

(1996) 09 GAU CK 0008

In the Gauhati High Court

Case No : Writ Appeal Nos. 166, 167, 198, 199 and 455 (T) of 1996, Civil Rule Nos. 2234, 2237, 2623, 2624, 2625, 2626, 4376, 4406, 4632 and 5342 of 1995

Debabrat Borgohain : Debabrat Borgohain : Jatin Das : Manoj Kumar Das : D.K.Shyam : Ajit Saikia : D.Lahan : Chandra Bahadur Limbu : Mostafa Hussai **APPELLANT**

Vs

Dilip Hazarika and Ors.: Pranab Deka : Dilip Hazarika : Pranab Deka : Koushik Mohan Sarma;State of Assam and Ors. **RESPONDENT**

Date of Decision : 18-09-1996

Acts Referred:

Assam Public Service Commission (Limitation of Functions) Regulations, 1951 — Regulation 3(1), 3(1), 3(f), 3(f)
Constitution of India, 1950 — Article 226, 226

Citation : (1997) 1 GLJ 62 : (1996) 3 GLT 310

Hon'ble Judges : A.K.Patnaik, J and V.K.Khanna, J

Bench : Division Bench

Advocate : D.K.Ojha, P.K.Goswami, P.J.Phukan, N.Saikia, N.Dutta, J.Maibam, S.Ali, H.K.Sharma, Sheikh Chand Mohmmmand, D.K.Mishra, D.K Mishra, D.Bora, B.J.Talukdar, B.D.Das, B.Acharyya, J.M.Choudhary, P.Kataki, A.K.Bhattacharyya, V.M.Thomas, A.R.Barthakur, A.M.Majumdar, Advocates appearing for Parties

Judgement

V. K. Khanna, C.J.—These connected writ appeals and Civil Rules were heard together as common questions of fact and law arose for determination. On 23.5.96, after hearing all the counsel for the parties, the Court ordered that Writ Appeal No. 167 of 1996 will be treated as the leading case for the group of cases which will be headed as "Appointment to the Post of Junior Engineers, /PWD (Roads) (Civil and Mechanical).

2. We have heard Mr. PK Goswami, Mr. AK Bhattacharyya, Mr. JM Choudhury, Mr. AChoudhury, Mr. N. Dutta, Mr. BD Das, Mrs. N. Saikia and all the other counsel adopted the arguments raised by these counsel appearing for the petitioners/appellants, and Mr. Sheikh Chand Mohammad, learned counsel appearing for the

Chief Engineer, PWD (Roads) and Mr.DK Misra, learned counsel appearing for the private respondents.

3. The controversy raised in these connected appeals and Civil Rules relate to the recruitment to the posts of Junior Engineer (Civil) and Junior Engineer (Mechanical) in the department of Public Work (Roads), Assam. Pursuant to a requisition dated 20.7.93 sent by the Chief Engineer, PWD (Roads), Assam the Assam Public Service Commission (APSC for short) issued advertisement No. 121 93 on 21.10.93 inviting applications for appointment to 32 posts of Junior Engineer (Civil) and 12 posts of Junior Engineer (Mechanical) and the last date of submission of applications was 30.11.93. However, while the selection process was going on the Chief Engineer, PWD (Roads), sent three more requisitions to the APSC i.e. (i) letter dated 24.2.94 stating that the total number of vacancies in the post of Junior Engineer (Civil) stands at 67; (ii) letter dated 30.12.94 stating that the vacancy position increased to 168 posts of Junior Engineer (Civil) and 18 posts of Junior Engineer (Mechanical) and (iii) letter dated 15.3.95 stating that 13 further vacancies had taken place in the post of Junior Engineer (Civil) and the vacancy position in the said post as on 31.3.95 was 181.

4. The written test was conducted by the APSC on 12.3.95 and out of 2807 candidates who appeared for the post of Junior Engineer (Civil), 1162 candidates qualified in the written test and out of 500 candidates who undertook the examination for the post of Junior Engineer (Mechanical) only 101 candidates qualified in the written test. On the basis of the aforesaid written test and interview, the APSC prepared a select list and waiting list of candidates and submitted the same to the Government on 18.9.95. Since the selection process was to take sometime, in the intervening period these vacant posts were filled up temporarily by the persons under Regulation 3 (f) of the Assam Public Service Commission (Limitation of Function) Regulations, 1951 (for short Regulation 3(f)).

5. As we have grouped all the cases which pertain to the selection to the post of Junior Engineer (Civil) and (Mechanical) in the Public Works Department (Roads) to take notice as to which of the petitioners appeared in the selection . conducted by the APSC and were not selected. Civil Rule No.4349 of 1995 has been filed by nine petitioners who were appointed under Regulation 3 (f) and admittedly all of them appeared in the selection held by the APSC but could not succeed in the aforesaid selection. Civil Rule No.4222 of 1995 has been filed by 14 petitioners all of whom appeared in the selection held by the APSC but did not succeed. These two Civil Rules have been decided by a common judgment by the learned Single Judge dated 4.4.96 which is under appeal in Writ Appeal Nos. 167 of 1996, 166 of 1996, 198 of 1996 and 199 of 1996. Civil Rule No.2624 of 1995 has been filed by six petitioners who were appointed under Regulation (f) and of six petitioners, petitioners 1,2,3 and 6 undertook the examination conducted by the APSC but were unsuccessful whereas petitioners 4 and 5 did not apply for the aforesaid posts and have taken a plea before us that the advertisement escaped their notice, In Civil Rule 2625 of 1995 there is only one petitioner and he

applied and appeared in the examination conducted by the APSC, but did not succeed. In Civil Rule No.2626 of 1995 there is one petitioner, who applied and appeared in the examination but was not selected. In Civil Rule No.2237 of 1995 there are 22 petitioners and all applied and appeared in the examination conducted by the APSC but were not selected. In Civil Rule No.4406 of 1995 there are 8 petitioners who were appointed under Regulation 3 (f) and all of them applied for and appeared in the test and their names feature in the waiting list prepared by the APSC. In Civil Rule No.2234 of 1995 there is one petitioner who has been appointed under Regulation 3 (f). He applied but could not qualify in the written test. In Civil Rule No.4376 of 1995 there are two petitioners and both of them appeared in the examination, but were unsuccessful. In Civil Rule No.4632 of 1995, there are eight petitioners and all of them have appeared in pursuance of the advertisement but were not successful. In Civil Rule No.5342 of 1995 there is one petitioner who was appointed under Regulation f) and he applied in pursuance of the advertisement but was not selected by the APSC. It is only the two petitioners in Civil Rule No.2623 of 1995 appointed under Regulation 3 (f) on 3.11.94 who could not apply to the APSC by 30.11.93 fixed by the advertisement as they obtained the qualification of Diploma only in the year 1994. It is therefore, clear that in all the Civil Rules except these two petitioners in Civil Rule No.2623 of 1995, namely, Diganta Kumar Shyam and Chao Phunkya Thaomung, all the petitioners had got a chance to appear in the selection by the APSC for appointment to the posts of Junior Engineer (Civil) and Junior Engineer (Mechanical) under the Chief Engineer, PWD (Roads), Assam, and except the 8 petitioners in Civil Rule No.4406 of 1995 who had been placed in the waiting list of candidates recommended by the APSC, none of the petitioners had been recommended by the APSC in its letter dated 18.9.95 to the State Government.

6. It may also be pertinent to note that the appointment letters of all the petitioners who had been appointed under Regulation 3 (f) contain a specific clause that the appointment being under Regulation 3 (f) continuance in service visavis regularisation in service in PWD thereof will depend upon his being selected by APSC for regularisation. It will be the responsibility of the appointee to apply and to appear in the earliest test/interview notified/advertised by the APSC for filling up the posts of Junior Engineer and in case he does not appear or is not able to appear or in case he is not selected by the APSC within the required position of the select list appointment will stand automatically terminated with effect from the date of issue of the aforesaid select list of the Commission.

7. It may be noticed that Civil Rule Nos.4349 of 1995 and 4222 of 1995 have been finally "decided by the learned Single Judge holding that as the advertisement was meant only for 32 plus 12 posts, the subsequent resultant vacancies which had not been advertised could not be filled up by the selection made by the APSC. The reason which has weighed with the learned Single Judge is that these petitioners who were appointed under Regulation 3(f) subsequent to

the publication of the advertisement dated 21.10.93 did not get a chance to appear before the APSC. The learned Single Judge, therefore, held that the select list made in pursuance of the advertisement dated 21.10.93 could not be utilized to appoint the petitioners whose posts were never advertised as they were appointed much after the advertisement dated 21.10.93. A Mandamus was therefore issued that the writ petitioners could hold the posts under Regulation 3 (f) till their posts were regularly filled up by fresh advertisement of the posts which have arisen subsequent to the advertisement. Learned Single Judge, however, made it clear that the above direction was given in the special circumstances and it would not be a precedent in future.

8. Civil Rule No.5056 of 1995 was filed by 32 petitioners whose case was that in pursuance of the advertisement made by the APSC they had applied and a select list of 181 candidates in order of merit had been published and the APSC while making the recommendation has also considered the increase in the number of vacancies and made recommendation accordingly. But the petitioners even though their names appear in the select list have not been appointed in pursuance of the recommendation made by the APSC as the posts were filled up by making appointment under Regulation 3 (f). In this Civil Rule the learned Single Judge has held that an appointee under Regulation 3 (f) does not acquire any right; he is also not entitled to block the appointment of the candidates who are regularly selected. The regularly selected candidates will steal a march over the candidates appointed under Regulation 3 (f). The learned Single Judge has followed the decision of a Division Bench of this Court in the case of PK Das vs. State of Assam, reported in (1995) 1GLR 229. The learned Single Judge has allowed the Civil Rule and directed the authorities to make appointment of the 32 selected candidates within a period of two months from the date of receipt of the order, if necessary by throwing out all the appointees appointed under Regulation 3 (f) inasmuch as ad hoc appointment through back door could not be encouraged in the field of public employment. The learned Single Judge has also observed that was a general order and that the benefits which were given to these 32 persons shall also be given to other persons selected regularly. In making appointment, the authority shall strictly adhere to the merit in the select list and no deviation shall be made in making the appointment from the merit list subject to reservation.

9. It is thus clear that there are two contradictory decisions by two learned Single Judges of this Court, one given in Civil Rule No.4349 of 1995 and 4222 of 1995 dated 4.4.96 in which appointment can only be made to the 32 plus 12 posts which had been advertised and the other in Civil Rule No.5056 of 1995 wherein it has been held that besides 32 persons, the benefit will also be given to other persons selected regularly and the appointees under Regulation 3 (f) cannot block the appointment of the candidates who are regularly selected. The purport of this second judgment is that all the selected candidates irrespective of the number of posts advertised are entitled to get appointment.

10. The legal questions which have thus arisen for consideration in this case basically are as to whether :

(i) the persons who had been given appointment under Regulation 3 (f) by the State Government to fill the posts of Junior Engineer in the PWD and who had either availed the chance or were in a position of availing the chance have a right to get relief of getting the select list quashed on the ground that the posts which are going to be filled up are beyond the posts which had been advertised;

(ii) the persons who had appointed under Regulation 3 (f) and possibly could not get a chance to appear in the selection in pursuance of the advertisement made by the APSC have got a right to get relief for continuing on their posts till they get a chance to appear before the selection to be held by the APSC.

(iii) the selected candidates in respect of whom the APSC has sent the select list have a right to get appointment irrespective of the fact that the select list contained more names than the posts for which the advertisement had been made by the APSC.

11. Mr. DK Misra, learned counsel appearing for the selected candidates, has urged that all the persons who have been appointed under Regulation 3 (have in fact applied and got the chance to appear for regularisation before the APSC, except the two petitioners in Civil Rule No.2623 of 1995 who were appointed on 3.11.94 and admittedly they could not have applied on account of their having acquired the requisite qualification after the date for submitting application for the stipulated in the advertisement made by the APSC. It has been urged that the Court while exercising its power under Article 226 of the Constitution has to enforce the individual rights of the petitioners and by no stretch of imagination it can be contended that the petitioners rights under Article 14 and 16 of the Constitution have been violated or though they were appointed under Regulation) they did not get the chance to get themselves regularised by appearing before the APSC as all the petitioners appointed under Regulation 3 (f) in all the Civil Rules have in fact applied and appeared in the test held by the APSC except the petitioner Nos.4 and 5 in Civil Rule No.2624 of 1995 though they got the chance to appear but did not apply as according to them the advertisement had escaped their notice. Of course there is an exception of only two petitioners in Civil Rule No.2623 of 1995 as mentioned above.

12. Mr. Sk Chand Mohammad, learned counsel appearing for the PWD has adopted the arguments raised by Mr. DK Misra and Mr. AK Bhattacharyya and has made a statement that even though the two petitioners in Civil Rule No.2623 of 1995 did not get a chance, but they have in fact been appointed as Junior Engineers in other Department of the State Government, in support of which documents were produced by him on 6.5.96 which formed part of the record. Mr. Chand Mohammad has also made a statement that as the aforesaid two persons did not get a chance to appear in the examination, they will be continued in their posts till they get a chance for regularisation by appearing in the next selection

conducted by the APSC. The stand of the Government is that in public interest they should be allowed to give appointment to regularly selected candidates by the APSC as the appointees under Regulation 3 (f) having availed of the chance of appearing before the APSC have no right to continue under the statutory provision of Regulation 3 (f) and the specific terms of their appointment letters.

13. Counsel appearing for the appellants in Writ Appeal Nos.167 of 1996 and 166 of 1996 have strongly relied on the decisions of the Apex Court in *Hosiar Singh vs. State of Haryana*, 1993 Suppl (4) SCC 377; *Asha Kaul vs. State of J and K*, (1993) 2 SCC 573; *Madan Lal vs. State of J and K*, (1995) 3 SCC 486; *Union of India vs. Ishwar Singh Khatri*, 1993 Suppl (3) SCC 84; and *State of Bihar vs. Secretariat Assistant Successful Examinees Unions*, (1994) 1 SCC 126.

14. Shri PK Goswami, counsel appearing on behalf of the petitioners appointed under Regulation 3 (f) has placed strong reliance on the decision of the Apex Court in *State of Bihar vs. Madan Mohan Singh*, AIR 1994 SC 765 and has contended that the Apex Court has laid down clearly that appointments made by the authorities pursuant to a selection in excess of the advertised posts will be violative of Article 14 and 16 of the Constitution.

15. The Apex Court in a latest decision in the case of *Prem Singh vs. Haryana State Electricity Board & others*, (1996) 4 SCC 319, decided on May 7, 1996, after reviewing all the decisions of the Apex Court has held:

"25. From the above discussion of the case law it becomes clear that the selection process by way of requisition and advertisement can be started for clear vacancies and also for anticipated vacancies but not for future vacancies. If the requisition and advertisement are for a certain number of posts only the State cannot make more appointments than the number of posts advertised, even though it might have prepared a select list of more candidates. The State can deviate from the advertisement and make appointments on posts falling vacant thereafter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf. Even when filling up of more posts than advertised is challenged the Court may not while exercising its extraordinary jurisdiction, invalidate the excess appointments and may mould the relief in such a manner as to strike a just balance between the interest of the State and the interest of persons seeking public employment. What relief should be granted in such cases would depend upon the facts and circumstances of each case.

26. In the present case, as against the 62 advertised posts the Board made appointments on 138 posts. The selection process was started for 62 clear vacancies and at that time anticipated vacancies were not taken into account. Therefore, strictly speaking, the Board was not justified in making more than 62 appointments pursuant to the advertisement published on 2.11.1991 and the selection process which followed thereafter. But as the Board could have taken into account not only the actual vacancies but also vacancies which were likely to

arise because of retirement etc by the time the selection process was completed it would not be just and equitable to invalidate all the appointments made on posts in excess of 62. However, the appointments which were made against future vacancies in this case on posts which were newly created must be regarded as invalid. As stated earlier, after the selection process had started 13 posts had become vacant because of retirement and 12 because of deaths. The vacancies which were likely to arise as a result of retirement could have been reasonably anticipated by the Board. The Board through oversight had not taken them into consideration while a requisition was made for filling up 62 posts. Even with respect to the appointments made against vacancies which arose because of deaths, a lenient view can be taken and on consideration of expediency and equity they need not be quashed. Therefore, in view of the special facts and circumstances of this case we do not think it proper to invalidate the appointments made on those 25 additional post but the appointments made by the Board on posts beyond 87 are held invalid. Though the High Court was right in the view it has taken, we modify its order to the aforesaid extent. These appeals are allowed accordingly. No order as to costs." (emphasis supplied)

From the review of all the authorities by the learned counsel for the parties, we are of the opinion that in view of what has been held by the Apex Court in its latest decision, it is clear that the law laid down by the Apex Court is (i) selection process by way of requisition and advertisement can be started for clear vacancies and also for anticipated vacancies but not for future vacancies. If the requisition ^ and advertisement are for a certain number of posts only the State cannot make more appointments than the number of posts advertised, even though it might have prepared a select list of more candidates; (ii) the State can deviate from the advertisement and make appointments on posts falling vacant thereafter in exceptional circumstances only in an emergent situation and that too by taking a policy decision in that behalf, (iii) even when filling up of more posts than advertised is challenged the Court may not, while exercising its extra ordinary jurisdiction, invalidate the excess appointments and may mould the relief in such a manner as to strike a just balance between the interest of the State and the interest of persons seeking public employment. What relief should be granted in such cases would depend upon the facts and circumstances of each case.

16. The law thus having been enunciated by the Apex Court, let us examine the cases of those petitioners who have been appointed under Regulation 3 (f) and as to whether any of their rights under the statutory provision, the appointment letter or the Constitution have violated. The statutory provision in Regulation 3 (f) makes it clear that the appointment under it is purely Temporary pending reference to and selection by the APSC. The appointment letter issued to the 3 (f) appointee clearly contain a clause that the appointment being under Regulation 3(f) continuance in service visavis regularisation in service thereof will depend upon his being selected by the APSC within the required position in the list of candidates recommended by the APSC for regularisation. It will be the

responsibility of the appointee to apply and to appear in the selection notified/ advertised by the APSC for filling up the posts of Junior Engineer and that in case he does not appear or is not able to appear or in case he is not selected by the APSC which the required position of the select list, the appointment will stand automatically terminated. From the facts narrated earlier, it is clear that except the two petitioners in Civil Rule No.2623 of 1995, all other appointees under Regulation 3 (f) have had the opportunity of appearing in the APSC selection for public employment and hence their rights either under Articles 14 and 16 of the Constitution or under Regulation 3 (f) or their appointment letters have not been violated. All these appointees, except two, did apply and appear and thus did avail of a chance and at the behest of such appointees under Regulation 3 (f) who have been found unsuccessful, this Court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution will not grant them any relief of quashing the selection of candidates by the APSC in excess of the advertised posts or in continuing them in the posts to which they were temporarily appointed pending regular selection by the APSC.

17. The next question which falls for consideration is as to whether considering the entire facts and circumstances of the case as has been held in the case of Prem Singh & others (supra) by the Apex Court all the 181 candidates in respect of whom requisitions have been sent would be entitled to get appointment or out of the select list appointments should be restricted only to the posts which have been advertised. The first requisition for 32 plus 12 posts was sent on 20.7.93 by the Chief Engineers, PWD (Roads), Assam to the APSC, the advertisement by the APSC was made on 21.10.93 and as per the advertisement the applications were to be received by 30.11.93. However, the examination was in fact held on 12.3.95 and interviews were held on 22.5.95 and 13.6.95 and the select list was sent by the APSC to the State Government on 18.9.95. Therefore, the whole process has taken more than 2 years. As a consequence of this delay of 2 years, the Chief Engineer, PWD (Roads) had to send to the APSC three additional requisitions. It has come on record that the Chief Engineer, PWD (Roads), Assam, in hfs letter to the APSC dated 30.12.94 had indicated that till the year 1994, 168 vacancies of Junior Engineer (Civil) existed in the department. As far as Junior Engineer (Mechanical) are concerned, it has been intimated by the said letter dated 30.12.94 that 18 vacancies in the posts of Junior Engineer (Mechanical) existed in the department as on 30.12.94. It will be evident that the total vacancies till the end of the year 1994 had been notified to the APSC, but the vacancies upto the end of year 1994 had not been advertised and as a consequence only the candidates who had obtained their Diploma and become qualified in the year 1994 such as the two petitioners in Civil Rule No.2623 of 1995 could not avail the chance of appearing in the selection conducted by the APSC for these vacancies upto the year 1994. In the year 1995, requisition had been sent on 15.3.95 for 13 more posts. The whole selection process had also come to an end when the select list was sent on 18.9.95 before the end of year 1995. In our opinion, on the peculiar facts and circumstances of the case since

the vacancies of the year 1995 do not represent the vacancies of the entire year and even the selection process had not been held after the end of the year 1995, the vacancies which occurred during 1995 cannot be filled up on the basis of the selection process which had come to an end before all the vacancies of the year 1995 could be known, and the two petitioner in Civil Rule No.2623 of 1995 and all other candidates who obtained their Diploma in the year 1994 and who did not get the opportunity to appear in the APSC examination in pursuance of the advertisement No. 12/93 dated 20.10.93, should get an opportunity to appear before the APSC for the said vacancies of the year 1995 and thereafter and the services of the two petitioners in the said Civil Rule No.2623 of 1995 should not be terminated until the said vacancies of the year 1995 and thereafter are advertised by the APSC and regular selection thereto is made. As held by the Apex Court, that this Court while exercising its extraordinary jurisdiction may not invalidate the excess appointments and may mould the relief in such a manner as to strike a just balance between the interest of the State and the interest of persons seeking public employment and what relief should be granted in such cases would depend upon the facts and circumstances of each case.

18. We may now examine the question from the point of view of striking a just balance between the interest of the State and the interests of the persons concerned. As far as the interest of the State is concerned, as have been noted above, the counsel appearing for the State has made a statement that the selection process takes a long time as in this particular case it has taken more than two years. 2807 candidates appeared for the posts of Junior Engineer (Civil) and 500 candidates appeared for the posts of Junior Engineer (Mechanical). 1162 candidates qualified in the written test for the posts of Junior Engineer (Civil) and 101 candidates qualified in the written test for the posts of Junior Engineer (Mechanical). The stand of the State Government to appoint regularly selected candidates, in our opinion, is in public interest as the appointments under Regulation 3 (f) have only been temporary as a stop gap arrangement. We may also take into account the nature of the posts to which appointments are being made. These are technical posts and ought to be filled in by persons who are well qualified. There has been a regular selection in which large number of candidates have appeared. As far as the interest of the appointees under Regulation 3 (f) are concerned, those appointed in the year 1993 who are before us did get a chance to appear for selection and as stated above except two, all had appeared in the examination. As far as the appointees under Regulation 3(f) in the year 1994 who have come before us, according to the statement made by the counsel appearing for the State Government, their services will not be terminated. The policy of the State Government therefore is clear that appointees under Regulation 3 (f) who could not get a chance to appear will be allowed to continue till they get a chance to appear in the examination. Regular selection will now be held for the vacant posts of the year 1995 and onwards and in the subsequent selection all these appointees under Regulation 3(f) made in the year 1994 onwards will get a chance besides the eligible persons who have acquired

qualification for becoming eligible for applying for these posts after the year 1993. As we have noted that requisition process for selection started on 20.7.93 and more than 3 years have gone by and this stopgap arrangements on these technical posts will not be in public interest, we are further of the opinion that State Government will send requisition to APSC for the vacant posts of 1995 and 1996 so that the candidates who have become qualified after 1993 and are eligible to apply may not be denied chance of public employment and these technical posts are filled up not by stopgap arrangement but by persons who are regularly selected by APSC in the open competition.

19. In the peculiar facts and circumstances of the case, therefore, 168 vacancies in the post of Junior Engineer (Civil) and 18 vacancies in the post of Junior Engineer (Mechanical), as notified by the Chief Engineer, PWD (Roads) in his letter dated 30.12.94 can be filled up from amongst the candidates selected by the APSC in order of merit subject to reservation as mentioned in the letter dated 18.9.95 of the APSC to the State Government and to make room for their appointment the authorities could terminate the services of the Regulation 3 (f) appointee occupying these posts.

20. For the reasons stated above, we are of the opinion that out of the candidates recommended by the APSC in its letter dated 18.9.95, only 168 candidates will be appointed in order of merit to the 168 vacancies in the posts of Junior Engineer (Civil), which have been intimated by the Chief Engineer, c PWD (Roads), Assam, to the Assam Public Service Commission in his letter dated 30.12.94. Similarly, out of the candidates recommended by the Assam Public Service Commission in its letter dated 18.9.95, only 18 candidates will be appointed in order of merit of the 18 vacancies in the posts of Junior Engineer (Mechanical) which have been intimated by the Chief Engineer, PWD (Roads), Assam to the Assam Public Service Commission in his letter dated 30.12.94. To make room for filling up these vacancies by the selected candidates as mentioned above, the authorities will be entitled to terminate the services of the appointees under Regulation 3 (f) occupying these posts.

21. Writ Appeal Nos.167 of 1996, 166 of 1996, 198 of 1996, 199 of 1996 and Writ Appeal No.(T) 455 of 1996 are disposed of in terms of this order and the judgment of Hon'ble Justice Smti M. Sharma dated 4.4.96 passed in two Civil Rule Nos.4349 of 1995 and 4222 of 1995 and of the Hon'ble Mr. Justice J. N. Sarma dated 14.3.96 passed in Civil Rule No.5056 of 1995 are modified to the extent indicated above.

22. Regarding the two petitioners in Civil Rule No.2623 of 1995 who have been appointed under Regulation 3 (f) on 3.1.1.94 and who have not got the chance for appearing in the examination conducted by the Assam Public Service Commission, it appears that these two petitioners have been appointed as Junior Engineers in other Departments of the State Government. The aforesaid fact is corroborated by the documents produced by the Government on 6.5.96 which forms part of the record. However, Mr. Sheikh Chand Mohammad, learned

counsel appearing for the Public Works Department, State of Assam, has made & a statement that as the aforesaid two persons did not get a chance to appear in the examination, they will be continued in their posts till they get a chance for regularisation by appearing in the next selection conducted by the Assam Public Service Commssion.

23. Civil Rule Nos.2623 of 1995, 2624 of 1995, 2625 of 1995, 2626 of 1995. 22J7.of 1995. 4406 of 1995. 2234 of 1995, 4376 of 1995, 5342 of 1995 and 4632 of 1995 arc disposed of in terms of the order made above.

24. The interim orders, if any, in all these cases are vacated.

25. However, looking to the entire facts and circumstances of the case, the parties shall bear their own costs.