant to take note of another aspect of the matter in as much as in some of the cases, it is seen that the Director of Health Services, Assam had appointed some of the petitioners. There is no mention in the writ petition wherein the Director of Health Services, Assam had appointed such petitioners as to whether the same was done so on the basis of some selection process initiated in terms with Rules of 1997. Therefore, it would be seen that the appointments of the petitioners to the various Grade-IV posts under the Health Department were totally in violation of the Rules of 1997.

80. Be that as it may, this Court finds it relevant at this stage to take note of the submission made by the learned senior counsel for the petitioners that the impugned removal orders were issued on the ground that the same are not in conformity with the Rules of 1997 or for that matter that the selection was not done in terms with the Rules of 1997, and as such, the learned senior counsel appearing on behalf of the petitioners placed reliance upon the judgment of the Supreme Court in the case of Commissioner of Police, Bombay vs. Gordhandas Bhanji, reported in AIR 1952 SC 16 to the effect that public orders made by public authorities which are meant to have public effect are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. On the basis of the said submission, the learned counsel for the petitioners submitted that the Rules of 1997 were never in the contemplation of the respondent authorities at the time of issuance of the impugned removal orders, and as such, the Rules of 1997 cannot be imported now to justify the action behind the impugned removal orders. This Court is of the opinion that though the said submission, at the first glance, appears to be tenable, but taking into account the constant stand of the respondent authorities since the formation of the Screening Committee on 27.03.1917 that the appointments of the petitioners were de hors the recruitment policy and were not genuine, the said submission of the learned counsel for the petitioners, in the opinion of this Court, is misconceived, more so, when the Rules of 1997 for selection of candidates in Class-IV posts are applicable. It is also the opinion of this Court that when the issue has arisen as regards the genuineness of the appointments of the petitioners are concerned, this court cannot shut its eyes to the stipulation of the Rules of 1997. Be that as

it may, even de hors the contentions that the Rules of 1997 were not complied with, let this Court examine whether the proceedings initiated which culminated with the issuance of the impugned removal orders can be interfered in the present facts and circumstances.

81. In the foregoing paragraphs of the instant judgment, this court has in detail dealt with the materials on record. From the materials on record, it is seen that on the basis of an Office Memorandum dated 06.12.1999, the State Level Empowered Committee was constituted. It was specifically mentioned in the said Office Memorandum that the existing vacant posts cannot be filled up by direct recruitment or promotion without the approval of the State Level Empowered Committee. It is also seen from the records that the Office Memorandum dated 06.12.1999 was brought to the notice of all concerned of the Government of Assam vide communication dated 07.12.1999 issued by the Commissioner and Secretary to the Government of Assam, Finance Department. Further to that, vide the WT Message dated 22.12.1999, all the Deputy Commissioners and Sub-Divisional Officers were also informed about the Office Memorandum dated 06.12.1999. It is also seen that on 11.04.2002, the Government in the Health and Family Welfare Department had directed Director of Health Services as well as the Director of Health Services (Family Welfare) not to issue any appointment order vide the communication dated 11.04.2002. This very communication further stipulated that even in cases where permission of the SLEC and the approval of the Minister, Health and Family Welfare Department, Assam was obtained, then also there should be no appointment. Their directions were also communicated to all the Joint Directors of Health Services of the districts, the Additional Directors of Health Services etc. vide communication dated 25.02.2002. There is however no record as to when the ban was lifted. But it has been mentioned in the Additional Affidavit filed on 31.05.2023 by the Director of Health Services, Assam that for the first time, selection and appointment of 76 numbers of Grade-III and Grade-IV posts under the Health and Family Welfare Department was conducted in October, 2006 and the said drive was initiated pursuant to the letter of the Health and Family Welfare Department vide No.HLA/1067/2002/102-A dated 19.01.2006 as per the approval of the Finance (SIU) Department dated 03.08.2006 mentioned in the letter dated 18.10.2006 issued by the Finance (Budget) Department. Under such circumstances, the question arises as to how the appointments were made prior to SLEC's dissolution w.e.f. 30.06.2005 without the SLEC's permission and also how during the ban period w.e.f 11.04.2002 till 18.10.2006, any of the appointments were made by the Joint Directors of Health Services of the concerned districts or by the Director of Health Services, Assam.

82. From the above, therefore, not only it is seen that the Rules of 1997 were not followed, but the said appointments were made by the Joint Director of Health Services as well as by the Director of Health Services, Assam during the ban period which was only lifted in the month of October, 2006 when the approval was granted by the Finance (SIU) Department.

83. This Court further finds it relevant that an Office Memorandum was issued on 04.07.2005 by the Finance Department of the Government of Assam wherein amongst others it was specifically stipulated that it is only upon the recommendation of the SIU, the concerned Administrative Department would fill up the posts as per the Rules and after observing all procedures. Therefore, post 04.07.2005, without the approval of the Finance (SIU) Department and without following the Rules of 1997 no post could have been filled up either by the Director of Health Services or by the Joint Director of Health Services. It is also relevant to take note of that the Act of 2005 was brought into effect from 01.09.2005 whereby no new posts could be created without prior concurrence of the Finance Department; no appointment shall be made by the State Government or the Appointing Authorities under it in the vacancies arising out of transfer and leave of the incumbents in these posts and the appointment letters to any vacant sanctioned post shall clearly indicate the identity of the post in the manner as may be prescribed. It is also relevant that the rigors of Office Memorandum dated 04.07.2005 in so far as the Grade-IV post was never relaxed and thereby the approval from the Finance (SIU) Department was mandatory. Under such circumstances, it is difficult to visualize or accept as to how post 04.07.2005, any appointment could have been made without the SIU approval and without following the Rules of 1997 which was applicable.

84. The illegalities so committed by the officials of the Health Department are manifested in each of the appointment made by them. Let this Court take the case of the writ petitioner in WP(C) No.9388/2019. The petitioner was initially appointed on contractual basis by the Joint Director of Health Services, Morigaon vide the communication dated 30.06.2013. Subsequent thereto, at the request made by the Joint Director of Health Services, Morigaon, the Director of Health Services, Assam had regularized the services of the petitioner vide an order dated 26.07.2013. It is surprising at this stage to note as to how the Director of Health Services, Assam could have regularized the services of the petitioner taking into account the mandate of Section 7 of the Act of 2005 as well as it is only the Government of Assam who by way of a scheme of regularization can regularize irregular appointments. As already stated herein above, regularization is not a source of recruitment, and as such, it is difficult to accept as to how the petitioner in WP(C) No.9388/2019 could be brought within the affairs of the State of Assam by the order of regularization made by the Director of Health Services, Assam. This clearly shows how the officials of the Respondent Health Department committed illegality with impunity.

85. Now coming to the case of the petitioner in WP(C) No.9377/2019 whereby the petitioner was appointed in the cadre of Grade-IV post vide order dated 07.04.2008 by the Director of Health Services, Assam and his services was placed at the disposal of the Joint Director of Health Services, North Lakhimpur. In the order of appointment, there is mention of the Government approval letter dated 17.12.2005 and the Finance (SIU) Department's approval dated 28.11.2005. On the other hand, if this Court takes into account the Additional

Affidavit filed by the Director of Health Services, Assam it is seen that only on 03.08.2006, the Finance (SIU) Department had granted the approval for filling up of 76 posts. The deficiency in the case of the petitioner in the instant writ petition is that there is no record available as regards his appointment letter. Be that as it may, when the appointment of the petitioner was made after 04.07.2005, it is not understandable as to how the same could have been made without following the Rules of 1997. Apart from that, the fact finding enquiry made by the Screening Committee could not trace out any materials as regards the appointment of the petitioners in the official records.

86. Now coming to the case of the petitioners in WP(C) No.8845/2019, it is seen that these petitioners were appointed by the Joint Director of Health Services, Goalpara and their services were also regularized by the Director of Health Services, Assam. As noted above, in the case of WP(C) No.9388/2019, the Director of Health Services, Assam cannot sans a regularization scheme of the Government of Assam to regularize the services of the petitioners.

87. In the case of WP(C) No.5013/2020, the petitioner was appointed on the basis that her father-in-law had donated some land where the Porbatia Sub-Centre had been constructed. There is no material produced before this Court during the course of hearing that there is a scheme of the Government for granting appointment in lieu of donation of land. The authorities in the Health Department or even the Office of the Deputy Commissioner, in the opinion of this Court, could not have appointed the petitioner de hors the Rules of 1997 which was holding the field and also without taking into account the extant Executive Instructions which were holding the field.

88. Therefore, from the above analysis, it would be seen that all the appointments which were made favouring the petitioners in the instant batch of writ petitions were de hors the Rules of 1997. The appointments so made prior to 30.06.2005 not only did not have the SLEC permission but also were during the ban period which was in existence from 11.04.2002 till October, 2006. The appointments which were made after 04.07.2005 in the instant batch of writ petitions did not have the SIU approval and also were made de hors the Rules of 1997 which were required in view of the Office Memorandum dated 04.07.2005.

89. This Court at this stage finds it relevant to take note of the judgment of the Supreme Court in the case of State of Bihar & Others vs. Devendra Sharma, reported in (2020) 15 SCC 466 wherein the Supreme Court was dealing with the termination of a large number of candidates who were appointed against Class-III and Class-IV posts in the Health Department of the State of Bihar. In paragraph Nos.35 to 44, the Supreme Court by taking into account the various judgments was of the opinion that no interference can be made to the termination orders. Paragraph Nos.35 to 44 being relevant are quoted herein below:-

"35. Lastly, it is argued that employees have been working for many years, some

for more than 25 years, therefore, humanitarian view should be taken to set aside the order of termination and regularise their services so as to make them entitled to pension and other retirement benefits.

36. We do not find any merit in the said argument. A Full Bench of the High Court in *Rita Mishra v. Director, Primary Education* while dealing with appointment in the Education Department claiming salary despite the fact that letter of appointment was forged, fraudulent or illegal, declined such claim. It was held that the right to salary *stricto sensu* springs from a legal right to validly hold the post for which salary is claimed. It is a right consequential to a valid appointment to such post. Therefore, where the very root is non-existent, there cannot subsist a branch thereof in the shape of a claim to salary. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights, including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is non est in the eye of the law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise.

37. Such judgment of the Full Bench was approved by the three-Judge Bench of this Court in *R. Vishwanatha Pillai v. State of Kerala*. This Court held as under:

"17. The point was again examined by a Full Bench of the Patna High Court in *Rita Mishra v. Director, Primary Education*. The question posed before the Full Bench was whether a public servant was entitled to payment of salary to him for the work done despite the fact that his letter of appointment was forged, fraudulent or illegal. The Full Bench held:

'13. It is manifest from the above that the rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights, including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is non est in the eye of the law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise. In particular, if the very appointment is rested on forgery, no statutory right can flow from it.'

18. We agree with the view taken by the Patna High Court in the aforesaid cases."

38. The appointments made have been examined by five-member Committee. 91 candidates have been found to be a case of irregular appointment. Such candidates are continuing in service. None of the candidates in the present set of appeals could point out that they were appointed in a manner meant for filling up of vacant post of public appointment i.e. by advertisement and by giving opportunity to all eligible candidates to apply.

39. This Court in *State of Jharkhand v. Manshu Kumbhkar*, while allowing of the appeal of the State found that the respondent was not sponsored by the

employment exchange. There was no advertisement and there was not even any properly constituted committee to make the selection.

40. This Court in *State of Bihar v. Upendra Narayan Singh* allowed the appeal of the State and that Section 4 of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 casts a duty on the employer in every establishment in public sector in the State or a part thereof to notify every vacancy to the employment exchange before filling up the same.

41. This Court in *Union of India v. Raghuwar Pal Singh* was examining a case, where the appointment letter came to be issued without approval of the competent authority, then whether such appointment letter issued to the respondent, would be a case of nullity or a mere irregularity? If it is a case of nullity, affording opportunity to the incumbent would be a mere formality and non-grant of opportunity may not vitiate the final decision of termination of his services. This Court held that in absence of prior approval of the competent authority, the Director In-charge could not have hastened issuance of the appointment letter. The act of commission and omission of the Director In-charge would, therefore, suffer from the vice of lack of authority and nullity in law.

42. In *Nidhi Kaim v. State of M.P.*, a three-Judge Bench was dealing with admission of students to MBBS course on the basis of illegal and unfair admission process. The Court held as under:

"92. ... Having given our thoughtful consideration to the above submission, we are of the considered view that conferring rights or benefits on the appellants, who had consciously participated in a well thought out, and meticulously orchestrated plan, to circumvent well laid down norms, for gaining admission to the MBBS course, would amount to espousing the cause of "the unfair". It would seem like allowing a thief to retain the stolen property. It would seem as if the Court was not supportive of the cause of those who had adopted and followed rightful means. Such a course would cause people to question the credibility of the justice-delivery system itself. The exercise of jurisdiction in the manner suggested on behalf of the appellants would surely depict the Court's support in favour of the sacrilegious. It would also compromise the integrity of the academic community. We are of the view that in the name of doing complete justice it is not possible for this Court to support the vitiated actions of the appellants through which they gained admission to the MBBS course.

94. ... Even in situations where a juvenile indulges in crime, he has to face trial, and is subjected to the postulated statutory consequences. Law, has consequences. And the consequences of law brook no exception. The appellants in this case, irrespective of their age, were conscious of the regular process of admission. They breached the same by devious means. They must therefore, suffer the consequences of their actions. It is not the first time that admissions obtained by deceitful means would be cancelled. This Court has consistently

annulled academic gains arising out of wrongful admissions. Acceptance of the prayer made by the appellants on the parameter suggested by them would result in overlooking the large number of judgments on the point. Adoption of a different course, for the appellants, would trivialise the declared legal position. Reference in this behalf may be made to the judgments relied upon by the learned counsel representing Vyapam.

108. ... In the facts and circumstances of the case in hand, it would not be proper to legitimise the admission of the appellants to the MBBS course in exercise of the jurisdiction vested in this Court under Article 142 of the Constitution. We, therefore, hereby decline the above prayer made on behalf of the appellants."

43. In another three-Judge Bench judgment in *Food Corpn. of India v. Jagdish Balaram Bahira*, the Court was examining the consequences of false caste certificate produced to seek appointment. The Court held as under:

"69. For these reasons, we hold and declare that:

69.3. The decisions of this Court in *R. Vishwanatha Pillai* and in *Dattatray* which were rendered by Benches of three Judges laid down the principle of law that where a benefit is secured by an individual—such as an appointment to a post or admission to an educational institution—on the basis that the candidate belongs to a reserved category for which the benefit is reserved, the invalidation of the caste or tribe claim upon verification would result in the appointment or, as the case may be, the admission being rendered void or non est.

69.7. Withdrawal of benefits secured on the basis of a caste claim which has been found to be false and is invalidated is a necessary consequence which flows from the invalidation of the caste claim and no issue of retrospectivity would arise;"

44. In view of the aforesaid judgments, it cannot be said that the appointment of the employees in the present set of appeals were irregular appointments. Such appointments are illegal appointment in terms of the ratio of the Supreme Court judgment in *Umadevi* (3). As such appointments were made without any sanctioned post, without any advertisement giving opportunity to all eligible candidates to apply and seek public employment and without any method of recruitment. Such appointments were back door entries, an act of nepotism and favouritism and thus from any judicial standards cannot be said to be irregular appointments but are illegal appointments in wholly arbitrary process."

90. From the above analysis of the facts and the relevant provisions of law, it would be seen that the Health Department of the Government of Assam had carried out a detailed fact finding inquiry as regards the genuineness of the

appointments of the petitioners. The petitioners have been afforded the opportunities to appear before the Screening Committee on various occasions and the petitioners have been asked to prove their genuineness of their appointments. Not only the petitioners failed before the Screening Committee to prove their genuineness inspite of the deficiencies pointed out, even before this Court, the petitioners could not show that their appointments were made in terms with the provisions of the Rules of 1997 or were made with the approval of the then existing SLEC or that their appointments were made not during the ban period or that there was Finance (SIU) Department's approval prior to their appointments. The only plea which has been taken in the replies to the show cause notices was that the petitioners were duly appointed against the vacant sanctioned posts and were regularly receiving the salaries without any objection and the transfer orders of the petitioners also show that the Director of Health Services knew very well that the petitioners were appointed. It was also the argument of the learned counsel for the petitioners by drawing the attention of this Court to the Office Memorandums dated 04.07.2005 and 14.07.2005 that the petitioners being disbursed the salaries by the respondent authorities meant that the petitioners appointments were made either with the due approval of the SLEC or with the approval of the Finance (SIU) Department in as much as without the approval number, the salaries of the petitioners could not have been released. It is the opinion of this Court that the said contentions of the petitioners are totally misconceived in as much as if the appointments of the petitioners were made de hors the Rules of 1997 or during the ban period or without SLEC or SIU approval as the case may be, the illegality in their appointments do not get legalized in view of the complicity of the then Joint Directors of Health Services, the Director of Health Services, Assam and the Treasury Officers who were releasing the salaries who with impunity resorted to illegalities, nepotism and favouritism by violating the provisions of the Rules of 1997, the prevailing Executive Instructions as well as the rights of other eligible candidates under Article 14 & 16 of the Constitution.

91. In the backdrop of the above, this Court therefore is of the opinion that the question of issuance of a writ in the nature of certiorari in the present cases for setting aside the impugned removal orders do not arise in as much as all the appointments of the petitioners were illegal appointments and had no sanctity in the eyes of law for which they are nonest. Accordingly, this Court finds no merit in the batch of the writ petitions and consequently all the writ petitions fail.

92. Before parting with the records, this Court finds it relevant to observe that the public power to make appointment on public posts is conferred for public good. The power is given to the officer concerned by the Government in trust, that it shall be used and not abused. If the trust is belied, the protection conferred upon a Government servant stands denuded. The answerability and accountability is then individual of the officer. The Government is duty-bound to take appropriate civil/criminal action against the officer. The illegality in the appointment is not a one way street. If there was someone willing to pay a price

for the job, there was another waiting to take advantage of the same by fixing a price. It is, not without reason that the appointments relate to Grade-IV posts. The standard by which the Government professes to act is the same standard by which its actions shall be judged. Therefore, whenever the Government terminates an appointment being illegal, it is the constitutional duty of the Government to simultaneously take action against the officials who belied the trust of the Government.

93. Accordingly, this Court, therefore, directs as follows:-

(i) The Government Officials who were responsible in facilitating such illegal appointments and the Government Officials who resorted to pay salaries to the petitioners without taking into account as to whether the petitioners' appointment orders had the SLEC or SIU approval are required to be made accountable as they have resorted to actions which have resulted in breaking the public trust reposed upon them. A Constitutional duty is cast upon the State, therefore, to take action against such officials who have belied the trust of the Government. This Court, therefore, directs the Chief Secretary to the Government of Assam to initiate appropriate actions against such officials as per the extant laws including criminal actions. This direction is issued to the Chief Secretary, Government of Assam taking into account that during the course of hearing, this Court made a specific query upon the learned Standing Counsel appearing on behalf of the Health Department as regards any criminal proceedings initiated against the then officials to which the learned Standing Counsel, Health Department submitted that certain criminal proceedings have been initiated, but the same are not progressing as required due to the indifference of some Departments. Therefore, this Court deeming it fit and proper has issued the above directions to the Chief Secretary, Government of Assam.

(ii) In view of the above analysis, this Court has not interfered with the impugned orders of removal. Consequently, in view of the removal of the petitioners from the vacant sanctioned posts, the Government may take appropriate steps for fresh recruitment. It is the opinion of this Court that if any recruitment process is initiated in respect to those posts, the petitioners would be at liberty to apply for such posts. This Court directs the Health Department of the Government of Assam to relax and/or condone the age of the petitioners in the instant batch of writ petitions, if they apply to the fresh recruitment process.

(iii) Taking into account that the petitioners have already rendered their services for which the petitioners have received salaries, the respondent Health Department shall not initiate any recovery proceedings from the petitioners in view of holding that the appointments of the petitioners were illegal and nonest by this Court.

94. With the above observations and directions, the instant batch of writ petitions stand disposed of.

95. A copy of the instant judgment and order be sent to the Chief Secretary of the Government of Assam for due compliance.