
(2010) 07 GAU CK 0018

In the Gauhati High Court

Case No : Writ Petition (C) No's. 4740, 5839, 5840 and 5843 of 2009

Jagannath Kr. Dey and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 02-07-2010

Acts Referred:

Assam Elementary Education (Provincialisation) Rules, 1997 — Rule 3
Assam Public Service Commission (Limitation of Functions) Regulations, 1951 —
Regulation 3(F)
Constitution of India, 1950 — Article 14, 16, 311

Citation : (2010) 3 GLT 632

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : P.K. Goswami, S.S. Goswami and L. Devi, for the Appellant; M.K. Choudhury, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—All these writ petitions with common set of facts and grievance have been heard together and are being disposed of by this common judgment and order.

2. While in W.P.(C) Nos. 4740/2009 5840/2009 and 5843/2009, the Petitioners involved were all appointed as Assistant Teachers of L.P. Schools, the Petitioners involved in W.P.(C) 5839/2009 were appointed as Assistant Teachers in ME Schools. They are all aggrieved by termination of their services.

3. The basic facts set out in the writ petition being more or less the same and as the learned Counsel for the parties primarily argued in reference to the facts involved in W.P.(C) 4740/2009, the facts stated in the said writ petition, are being taken into account The additional points urged in W.P.(C) 5839/2009, in which the Petitioners involved were appointed as ME School teachers unlike the other three writ petitions, in which the Petitioners were appointed as LP School Teachers, shall be taken note of at appropriate place.

4. As against the claim of the Petitioners that they had been validly appointed as Assistant Teachers of L.P. and ME Schools way back in 1999, it is the stand of the Respondents that they had been appointed de hors the recruitment rules and that too without any valid sanctioned posts. Be it stated here that the services of the Petitioners have been terminated by the competent authority of Bodoland Territorial Council (BTC) as the Schools in which the Petitioners had been serving are under deep and pervasive control of the said Council.

5. According to the Petitioners they were all appointed in the year 1999 after due employment notice and selection process. It is the further stand of the Petitioners that they were all appointed against the valid sanctioned posts.

6. By Annexure-I letter dated 9.12.96 issued on the subject of Education policy of Bodoland Autonomous Council (BAC). While enclosing therewith the copy of the education policy to be followed by the BAC w.e.f. 1.1.1997, direction was issued for taking necessary action. By the said letter, qualification for teachers and other employees were also indicated. The letter was addressed to the Director of Education, the then BAC (now BTC) by the Joint Secretary, BAC. Thereafter by Annexure-2 communication dated 17.12.96, it was further intimated that the Deputy Inspector of Schools will be the Ex-officio Member-Secretary of Elementary Education Advisory Boards so constituted by BAC in each Sub-Division.

7. Be it stated here that in the instant proceeding, we are concerned with appointment made by the D.I. of Schools. By Annexure-3 communication dated 17.2.1997, issued by the Director of Education, BAC to the authorities including the DI of Schools under BAC, request was made to take necessary action for implementation of the aforesaid policy of the BAC. By the said letter, further request made was to receive applications from the Principals of Head Master concerned in respect of selection for appointment to the posts of (1) LDA in High or Higher Secondary Schools; (2) LDA for ME School; (3) Gardener of High and Higher Secondary Schools; (4) English Teachers for Bodo Medium LP Schools; (5) Mother Teacher in all provincialised LP Schools under BAC. Thus, it will be seen that in the said letter, there was no mention of LP and ME School Teachers.

8. In paragraph 7 of the writ petition, the Petitioners have referred to the Annexure-4 advertisement/employment notice published in January, 1997 in the local newspapers inviting applications from eligible candidates for filling up about 7500 vacant posts of Assistant Teachers of LP/ME/MV/MEM, etc. schools all over the State. However, in the said employment notice, it was specifically spelt out that the said employment notice was not applicable for autonomous council area, Karbi Anglong and NC Hill District. Thus, the said advertisement was not meant for the posts of LP and ME School teachers in BAC.

9. In paragraph 8 of the writ petition, the Petitioners have referred to the Office Memorandum dated 14.1.1994, issued by the Govt., of Assam in the Personnel (B) Department, notifying delegation of power to the BAC for recruitment to

Class-III and IV posts relating to 38 subjects falling under BAC. By the said OM, it was clarified that the recruitment in respect of Class-III and IV posts would be made by the concerned Departments.

10. In paragraph 9 of the writ petition, the Petitioners have referred to the Annexure-5 notification dated 11.2.1999, issued by the BAC, constituting the Sub-divisional Elementary Education Advisory Board (s) and District Secondary Education Advisory Board, Nalbari. As per the said notification, the tenure of the board was for one year from the date of issuance of the notification, subject to further extension, if felt necessary. As regards the duties and functions of the Boards, it was stipulated that the Board shall be advisory in nature and that it would have the power to constitute Interview Board to conduct interviews for selection of suitable candidates for appointment on merit. Further stipulation was that the select list of candidates must be forwarded to the BAC (Education) for due approval and that only thereafter appointment might be issued to the selected candidates.

11. By Annexure-6 order dated 25.6.99, the BAC constituted the District Secondary Education Advisory Board, amongst others, for the district of Nalbari with the same stipulations. The Advisory Board was constituted with as many as 24 members with one Chairman. The Deputy Inspector of Schools, Nalbari was made the Member-Secretary. In paragraph-11 of the writ petition, the statement made is that pursuant to the constitution of the aforesaid Sub-divisional Advisory Board, an advertisement was issued on 7.7.99 to fill up the vacancies of Assistant Teachers. According to the statement made, the advertisement was published by the Advisory Board as an employment notice, in the notice board of the office of the Sub-Divisional Elementary Advisory Board, BAC, Nalbari, inviting applications from the eligible candidates. Thus, as per the own stand of the Petitioners, the employment notice was not published in any newspaper. It is also not the case of the Petitioners that the same was published or hanged in any other notice board of any office other than the office of the Sub-Divisional Elementary Advisory Board, BAC, Nalbari.

12. According to the Petitioners, they had responded to the said employment notice by offering their candidatures alongwith many others and thereafter the board invited the candidates for interview commencing from 18.8.99 onwards in all the blocks involved. According to the Petitioners, it was in the month of September, 1999, the Board published a select list and notified the same in the notice board of the office of the Sub-divisional Advisory Elementary Education Board, BAC, Nalbari. It is the further stand of the Petitioners that their names were included in the select list published on 19.9.99.

13. It is the further case of the Petitioners that after the select list was published, necessary formalities including obtaining approval etc. were carried out and thereafter the DI of Schools, Nalbari issued appointment orders to the Petitioners on different dates, such as 3.12.99, 4.12.99 and 6.12.99. Pursuant to the said orders of appointment, all the Petitioners joined their respective posts and

started receiving salary from the Nalbari Treasury. According to the Petitioners, they started drawing salary from March, 2000. As a token of receipt of salary, the Petitioners have annexed the Annexure-8 document dated 16.3.2000 standing in the name of the Petitioner No. 1 Shri Jagannath Kumar Dey, showing bill No. and date as 599 and 1.3.2000 amounting to Rs. 5400/-. Be it stated here that the monthly stipend that was paid to the Petitioners was for Rs. 900/- per month. It is on this count, the Respondents in their counter affidavit, have contended that this document itself will go to show the fake appointment of the Petitioners, as the Petitioner No. 1 could not have drawn Rs. 5400/- for 3 months i.e. December, January and February, inasmuch as, taking into account monthly stipend of Rs. 900/-, at best he could have drawn Rs. 2700/-.

14. In the writ petition, the Petitioners have stated about their undergoing the junior basic training course; receipt of salary in the time scale of pay which was subsequently again reverted to consolidated pay of Rs. 900/-, subsequently enhanced to Rs. 1800/-, on the basis of the decision rendered by this Court. The Petitioners have also referred to the purported inquiry report by the authorities towards verification of their appointment to find out as to whether they were validly appointed or not and also as to whether they were appointed against sanctioned post or not. According to the Petitioners, they were all validly appointed against clear vacancies. In this connection, the Petitioners have referred to the Annexure-9 and 9-A communications dated 3.2.2003 and 21.5.2009, addressed to the Deputy Commissioner of the District i.e. Nalbari by the D.I. of Schools, Nalbari and Secretary, Bodo Territorial Council (BTC).

15. In the first communication issued on the subject of submission of No. of teachers appointed during the year 1998-99, the total number of teachers appointed was shown block and yearwise. By the second letter, it was conveyed that the list submitted by the DI of Schools, did not contain the advertisement and the particulars relating to holding of interview, preparation of select list and approval thereof. It was further conveyed that the DI of Schools, Nalbari had submitted the list of working teachers and that there were large number of illegal teachers. By Annexure-9B letter dated 3.8.09, addressed to the Secretary BTC by the Additional Dy. Commissioner, Nalbari, it was conveyed that in absence of the list of LP teachers appointed in BTC area, it was not possible to verify the same. However, by referring to the particulars furnished in Annexure-Alist containing the names of the Petitioners, it is their plea that they were all appointed against clear vacancies. Be it stated here that the list has been prepared by the Petitioners themselves.

16. By Annexure-18 Order dated 6.4.2000, issued by the Director of Elementary Education, Assam, it was ordered that authenticity of the appointment of the teachers appointed by the then DI of Schools (Late S.N. Sarma) would be scrutinized and such teachers, if found genuinely appointed, should be deputed for training. Thus, there was some doubt regarding genuineness of the appointment of the teachers in LP and ME Schools. By Annexure-19 letter dated

7.5.04 addressed to the DI of Schools, Nalbari and District Elementary Education Officer, Tamulpur in the district of Nalbari, issued on the subject of scrutiny of the list of deputed teachers for Junior Basic Training, 2004, direction was issued to collect the original appointment letters and respective joining reports; to ascertain the vacancy position after tallying with the field level reality etc.

17. After the aforesaid developments, the services of the Petitioners had been terminated by Annexure-25 order dated 25.9.2006, on the ground of appointment being made without following selection procedure required for the purpose, such as advertisement, selection test, interview etc. It was stated in the order that it was a back door appointment in arbitrary exercise of power by the officer concerned. The order also stated about the ban that was imposed on appointment For a ready reference, the order is quoted below:

Bodoland Territorial Council Secretariat: Kokrajhar

No. BTC/Edn (EI)- 187/2006/271

Dated Kokrajhar the 28th Sept/2006

ORDER

Seen the order of Principal Secretary, EBAC in compliance of order of Honourable Gauhati High Court in W.P.(C) 6262/2001, No. 5683/2001, No. 6771/2001, No. 5499/2001, No. 6729/2001, No. 6760/2001, No. 5696/2001, No. 6861/2001, No. 6120/2001 and No. 7190/2001. Vide No. BAC/EDN/PL/2/2002/18 dated 10.04.2002 and the enquiry report of Director of Education Vide No. BAC/EDN/PL/2/2002/93 dated 03.08.2002, the statement prepared by Block Elementary Education Officer and letter of Director of Education, vide No. DEBTC/Appn-69/06 dated 15th July" 2006, it is reported that Jagannath Dey of Pub Salmara L.P. School of Baksa district is appointed by Deputy Inspector of Schools, Nabari as Assistant Teacher to regular sanctioned vacant post by way of adjustment.

The appointment of incumbent concerned is made without going through formal selection procedure required for the purpose. In this regard, it is clearly spelt out that the period in which incumbent concerned was appointed, the Advisory Board for Selection of candidate was in force. The appointment is made without selection test, advertisement and no interview was conducted for the purpose. This is a kind of backdrop appointment in the regular sanctioned posts. The arbitrary power exercised by the officer concerned is an example not to be followed by any other officer.

Further the Govt., of Assam has made it compulsory for any appointment a concurrence/approval from the now defunct State Level Empowered Committee of Personnel Department or the Staff Inspection Unit of the Finance Department of the Govt., of Assam. No approval/concurrence has been obtained in the instant case from the State Level Empowered Committee or the Staff Inspection Unit. The officer concerned who has issued this illegal appointment order is also liable for prosecution for violation of existing rules and procedure of

appointment. He should be made responsible for causing loss to the exchequer and irrational expenditure not allowed by the rule. Herein, the nexus between the officers of the Education Department and Treasury office cannot be ruled out. The Director of Elementary Education, Kahilipara may take appropriate steps in this regard.

Further it is also pointed out that there were blanket ban on issue of appointment by any District Level or Sub-Divisional Level officer throughout the State. The ban is still effective. The Erstwhile BAC or the BTC is within the purview of that order.

In view of above stated circumstances the appointment order of incumbent concerned by the District Elementary Education Officer, Nalbari/Deputy Inspector of School, Nalbari stands quashed and the appointment thereof is declared illegal. The drawal of salary etc. is stopped forthwith.

The Director of Education, BC, Kokrajhar will take all necessary steps to fill up the post by regular process and move the SIU through proper channel for approval/concurrence.

Sd/-P.K. Hazoari, Secretary, Bodoland Territorial Council, Kokrajhar.

18. Prior to the said order, Annexure-27 communication dated 24.8.2006 was issued to the Director, Elementary Education, Assam by the Secretary to the Govt., of Assam in the Education Department, enclosing therewith the inquiry report submitted by the team of three Officers. By the said letter, direction was issued to terminate the services of all illegal appointees. The letter also suggested for taking action against the erring officials named in the order. Be it stated here that Shri S.N. Sarma, the then DI of Schools under whose signature, the Petitioners were appointed, has since expired.

19. Aggrieved by the aforesaid order of termination of service, the aggrieved teachers filed writ petitions, one of which was W.P. (C) 6071 of 2006: Jagannath Kumar Dey and Ors. v. State of Assam and Ors. The writ petition was disposed of by order dated 6.12.2007 interring with the order of termination on the ground that no opportunity of being heard was provided to the terminated teachers. However, liberty was granted to the authority to deal with the matter in accordance with law. For a ready reference, the operative part of the order is quoted below:

Mr. B. Das, learned Standing Counsel, BTC, on the other hand, submits that the Petitioners having been appointed irregularly, their services were rightly terminated. However, he fairly submits that it would have been prudent, had the Petitioners been served with show cause notices asking them to show cause as to why their services would not be terminated. As regards the payment of salary, Mr. Das, learned Standing Counsel, B.T.C. submits that the BTC authority has written to the Government of Assam for providing budgetary allocation for payment of salary to the Petitioners, who have not been paid their salary in

absence of the same.

In view of the above submission and as agreed to by the learned Counsel for the parties, this batch of writ petitions is disposed of with the following directions:

(1) The impugned orders pertaining to termination of services of the Petitioners shall stand set aside and quashed. However, it is made clear that no opinion is expressed regarding the merits of the rights and contents of either of the parties. The impugned orders have been set aside and quashed on the technical grounds of non-issuance of notices and/or violation of the principles of natural justice.

(2) It will be open for the BTC authority to deal with the matters in accordance with law. However, no adverse orders shall be passed against the Petitioners without providing opportunity of being heard.

(3) The Petitioners, who have not been paid their salary for the period of services they have rendered; shall be paid their salary seeking budgetary allocation of which, the BTC authority has already written to the Government. Necessary budget sanction shall be provided by the Government to the BTC towards payment of admissible salary to the Petitioners, who have not been paid their salary. It is made clear that such payment of salary to the Petitioners will not be dependant on the interim order passed by this Court, meaning thereby, that irrespective of interim order passed, the Petitioners shall be paid their salary. This is in tune with the interim order passed on 15.12.2006 in WP(C) No. 6064/2006.

20. After the aforesaid order was passed by this Court, the orders of termination passed against the teachers were withdrawn and they were allowed to continue in their services. Thereafter, show cause notices were issued to the teachers including the Petitioners to show cause as to why on the common grounds assigned in the show cause notices, their services should not be terminated. For a ready reference, the show cause notice addressed to the Petitioner No. 1 (Annexure-33) is reproduced below:

Govt. of Assam Office of the Director of Education, Bodoland Territorial Council, Kokrajhar No. DE/BTC/Apptt-93/102 Dated Kokrajhar the 19th July/08. From: Sri R.S. Borgayari, AES, Director of Education, Bodoland Territorial Council, Kokrajhar. To Sri Jagannath Kumar Dey, Asstt. Teacher, Pub-Salmara L.P. School, District-Baksa, BTC. Through - The Head Teacher, Pub-Salmara L.P. School. Subject: Show Cause Notice. Sir,

You are hereby to show-cause as to why your services shall not be terminated with immediate effect, your appointment being made illegally.

Your show-cause to the statement of allegations as stated below hereunder should be submitted to the undersigned with all necessary documents attested by the competent authority within a period of 15 days from the date of receipt of the instant show-cause notice failing which it shall be presumed that you have no defense to offer against the allegations levelled against you and the authority will

proceed accordingly to take steps for termination of your services.

Statement of allegations

Upon enquiry it is found that your appointment has been made dehorse the Rules and as such you are hereby directed to show cause as to why your services may not be terminated with immediate effect for the following charges/allegations levelled against you.

- (a) Your appointment was not preceded by the procedure of advertisement, interview and selection as envisaged by the Rules.
- (b) Your appointment was made during the period of ban on appointment imposed by the Government of Assam.
- (c) The approval and clearance of the State Level Empowered Committee which was prerequisite for appointment was not obtained prior to issuing your appointment letter and even thereafter.
- (d) Your appointment was never approved by the erstwhile. BAC/the competent authority.
- (e) You have been appointed against a non-sanctioned and non-existent post.
- (f) No salary bill was either prepared or drawn in your name from the date of your appointment.

Yours faithfully, Sd/- Director of Education, Bodoland Territorial Council, Kokrajhar.

21. The Petitioners on receipt of the said show cause notices, submitted their individual reply and one such reply has been annexed as Annexure-34 to the writ petition. The reply is dated 6.9.08. It was submitted by the Petitioner No. 1. In the said reply, the aforementioned facts had been narrated. It was stated that the Petitioner had applied for the post of Assistant Teacher in response to the local employment notice hanged in the notice board of the Office of the Sub-Divisional Elementary Education Advisory Board of the then BAC, Nalbari. As in the writ petition, in the show cause reply also, it was contended that the Board had conducted the selection/interview and on that basis, the select list was published and hanged in the notice board. As regards the approval of the appointment, it was stated that the approval was accorded by the Sub-Divisional Elementary Education Advisory Board, BAC, Nalbari. Alongwith show cause reply, the following documents were furnished:

- i) Order of appointment dated 4.12.99.
- ii) Order of conversion dated 20.11.2000.
- iii) Order of regular scale of pay dated 28.1.2005.
- iv) First withdrawal salary statement.

v) First pay Treasury Voucher from Nalbari

vi) Pay Certificate

vii) Basic Training Certificate.

22. After the aforesaid show cause reply was furnished, the Director of Education, BTC submitted his report, pursuant to personal hearing accorded to the Petitioners to the Secretary, Education Department, BTC. Finally, the authority of the BTC i.e. the Secretary, BTC passed the impugned order dated 6.11.08 (Annexure-36) terminating the services of the Petitioners and others on the ground mentioned in the said order, which is reproduced below:

Bodoland Territorial Council Secretariat: Kokrajhar

No. BTC/EDN/TERM-514/2008/96

Dated Kokrajhar the 6th November 2008.

ORDER

Seen the report of Director of Education, BTC vide this letter No. DE/BTC/ Apptt-93/08/105 dated 7th November, 2008 in connection with issue of Show Cause Notice, Personal Hearing etc. in connection with observance of formalities in respect of appointment of teachers.

The incumbent Jagannanth Dey, Assistant Teacher of Pub Salmara LPS has failed to submit documents to the Director of Education, BTC or his authorised officer in the process of Show Cause Notice and Personnel hearing. No relevant documents as sought for in the Show Cause notice were furnished by the incumbent in the process of personal hearing.

The incumbent was supposed to submit the following papers.

(a) Advertisement issued by the DEEO, DI of Schools of Nalbari, calling upon the candidates to submit the application as a candidate to fill up the posts in the schools as stated in the advertisement.

(b) Approval of State Level Empowered Committee of the Personnel Department of Govt., of Assam to fill up the posts.

(c) The records of holding interview and preparation of score sheet by the Interview Board.

(d) List of selected candidates indicating vacancies of the schools to fill up the selected candidates.

(e) Approval of EBAC for the appointment.

In this regard, it is stated that the Cabinet Committee tried its best to find of records in the office of the DEEO, Nalbari and DI of Schools, Nalbari. The DEEO and DI of Schools, Nalbari failed to furnish the records of advertisement, score

sheet prepared by the Interview Board, Select List of candidates, approval/concurrence of the State Level Enquiry Committee to the Govt., of Assam and approval of EBAC for appointment.

In view of the observation indicated above, the appointment of incumbent in the said post is found to be illegal and without observing requisite formalities. Hence the appointment of the incumbents is liable to be terminated forthwith.

The Director of Education, BTC will take necessary steps for termination of services, etc. Further, the Director of Education, BTC shall submit proposal for filling up of the vacancies arising out of this termination.

Subject to availability of fund the salary of the incumbent stopped vide this Secretariat Order No. BTC/Edn (EI)-187/2006/Pt-I/236 dated 11th July, 2008 stand vacated.

Inform all concerned. Secretary, Bodoland Territorial Council Kokrajhar.

23. After the aforesaid order dated 6.11.08, necessary consequential orders have also been issued dispensing with the services of the Petitioners and others. Hence, this writ petition.

24. According to the Petitioners, their services could not have been dispensed with in the manner and method in which the same has been done. It is their case that before termination of their services, they ought to have been given proper hearing instead of confining such hearing to a show cause notice and reply thereof. It is their stand that although according to the Respondents, they had been given personal hearing but, in fact, no such hearing was provided to them. However, in paragraph 53 and 54 of the writ petition, it has been stated that such personal hearing was conducted on 20.9.2008 and the Petitioners had submitted all the relevant documents but they were not asked anything and no documents were examined. It is the plea of the Petitioners that they being regularly appointed teachers, their services could not have been dispensed with dispensing with the requirement of the procedure to be followed under Article 311 of the Constitution of India and the procedure envisaged in the Service Rules i.e. Assam Services (Discipline and Appeal) Rules, 1964.

25. The Respondents have filed their counter affidavit, denying the pleas and the contentions raised in the writ petition. In the said affidavit, the basic stand is that the Petitioners having been appointed quite illegally by the then DI of Schools, Nalbari, their services have been rightly dispensed with. It is the stand of the Respondents that there was complete violation of the provisions of the Recruitment Rules. According to them, the Petitioners were appointed without any advertisement and selection. Pointing out to the illegality in the entire episode, the Respondents have also pointed out the Annexure-8 Pay Voucher amounting to Rs. 5400/-, about which mention has been made above. It is the stand of the Respondents that the required approval of the BAC for appointment was also not obtained.

26. In paragraph 20 of the affidavit, it has been stated that the entire issue relating to illegal appointment of the Petitioners and others, came to light when the authority for payment of salary etc. came to BTC for the employees of the BTAD area. On being bestowed with the power to release salary, when the necessary verifications were made, it was found that large number of teachers were appointed illegally against non-sanctioned and non-existent posts and there was no budgetary provisions against such posts. According to the Respondents, it was in such circumstances, the services of the Petitioners have been dispensed with and that there is no question of following the procedure laid down in the Discipline and Appeal Rules. Another point raised is that for any appointment, the approval of the then State Level Empowered Committee (SLEC), came into being on 6.12.99, was required but unscrupulous officers made the appointments just at the eve of the same and even on 6.12.99 when no such appointment could have been made without the approval of the said SLEC.

27. Against the aforesaid counter affidavit filed by the Respondents, the Petitioners have filed an affidavit-in-reply reiterating and reaffirming the stand in the writ petition. In paragraph 11 of the said reply affidavit, the Petitioners have craved leave of this Court to produce the copy of the select list dated 23.9.99. Accordingly, the learned Counsel for the Petitioner was requested to produce the copy of the said select list. The purported select list was produced during the course of hearing, about which discussion will be made latter. Be it stated here that the Petitioners have also produced the copy of the purported employment notice dated 7.7.99.

28. I have heard Mr. P.K. Goswami, learned Senior Counsel assisted by Mr. S.S. Goswami, learned Counsel for the Petitioners as well as Mr. D. Das, learned Standing Counsel, BTC alongwith Ms. M. Bordoloi, also learned Standing Counsel, BTC. I have also heard Mr. M.K. Choudhury, learned Sr. Counsel and Standing Counsel, Education Department, Govt., of Assam. I have also carefully considered the entire materials on record including the documents produced by the Petitioners.

29. Mr. Goswami, learned Counsel in his long and elaborate argument referring to each and every documents available on records, submitted that the Petitioners having been appointed way back in 1999, their services could not have been dispensed with in the manner and method in which the same has been done. According to him, in view of the earlier order of this Court granting liberty to the authorities of the BTC to deal with the matter in accordance with law, it was incumbent on their part to provide a reasonable opportunity of being heard to the Petitioners instead of dispensing with their services by simply issuing a show cause notice. According to him, there has been gross violation of the mandate of Article 311 of the Constitution of India. As regards the 4th writ petition i.e. W.P. (C) 5839/2009, it was submitted that the Petitioner were validly appointed as ME School teachers against centrally sponsored scheme and thus the Petitioners involved therein ought to have been absorbed/adjusted against regular vacant

posts instead of terminating their services and that too without providing them any reasonable opportunity of being heard.

30. Mr. Goswami, in support of his argument, placed reliance on the following decisions:

- i) Ashwani Kumar and Others Vs. State of Bihar and Others,
- ii) Abdul Kalam Borbhuya Vs. State of Assam and Others,
- iii) Meenglas Tea Estate Vs. Its Workmen,
- iv) Union of India (UOI) Vs. T.R. Varma,
- v) Basudeo Tiwary Vs. Sido Kanhu University and Others,
- vi) Shrawan Kumar Jha and others Vs. State of Bihar and others,
- vii) 1988 (1) GLJ 383 : Hemanta Kr. Pegu and Ors. v. State of Assam and Ors.
- viii) The judgment and order dated 26.9.2003 passed in W.P. (C) 5449/2001.
- ix) Order dated 19.11.2009 passed by the Apex Court in Civil Appeal s Nos. 8305-8309/2003 : State of Assam v. Khargeswar Bora and Ors.

31. Countering the above argument, Mr. D. Das, learned Standing Counsel, BTC on the other hand strenuously argued that having regard to the fact that the Petitioners were illegally appointed, their services had to be dispensed with and while doing so, all the Petitioners were provided with a reasonable opportunity of being heard. Referring to the own case of the Petitioners and the averments made in the writ petition, Mr. Das submitted that the Petitioners having failed to establish their own case by producing valid documents relating to wide publicity of employment notice, call letters, for selection/interview, publication of the select list in due manner, approval of the authority towards appointment of the Petitioners etc., they cannot harp on certain communications made between the authorities to establish their case. He submitted that since the whole basis of appointment of the Petitioners is not in accordance with law, any consequential action will not cloth them with any right to continue in service. He has also placed reliance on the following decisions:

- i) (2008) 1 SCC 798 : Nagendra Chandra and Ors. v. State of Jharkhand and Ors.
- ii) Ashwani Kumar and Others Vs. State of Bihar and Others,
- iii) Ashwani Kumar and others Vs. State of Bihar and others, etc. etc.,
- iv) State of Bihar Vs. Upendra Narayan Singh and Others,
- v) State of Manipur and Others Vs. State Land Use Board Casual Employees" Association and Another,
- vi) Abdul Kalam Borbhuya Vs. State of Assam and Others,

vii) 2006 (2) GLR 764 : Sankha Nath Pegu v. State of Assam and Ors.

viii) Govt. of A.P. and Others Vs. K. Brahmanandam and Others,

ix) 2009 (1) GLT 729 : Manasi Goswami v. State of Assam and Ors.

x) State of Manipur and Others Vs. Y. Token Singh and Others,

32. Mr. M.K. Choudhury, learned senior Counsel appearing for the State Govt., in the Education Department, while adopting the arguments advanced by Mr. D. Das, learned Standing Counsel, BTC, submitted that in absence of any specific particulars disclosed by the Petitioners relating to their process of appointment, it will not be in the interest of justice to uphold their appointments. He submitted that since 1991, the Govt., of Assam in the Education Department has not sanctioned any post for operation in the BTC area except the posts under centrally sponsored scheme called OBB in 1998 and 2001. They are known as 4040 Group (ME School Teachers only) and 7066 Group (both LP and ME School Teachers). Referring to particular appointment order annexed to the writ petition (Annexure-7), which is the appointment order of the Petitioner No. 1, he submitted that the appointment order showing the sanction of post, is illegal and based on nonexistent fact. He further submitted that the appointment could not have been made against non-sanctioned/non-existent posts.

33. The decision on which Mr. Goswami, learned Counsel for the Petitioner has placed reliance are basically on the principles involved in reasonable opportunity of being heard on which much emphasis has been given. There cannot be any quarrel with the said proposition of law but each fact will have to be judged on its own merit. Needless to say that ratio of any decision is available on the given facts and circumstances and cannot be universally applied to all cases irrespective of facts involved.

34. In Meenglas Tea Estate (supra), dealing with the domestic inquiry conducted by the management, it was observed that it is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. In the instant case, there was no regular inquiry relating to any charge sheet. The whole basis of the action was that the Petitioners were appointed illegally dehors the Recruitment Rules. If in the given facts, the same is established, the matter ends there. It is not a case of levelling any charge against the Petitioners in a regular departmental proceeding.

35. In Basudeo Tiwary (supra), it was observed by the Apex Court that conferment of absolute power to terminate services of an employee is anti thesis of fair, just and reasonable treatment. That was a case relating to the provisions for termination of services at any time without notice.

36. In Shrawan Kr. Jha (supra), dealing with the principle of natural justice, the Apex Court held that the holders of appointment orders were entitled to opportunity of hearing before cancellation of their appointments.

37. In Hemanta Kumar Pegu (supra), the Division Bench of this Court dealing with the appointments made under Regulation 3(F) of the APSC (Limitation and Function) Regulation 1951, held that even if the appointments were made illegally, the incumbents ought to have been given an opportunity of being heard.

38. In Khargeswar Bora (supra) and also in the decision in W.P. (C) 5449/2001, what was emphasised was on the observance of the principles of natural justice.

39. As already noted above, there cannot be any second opinion relating to observance of the principles of natural justice whenever a right is sought to be affected but as noted above, the said principle will have to be tested in touch stone of the extent of requirement to follow the same in the given facts and circumstances. It can not be a straight jacket formula that whenever there is any deviation and/or infraction of said right irrespective of the own case of the person concerned and/or the given facts and circumstances, applying the test of reasonableness of the action on the principles of natural justice, an illegal thing cannot be restored back.

40. What is the own case of the Petitioners? It is not their case that they had offered their candidatures pursuant to any public employment notice widely published in the newspaper and by other means. It is also not their case that they had been invited for the selection/interview by issuing any call letters. As regards the stand of the Respondents that there was no approval of the competent authority of the BAC towards appointment of the Petitioners, the plea advanced by them is that their appointments had the approval of the Advisory Board.

41. The Petitioners have referred to the Annexure-4 advertisement published in January, 1997 inviting applications from eligible candidates for filling up about 7500 vacant posts of Assistant Teachers. The said advertisement was published in the newspaper, copy of which has been annexed to the writ petition as Annexure-4. Although, the said advertisement was not meant for the areas covered by the BAC but the same procedure was required to be followed towards making any appointment to the post of Assistant Teachers which was admittedly not done.

42. Rule 3 of the Assam Elementary Education (Provincialisation) Rules, 1977, laying down the method of recruitment, mandates that advertisement should be published in newspapers inviting applications from the desirous candidates registered with employment exchange. In the advertisement, number of posts is required to be indicated. The amount of application fee has been prescribed as Rs. 25/-. Detail procedure has been laid down as to how the selection board on receipt of applications shall scrutinise and process the application forms, the mark sheets and other necessary testimonials of the candidates for interview by the Interview Committee.

43. The said rule further requires that the selection board on completion of interviews by the different Interview Committees, shall add marks secured by

different candidates in the interview, the marks secured due to qualifications of the candidates, over and above the minimum qualification and the marks secured due to experience as a teacher in a manner provided in Schedule-I. The select list is required to be prepared constituency wise for each Assam Legislative Assembly Constituency in descending order of the total marks secured by a candidate, out of the total marks mentioned in Schedule-I. The list so prepared is required to be submitted to the Director of Elementary Education (in the instant case to the competent authority of BAC) for his authentication. After such authentication, the select list is to be published by affixing copy thereof in the office notice board of the office of the Director, Elementary Education, Assam; Inspector of Schools; District Elementary Education Officer; Block Elementary Education Officer and DI of Schools and in any other manner as the Govt., may deem fit as and when they are received from different Sub-divisions. As per the said provision, the select list published shall be public document and shall be made available to a bonafide member of the public, on application with such requisite, as may be determined by the Govt., from time to time.

44. Schedule-I to the said rules give the details of the marks to be awarded in the qualifying examination, credit for experience as teacher, credit for junior basic training and performance in the interview.

45. Admittedly, in the instant case, the aforesaid procedure laid down in the rules was not followed. Interestingly, the purported copy of the advertisement dated 7.7.99 issued by the same very officer, who had issued the appointment orders, does not disclose anything about the number of posts. Even if the said employment notice is held to be in existence, the same having not been published in newspaper as is required in any public employment and also in terms of the aforesaid rules, if any selection was made on that basis, same must be held to be vitiated.

46. In paragraph 11 of the writ petition it has been stated that the advertisement was hanged in the notice board of the Advisory Board only and thus there was no wide publication of the same, not to speak of in newspapers. Further, according to the Petitioners, interview was conducted by the Board from 18.8.99 and onwards in all the blocks. However, the Petitioners are silent upto which date the interview was conducted and what was the constitution of the interview Board and also as to how the candidates had been invited for appearing in the selection. During the course of hearing when the learned Counsel for the Petitioners was asked to produce any such call letters, the answer was that so such call letters are available and that the candidates must have been invited by the Board by affixing notice in the notice board.

47. It has been stated in the writ petition that the select list was published on 19.9.99 and the same was hanged in the notice board of the office of the Advisory Board only. As noted above, as per rules, the select list prepared after observance of due formalities, is required to be hanged in the notice board of various offices, which was not done in the instant case. The Petitioners have

stated about the purported approval obtained towards their appointment but have not even obliquely stated as to from whom such approval was obtained. In the show cause reply, the statement made was that such approval was given by the Sub-Divisional Elementary Education Advisory Board, BAC, Nalbari. The specific allegation made in the show cause notice was to the effect that such appointment was never approved by the erstwhile BAC/the competent authority.

48. It is in the above context, learned Standing Counsel, BTC has placed reliance on the decisions cited by him. The decisions are on the necessity of wide publication of advertisement in any public employment; requirement to follow the Recruitment Rules for public employment, extent of applicability of observance of principles of natural justice etc.

49. In *Sankha Nath Pegu (supra)*, declining to grant any relief to the Petitioner, it was held that the Petitioner having been appointed illegally against a non-existent post without any recruitment process, cannot claim regularisation of his service.

50. In *K. Brahmanandan (supra)*, the Apex Court has held that appointments made in violation of mandatory provisions is illegal and therefore void. It has further been held that the equality clause contained in Article 14 and 16 of the Constitution, must be scrupulously followed.

51. In *Abdul Kalam Borbhuiya (supra)*, under some what similar circumstances, the Division Bench of this Court while dismissing the appeal noticing the fact that the Appellant was appointed by the DI of Schools in violation of the Recruitment Rules, held that person entering into service through back door by depriving other eligible candidates cannot subsequently complaint of violation of principles of natural justice on termination of his service on the ground of illegal appointment. In this connection, paragraph 12 of the judgment is quoted below:

The principles of natural justice cannot be put in a straight jacket formula and not inflexible. Whether a person is entitled to a notice before taking any action against him depends on the fact of each case. If a person is appointed de hors the Rules and in complete violation of the statutory rules framed for that purpose, without any advertisement and without any selection, his entry into the service is through the back door. The person who entered into the service is through the back door, by depriving other eligible candidates from competing in selection, cannot subsequently complained of the violation of the principles of natural justice, when his services are terminated on the ground of illegal appointment, as such appointment does not confer any right on such person to continue in service. Even, in the case where a person is entitled to notice before termination, non-issuance of such notice, ipso facto, will not render such order of termination invalid, as he has to show what prejudice has been caused to him for non issuance of such notice. In the instant case, the Appellant has admitted that he was appointed without any advertisement and without any selection and in complete violation of Rules, therefore, Petitioner's entry into service being

through back door cannot be allowed to say that the order of termination is bad in law being violative of natural justice, as he is not entitled to such notice. Moreover, non-issuance of any notice before passing the order of termination has not caused any prejudice to the Petitioner. Therefore, the contention of the Appellant that the order of termination of service is bad in law for non-issuance of notice cannot be accepted. The decision cited by the learned Counsel for the Appellant, in *Commandant 60 BN CRPF and Ors. v. J.K. Medhi*, reported in 7999 (2) GLT 175 is not applicable in the instant case as the said decision relates to giving an opportunity to a delinquent officer to make representation against the finding recorded by the enquiry officer in a disciplinary proceeding against such officer.

52. In *Manasi Goswami (supra)*, this Court dealing with the appointment of the Assistant Teacher under Assam Elementary Education (Provincialisation) Rules, 1977, held that any appointment made dehors the provisions of Rule 3 will be still born, null and void. It has further been held that such an appointee is neither entitled to regularisation nor could the State be made liable for payment of salary to such a person, for the period of service rendered. In *Ashwani Kumar and others Vs. State of Bihar and others, etc. etc.*, also the same principle has been reiterated.

53. In *State Land Use Board Casual Employees Association (supra)*, when the termination was challenged on the ground of not affording any opportunity to show cause before passing the order, the Division Bench of this Court held that the principle of natural justice does not require, if the appointment is ex-facie illegal, the termination has to be preceded by a notice. It has been held that when appointment is dehors the rules or against non-sanctioned post, termination of such a service would not require issue of any notice. In such a case opportunity of hearing may not be necessary.

54. In *Upendra Narayan Singh (supra)*, emphasising on the need for equality of opportunity in matters of public employment, the Apex Court held that the persons appointed by back door method or as a result of favouritism or nepotism or corruption, cannot take the plea of violation of the principles of natural justice. Justifying the termination of such appointees, the Apex Court has observed thus:

Unfortunately, some orders passed by the Courts have also contributed to the spread of spoils system in this country. The judgments of 1980s and early 1990s show that this Court gave expanded meaning to the equality clause enshrined in Articles 14 and 16 and issued directions for treating temporary/ad hoc/daily-wage employees on a par with regular employees in the matter of payment of salaries, etc. The schemes framed by the Governments and public bodies for regularisation of illegally appointed temporary/ad hoc/daily-wage/casual employees got approval of the Courts. In some cases, the Courts also directed the State and its instrumentalities/agencies to frame schemes for regularisation of the services of such employees.

In view of the above discussion, we hold that the initial appointments of the Respondents were made in gross violation of the doctrine of equality enshrined in Articles 14 and 16 and the provisions of the 1959 Act and the learned Single Judge gravely erred by directing their reinstatement with consequential benefits.

By now it is settled that the guarantee of equality before law enshrined in Article 14 is a positive concept and it cannot be enforced by a citizen or Court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing wrong order Chandigarh Administration and another Vs. Jagjit Singh and another,

55. In Nagendra Chandra (supra), the Apex Court noticing the fact that illegal appointments made in violation of the Recruitment Rules, held that appointment were not only in infraction of rules but also in violation of Articles 14 and 16. Although, the appointees had continued in their services for about 14 years but the Apex Court noticing the fact that they were appointed illegally, held that the competent authority was justified in dispensing with their services even after 14 years.

56. In Income Tax Officer Vs. Gita Rani Banik, the Apex Court under somewhat similar circumstances and when it was found that appointment of Assistant Teachers of Primary Schools were made indiscriminately without following the statutory rules, held such appointments would not confer any right on the appointees nor could any such appointee claim any equitable relief from any Court. As in the instant case, in the said case also, there was violation of Rule 3 of the Aforesaid Rules. In paragraph 7 of the judgment, the Apex Court has quoted the entire provisions of Rule 3 of the said rules to point out the infraction of the said rules towards making the appointment.

57. The Apex Court in Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. Vs. Devendra Kumar Jain and Others, noticing that services of the appointees were terminated for want of requisite approval, held that the High Court erroneously quashed the termination. It was also noticed that the Managing Director of the Company who was retiring shortly issued the appointment orders in high haste ignoring the Government instructions to the contrary.

58. A Division Bench of this Court by its judgment and order dated 27.4.2010 passed in W.A. No. 351/2007 and W.A. No. 352/2007: Manju Brahma v. State of Assam upholding the judgment and order passed by the learned Single Judge, under somewhat similar circumstances repelling the contention that Rule 3 of the Aforesaid Rules was not applicable, observed thus:

Assuming that the law made by the Government was not to apply to all and the General Council of the Bodoland Autonomous Council had absolute and unruffled power to initiate the appointment procedure, then too, the basic requirement of making public advertisement for the public employment was required to be

observed by them. Undisputedly, in the present matter the Petitioners/Appellants have not brought on record any document to show or suggest that any public advertisement was issued. It is also not the case of the Appellants that wide publicity/circulation was made and/or competent/qualified persons were invited to submit their candidature to occupy the posts.

In the case of public advertisement the policy to pick and choose or the policy of pick and kick has no role to play. Favouritism and nepotism are absolutely foreign to the principles enshrined under the Constitution. After all, a common man is also entitled to take part in the selection process and to satisfy himself that he is entitled to be appointed.

59. In the aforesaid case, writ petitions were filed claiming appointment on the basis of purported selection and publication of select list. However, it was the contention of the Respondents, as in the instant case that no valid select list ever existed, no advertisement for appointment was issued and no selection as per procedure was made in the field of public employment. It was also contended that there was ban on appointment. It was noticed that the purported select list was not approved by the competent authority and that the same was also not an outcome of public advertisement for the public employment. It was found that the select list was prepared violating all the mandates issued by the Constitution of India Dismissing the judgment and order passed by the learned Single Judge dismissing the writ petitions, the Division Bench while making the aforesaid observations, held that the purported select list cannot be taken to be a select list, specially when it did not have any authority of law behind it.

60. In the instant case, there is absolutely no manner of doubt that the Petitioners as per their own case had been appointed in a most illegal and arbitrary manner. There was no advertisement, no selection, no publication of select list and no approval of the competent authority of the BAC towards appointment of the Petitioners as envisaged under the Rules. Interestingly, all the appointments had been made by late S.N. Sarma, the then D.I. of Schools purportedly pursuant to the regular selection of the Petitioners, but there is variation in the orders of appointment itself. The Petitioners have annexed the copies of the orders of appointment through their affidavit-in-reply. For a ready reference, 3 (three) of the orders are quoted below:

Govt. of Assam

Office of the Deputy Inspector of Schools ::: Nalbari

ORDER

Subject to termination without notice and without assigning any reason thereof Sri/Smt. Tapan Sarkar, HSLC/HS passed of village - Dimiapar, P.O.- Dimiapar, Dist.- Nalbari, BAC (Assam) is hereby appointed with effect from the date of his/her joining as Asstt. Teacher at stipend pay Rs. 900/- p.m. in Mushalpur Junior Basic L.P. School against the sanctioned post vide Govt., of Assam sanctioning

letter No. PMA/158/95 dated 18.2.95 and DEE's communication letter No. EPD/TSP/SCP/13/97/178-A Dated 5th Nov" 98.

The appointment is made as per approval of Sub-divisional Advisory Board, Elementary Education BAC, Nalbari.

The expenditure for the purpose will be debitable to the head "2202-GenI-Edn. (I) III Centrally sponsored Scheme-01 -Ele-Edn (d) O.B. B-I Salaries (Plan).

Sd/- S.N. Sarma Deputy Inspector of Schools, Nalbari.

Govt, of Assam

Office of the Deputy Inspector of Schools ::: Nalbari

Order

Subject to termination without notice and without assigning any reason thereof Kumud Ch. Rabha, HS passed of village- Majdia, P.O. - Majdia, Dist. Nalbari (Assam) is hereby appointed as stipendary teacher against the sanctioned post vide Govt., creation No. EPD/TEP/SCP/13/97/198-A dated 31.12.98 in Lengurkata L.P. School at a stipend of Rs. 1800/- p.m. with effect from the date of his joining.

The appointment will be considered for regular scale of pay on successful completion of prescribed training as per existing norms and procedure of Education Department" and subject to satisfactory police verification report.

In case of failure to pass the training examination with the stipulated time for 3 chances his/her service shall be terminated for which no claim/appeal will be entertained.

The expenditure is debitable to the Head of Account "2202" Gen-Edn-II other state plan scheme- Ele. Edn. 101 (A) Govt. Pry-schools (plan).

Sd/- S.N. Sarma Deputy Inspector of Schools, Nalbari.

Govt. of Assam

Office of the Deputy Inspector of Schools ::: Nalbari

Order

As per approval of the Chairman Sub-Divisional Elementary Education Advisory Board, Nalbari, BAC (Assam) of Shri Akshay Kumar Das, HS passed of village - Majdia, P.O. - Majdia, Dist. - Nalbari, BAC (Assam) is hereby appointed temporarily as stipendary teacher against the Retd. vacancy of Sri Cheniram Nath, H.T. of Kalbari L.P. School and posted at Lengurkata L.P. School on the fixed pay of Rs. 900/- p.m. with effect from the date of his joining.

The expenditure is debitable under Head of Accounts "2002-Gen-Edn-etc. (Non-Plan)".

Sd/-S.N. Sarma Deputy Inspector of Schools, Nalbari.

61. Interestingly, the appointment order in respect of Petitioner No. 15 in W.P. (C) 4740/2009 speaks of his appointment only for a period of 3 (three) months against a temporary vacancy. There is no explanation as to how such an appointment can be said to be made a regular appointment. The order is reproduced below:

Govt, of Assam

Office of the Deputy Inspector of Schools ::: Nalbari

Order

Shri Kanak Das, HSLC pass village - Dinilapar, P.O. Dinilapar is hereby allowed to work very temporarily against the transfer vacancy of Smti. Anowara Begum, H/T Narayanpur Baritola L.P. School and posted at Kundulimara L.P. School for a period of 3 (three) months w.e.f. the date of joining of the teacher in the fixed pay Rs. 900.00 p.m.

Sd/- S.N. Sarma Deputy Inspector of Schools, Nalbari.

62. Apart from the above, as pointed out by both Mr. Das learned Standing Counsel, BTC as well as Mr. M.K. Choudhury, learned Standing Counsel, Education Department, in some of the appointment orders, appointment is said to be "without effect".

63. If the Petitioners were all validly appointed pursuant to a regular process of selection, their appointment orders would have in the same format but same is not so. The documents available on records give the irresistible conclusion that the entire episode was a creation of some unscrupulous officials including the then DI of Schools. He had issued the appointment orders in a most illegal and arbitrary manner without following the procedure laid down in Rule 3 of the Rules. In such a situation, the plea of the Petitioners that there has been violation of the principles of natural justice cannot be accepted. The Petitioners will have to establish their own case on the basis of the materials in their possession but they have miserably failed to do so. In the show cause notices, they were directed to furnish the required documents. It was categorically alleged that the appointments were made de hors the rules; not preceded by the procedure of advertisement/interview and selection as envisaged in the rules; the appointments were made during the period of ban on appointment; approval of the competent authority of the BAC was not obtained, etc.

64. In response to the said allegations, although the Petitioners in their show cause replies took the plea of their valid appointment but apart from annexing the orders of their appointment, salary statements, pay certificates etc. could not furnish any other relevant documents concerning their selection and appointment. In the normal circumstances, the Petitioners ought to have annexed the related documents pertaining to a regular selection, but they failed to do so.

In such a situation, the authority of the BTC was left with no other option than to terminate their services.

65. In the Annexure-A statement, the Petitioners have given certain particulars of their appointments. In the said particulars, they have furnished one column with the heading "date of convert against the post". In one hand, it is the case of the Petitioners that they were all appointed against valid sanctioned posts but on the other hand has shown their conversion against other posts. If they were appointed against valid sanctioned post, there was no necessity for their conversion to any other post. Thus, everything was done in a most illegal and arbitrary manner. Situated thus, the competent authority of the BTC has rightly terminated their services. While doing so, the Petitioners had been issued with show cause notices to have their say in the matter. In spite of providing such opportunity, the Petitioners miserably failed to substantiate their appointments.

66. As noted above, the learned Counsel for the Petitioner, during the course of hearing, produced the purported copy of the select list (part only) containing names from SI. No. 46 to 130. On being asked as to why the list is not in full and starts from SI. No. 46, Mr. Goswami, learned Counsel for the Petitioner submitted that the select lists were sent and/or published in part. Such a plea is wholly untenable. Firstly, it is never the contention of the Petitioner in the writ petition that the select list was published in parts. Secondly, a select list is never published in parts. At best it may be published as main list and waiting list, but certainly not picking up names at random or midway. As per the own case of the Petitioner, the select list was published on a single day i.e. 19.9.99 and not in phased manner.

67. The purported select list also does not contain the signatures of any other member except the Member Secretary, who is only one of the 24 members constituting the Advisory Board. There was also no constitution of any interview Board as envisaged in Rule 3 referred to above. Thus, everything was done by the same very person i.e. the DI of Schools, right from approving and sending the select list and issuing appointment orders. There is nothing to show association of anyone of the other members. It is also not the case of the Petitioners that the entire body was associated in the process.

68. The Requirement of Rule 3 of the Rules, has been noted above. There is nothing to show that the said requirements had been followed. It is not only the interview marks on the basis of which the selection is to be made. There are different heads including interview head under which, marks are to be awarded.

Upon consideration of such marks, the select list is published on merit. The purported part select list contains the names without indicating anything about the marks secured by them under different heads and their merit position with Roll Nos. The purported part select list contains the names of some of the Petitioners and not all. There is no explanation for non-production of the other parts of the purported select list containing the names of other Petitioners and

for that matter all the Petitioners.

69. In the aforesaid facts and circumstances, can it be said to be a case of appointment on the basis of a validly drawn selection Certainly not. The case projected by the Petitioners speaks for itself. In any public employment, the procedure adopted towards selection and appointment must conform to the requirements of Articles 14 and 16 of the Constitution of India Any infraction thereof must be viewed seriously and there cannot be any scope of compassion which if provided will be misplaced. Anybody appointed throttling the principles underneath Article 14 and 16 of the Constitution, cannot later on complain of violation of the principles of natural justice. It is also not a case of condemning the Petitioners unheard. They had been provided with reasonable opportunity of being heard by issuance of show cause notice assigning the grounds for action which they failed to meet as per their own showing.

70. In W.P.(C) No. 5839/2009, the Petitioners had been appointed as ME School Teachers. According to Mr. Goswami, learned Counsel for the said Petitioners, since they had been appointed under the OBB scheme, launched by the Central Govt., as per the provisions of the said scheme, their services are required to be adjusted/regularised against existing vacancy. If the Petitioners had been appointed illegally, there is no question of their regularisation/adjustment. When their very initial appointment is void abinitio, there is no question of adjustment of their services. Thus, their case cannot be treated differently from that of the other Petitioners involved in the other writ petitions.

71. For all the aforesaid reasons, I do not find any merit in any one of the writ petitions and accordingly they are dismissed. However, in the given facts and circumstances, I am not inclined to pass any order as to costs.

72. The writ petitions are answered in the above manner. However, the most important aspect of the matter is that the elimination of the products of an illegal act is not the end in itself, may be a means to an end, but unless the author or the authors of such an illegal act is/are brought to book, there will be repeat performance of such illegal acts which is so rampant in the Education Department of the Govt., of Assam. The manner and method in which the appointments were made has been noted above. Not only that, the illegal appointees were provided with salary, both fixed (stipend) and in the time scale of pay. They were even sent for Junior Basic Training. Certain objections were raised on such deputation to training on ground of appointments being illegal, but no any concrete action was taken. It was only when the BTC was empowered to release salary, the real state of affairs came to light and action followed. Materials on record have disclosed that some action was taken against some office staff, but the outcome of the said action is not known.

73. Unless there was a racket in the entire episode, such large number of teachers could not have been appointed by Late S.N. Sarma, the then DI of Schools, Nalbari, alone. It appears that the Govt., of Assam in the Education

Department is not willing to unearth the racket and would rather protect its erring officials, which may even include its high officials of the Department. The role of the Finance Department/Treasury is also not beyond the shadow of doubt. It could not have released salary to the illegally appointed teachers without proper verification. It is really a matter of grave concern that the illegally appointed teachers could draw their salary for all these years, although were appointed against non-existent/non-sanctioned posts. Needless to say that such drawal of salary was at the cost of public money. In such a situation, only by terminating the services of the Petitioners and for that matter, the illegally appointed teachers, the matter does not come to end, but the end will be achieved only when the culprits are brought to book. However, going by the conduct of those who are at the helm of affairs, it is really doubtful as to whether such an end will ever be achieved. I place on record the high expectation that the things will move in right direction.