

(2015) 08 GAU CK 0048
In the Gauhati High Court
Case No : W.P. (C) No. 2485 of 2012

Julekha Wahida Ahmed

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 25-08-2015

Acts Referred:

Citation : (2015) 4 GLT 922

Hon'ble Judges : Tinlianhang Vaiphei, J.

Bench : Single Bench

Advocate : S.P. Hussain and S. Ahmed, Advocates, for the Appellant; B.D. Das, Senior Advocate, D. Nath, U.K. Goswami, SC, H. Buragohain, A.F.N.U. Mollah, U.K. Das and P.J. Saikia, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Tinlianhang Vaiphei, J.—Desperately seeking appointment to the post of Subject Teacher in Zoology in the provincialized Higher Secondary Schools of the State of Assam since 2008, which has remained as elusive as ever, the petitioner is initiating another round of litigation by way of this writ petition. The petitioner is a master degree holder in Zoology and stood 1st in the Second Class in the year 1991 conducted by the Gauhati University. She had participated in the selection process for appointment to the post of Subject Teacher in Zoology in the various provincialized Higher Secondary Schools of the Assam in the year 1995. In the select list so prepared, her name appeared in serial No. 47 against the advertised vacant posts of 20. According to the petitioner, the select list was never acted upon nor was she provided the correct information about the fate of the select list. She was ultimately informed that the select list did not get the approval and the same had become invalid due to lapse of time. However, she subsequently came to learn that candidates below her in the select list as well as candidates who were not included in the select list had been appointed against the advertised posts of Subject Teacher in Zoology. When she approached the authorities under the Right to Information Act, 2005, she was informed by the

Deputy Secretary vide his letter dated 14.8.2007 thus:

a) Select List of 1995 sent by the State Selection Board, Assam was not approved by the Government and hence, nobody from the select list was appointed by the Director of Secondary Education, Assam.

b) For the other information sought as per the RTI Complaint Petition dated 9.7.2007 could not be provided as the relevant file No. B(3) S. 515/95 was missing from the Department.

2. As no specific information is disclosed by the said letter dated 14.8.2007 regarding the fate of the select list and the appointments being made in connection therewith, the petitioner was constrained to file WP(C) No. 3175 of 2008 before this Court. In the meantime, following the said RTI application filed by the petitioner, the respondent authorities lodged the FIR dated 6.9.2007 with Dispur Police Station. Due to the magnitude of the scam, the learned Single Judge passed the order dated 18.9.2008 directing the Registry to place the matter before the Division Bench for consideration as to whether the case should entertained as a Public Interest Litigation. The Division Bench of this Court by the order dated 1.12.2008 then called upon the respondent No. 1 to institute an inquiry into the issue pertaining to the illegalities and irregularities alleged to have been committed in the selection process in question. On 16.3.2009, the letter dated 13.3.2009 of the respondent No. 3 addressed to the respondent No. 1 was placed before the Division Bench disclosing that while filling up 20 posts of Subject Teachers in Zoology in the said recruitment process, six candidates who were below the petitioner in the select list and another 8 candidates who could not made it in the select list were given the appointments. According to the petitioners, the six candidates who were below her in the select/merit list are:-

a) Smt. Gitimoni Katikakaty (Respondent 4);

b) Shri Pradip Das (expired recently);

c) Smt. Lini Baruah (Respondent 5);

d) Smt. Nili Kalita (Respondent 6);

e) Smt. Archana Sarma (Respondent 7) and

f) Shri Khagendra Ballav Choudhury.

3. It may be noted that the said Khagendra Ballav Choudhury is not made a party respondent contrary to the averment by the petitioner in the writ petition. According to the petitioner, the respondent No. 4, 5, 6, and 7 were placed below the petitioner at Serial No. 48 downwards. It is also the case of the petitioner that the candidates who were not at all in the merit list are as follows:

a) Trinangajyoti Handique (respondent 11);

b) Smt. Anjali Patar;

- c) Smt. Anjali Chakravarty
- d) Md. Nurula Huda (respondent 13);
- e) Sri Ajit Goswami;
- f) Sri Amuliya Goswami (respondent 14);
- g) Smt. Gitanjali Talukdar (respondent 10);
- h) Smt. Madhumita Das Borah (respondent 8).

4. At this stage, it may also be noticed that Anjali Patar, Anjali Chakravarty and Ajit Goswami are not impleaded as party respondents contrary to the pleaded case of the petitioner. This Court had initially not thought it appropriate to interfere with their appointments since they had by then been rendering services for more than a decade provided the respondent authorities could accommodate the petitioner. But when the learned standing counsel for the Education Department informed this Court that the respondent authorities could not accommodate the petitioner, this Court proceeded to decide the legality of their appointments. After perusing the records of appointments, this Court unilaterally constituted a Special Investigation Team (SIT) to investigate any wrongdoing in the said appointments whereupon the case was ordered to be treated as PIL and was accordingly registered as PIL No. 14 of 2010. In the meantime, the respondent No. 3 vide his letter dated 20.2.2010 in reply to the letter of the petitioner confirmed that there was only one select list of 1995 prepared by the State Selection Board, Assam from 1992 till date by stating therein that "After 1995, this State Selection Board, Assam has not conducted any interview/prepared list of Subject Teachers till date". The SIT submitted their report to this Court on 7.6.2010 wherein it found one Kumud Gogoi responsible for the disappearance of the records relating to the appointments and six former Directors of Secondary Education, Assam responsible for the illegal appointments. The SIT also revealed that one M. Rahman, the then Deputy Secretary to the Government of Assam, Education (Secondary) department responsible for giving false information to the petitioner under the RTI Act, 2005 with respect to the approval of the select list of 1995 and the appointments of candidates in connection therewith. This Court by the order dated 6.8.2010 disposed of the PIL directing the respondent authorities to take into account the report of the SIT and thereafter take appropriate action to discontinue the services of those appointees who got undeserved appointments. The Court further directed that if any adverse action was to be taken against any appointee, they should be given an opportunity of hearing before termination orders were issued. In so far as the case of the petitioner was concerned, this Court held that as she was position only at serial No. 47 of the select list against the advertised posts of 20, she could claim appointment as per her turn if vacancies became available through termination of the services of illegal appointees and if appointment was refused by those who were in higher merit position that the petitioner only upon which she could be offered the

appointment by virtue of her selection. The Court also directed payment of compensation to the tune of Rs. 25,000/- to the petitioner for her efforts to cleanse public life, etc.

5. It is also the case of the petitioner that the then Director of Secondary Education, Assam issued the advertisement dated 20.11.1998 for regularization of the services of the temporary/ad hoc appointees fully knowing well that there was already the valid select list of 1995 and such regularization exercise was in contravention of the provisions of the Assam Secondary Education (Provincialization) Service Rules, 1982. According to the petitioner, the only select list in existence between 1991 and 2003 was the select list of 1995, which was, though, never published, but appointments continued to be made from and outside the said select list till 2003: the services of these temporary/ad hoc employees, who were initially appointed purely on personal consideration, came to be regularized. The respondent No. 6 whose position in the select list was at Sl. No. 57, was given the appointment vide the order dated 9.11.1999 in compliance with the order dated 20.11.1996 passed by this Court in C.R. No. 4405/1995. The respondent No. 6 was aggrieved by the appointment of the respondent No. 14, who had been appointed outside the said select list, but the respondent authorities continued to retain the respondent No. 14 in service even after the appointment of the respondent No. 6. It is the contention of the petitioner that such appointment is a clear indication that the select list of 1995 was still operative 2003. The respondent No. 14 had secured only 54 marks which was less than the cut-off marks and could not therefore, make it to the select list as found by the SIT. He was temporarily appointed on 20.10.1995 just after the select list was sent for approval and his service regularized on 27.8.1999 even when the select list was still operating. The respondent No. 4 was initially appointed for a temporary period on 20.4.1992. She had also appeared for interview before the State Selection Board in 1995 and her position in the merit list was at serial No. 48, which was below the position of the petitioner, yet she was given regular appointment by virtue of her selection in the year 1995. Similarly, the respondent No. 5 was placed at 56th rank in the merit list, but was given temporary appointment on 31.10.1995 though she was below the petitioner. Her service was regularized on 31.5.1997. The respondent No. 7 was initially appointed on temporary basis on 11.5.1992 and by virtue of the said selection in the year 1995, her service was regularized on 2.6.1997 though her position in the select/merit list of 1995 was at Sl. No. 64. The respondent No. 8 and 9 were appointed on 26.11.1993 and 19.12.1994 respectively, but they did not appear in the interview held in 1995. Yet, they were given permanent appointment on the basis of the screening process held in 1999 for regularization of teachers whose temporary appointments were extended by the respondent authorities on ad hoc basis. Their services were regularized on 19.11.1999 and 11.2.2000 respectively. Similarly, the respondent No. 10, 11, 12 and 13 were temporarily appointed on 5.10.1993, 17.5.1994, 21.9.1994 and 12.4.1993 respectively. Their services were also regularized on 22.3.2000, 30.1.2001,

16.11.1999 and 16.11.1999 respectively after undergoing the screening process: they had never appeared for interview before the State Selection Board in 1995. It is contended by the petitioner that the regularization of the services of the respondent No. 8, 9, 10, 11, 12, 13 and 14 against the 20 posts so advertised in the year 1992 is in contravention of the Assam Secondary Education (Provincialization) Rules, 1982 ("the Provincialization Rules" for short) and that their temporary appointment orders had also clearly indicated that they would hold those posts till the candidates from the select list were appointed. On 16.11.2010, the petitioner had filed M.C. No. 3978/2010 before this Court complaining of violation of the direction passed by the Court in PIL No. 14/2010. In the affidavit filed by the respondent No. 1 therein had stated that in compliance with the order of this Court dated 6.8.2010 passed in PIL No. 14 of 2010, show cause notices dated 10.5.2010 had been issued upon all the 20 Zoology Subject Teachers and after consideration of their replies, it was found that they were not appointed in conformity with the Provincialization Rules, their services were terminated by the respondent No. 2 vide the order dated 7.6.2011 and 25.7.2011. On the basis of the said statement, the Division Bench of this Court by the common order dated 25.1.2012 disposed of the Misc. Case together with Review Petition No. 117 of 2011 by holding that no further order was necessary for compliance with the order of this Court and that with regard to the claim of the petitioner in the Review Petition, she could not show preferential right to appointment against available vacancy in terms of the order dated 6.8.2010 inasmuch as no person lower in merit to her had been considered or no person higher in merit to her was available (unavailable?) for the appointment. In the meantime, the respondent No. 5, 6, 7 and 8 filed a joint writ petition being WP(C) No. 3345/2011 before this Court challenging their termination orders dated 7.6.2011 and 25.7.2011 on the ground that they had not been served a copy of the show cause: they were merely asked by the respective jurisdictional Inspector of Schools over telephone on 17.5.2011 to appear the Office of the respondent No. 2 on 17.5.2011 and on their appearance, no proper hearing was given to them except to ask them to write down the history of their appointments, which they accordingly. This Court by the order dated 29.2.2012 quashed the impugned terminations orders for violation of principles of natural justice and directed the respondent authorities to reinstate them to service with continuity in service by giving liberty to the respondent authorities to proceed with the matter in accordance with law, if so advised. The respondent No. 9, 10, 11, 13 and 14 also filed separate writ petitions, namely, WP(C) No. 3093/2011, WP(C) No. 3089/2011, WP(C) No. 3191/2011, WP(C) No. 3260/2011 and WP(C) No. 3105/2011 before this Court challenging their termination order dated 7.6.2011 on the ground that their services were regularized on the basis of the recommendation made by the Screening Committee and were not the beneficiaries of the selection process conducted in 1995 and further that their cases were not covered by the dispute raised in PIL No. 14 of 2010. This Court by the order dated 29.2.2012 allowed the writ petitions and quashed the impugned termination order dated 7.6.2011 in so far as the petitioners therein

were concerned and declared that they should be deemed to be in service all throughout with all consequential benefits. It is contended by the petitioner that during the investigation carried out by the SIT, it was unearthed that there were actually 21 regular appointments made since 1995 out of which one appointee, namely, Khagendra B. Choudhury had resigned and that seven Subject Teachers were appointed till 15.12.1998 and the respondent No. 4, 5 and 7 were among these seven appointees. It was further found out by the SIT that the remaining 14 teachers were given regular appointments after 15.12.1998, the date on which the file containing the particulars of the select list of 1995 were missing while the respondent No. 6, 8, 9, 10, 11, 12, 13 and 14 were among the 14 candidates who were given regular appointments in the absence of the concerned file. The SIT categorically stated that out of the 20 appointed candidates, all the appointments except that of Shri Subhash Bhattacharjee and Madhumita Sen who stood at Serial No. 11 and 13 respectively, were illegal. The SIT also held that the appointment of candidates after holding the screening test conducted in the year 1998 without first appointing the previous selected candidates of 1995 could not be justified by any means. The SIT further held that the aforesaid 20 appointees for the posts of Subject Teachers in Zoology were appointed against the same posts which were advertised for which the petitioner appeared for the interview in 1995. In the meantime, the petitioner was given to understand by the office of the respondent authorities that once the termination orders of the private respondents had been set aside by this Court, no further show cause would be initiated. According to the petitioner, the vacancy caused by the death of the said Pradip Das is still lying vacant for which she could be accommodated. As the litigations initiated by the petitioner have not resulted in her appointment till now, the petitioner is returning to this Court in this writ petition for redressal of her grievances.

6. It is most unfortunate that the State-respondents have not even bothered to file their counter-affidavit despite granting several opportunities to them to do so by this Court: this is a case of 2012. The chance for filing the counter-affidavit was granted to the State-respondents on 3.10.2013. This was again reiterated by the order dated 2.9.2014 passed by this Court. Under the circumstances, it can be presumed that they have nothing to say against the allegations of illegalities and irregularities made against them. However, the writ petition cannot be allowed on this ground alone: the petitioner must succeed in her writ petition on the strength of her own case and not on the weakness of the case of her opponent. Therefore, an attempt shall have to be made to dispose of the writ petition on the basis of the case pleaded by her after giving due consideration to the affidavits-in-opposition filed by the respondent No. 4, 5, 6, 7, 9, 11, 12 and 13. As for the respondent No. 8, no affidavit was filed by her, but her case is argued by Mr. B.D. Das, who also represents the respondent No. 5, 6, 7 and 9 in the course of hearing. As for the respondent No. 14, deemed service of notice upon him has been declared vide the Registry note dated 7.8.2013.

7. The case of the respondent No. 4 (Gitamoni Hatikakoti) as projected by her in

her affidavit is that she was appointed as subject teacher of Zoology of Nazira Higher Secondary School in the year 1993 on ad hoc basis against a non-Plan sanctioned post with the approval of the jurisdictional Inspector of Schools. According to her, the Government of Assam took a policy decision vide the Office Memorandum dated 22.2.1995 issued by the Commissioner/Secretary, Govt. of Assam, Education Department directing the Director of Secondary Education, Assam to regularize all ad hoc appointees through the process of selection to be conducted by the State Selection Board along with fresh candidates. She had appeared in the interview conducted by the State Selection Board whereafter her service came to be regularized on 21.5.1997 in the post to which she had been rendering her service for the last 18 years: her appointment cannot, therefore, be termed as an illegal appointment. Her regularization took place before the disappearance of the said official file on 15.12.1998. It is true that the termination order of her service was quashed by this Court when she was never given adequate opportunity to present her case. According to her, more than 880 subject teachers were appointed all over Assam on ad hoc basis like her and their services were subsequently regularized either by the Screening Committee or the State Selection Board during the period 1991-1995 in various subjects like Chemistry, Botany, Physics, English, History, Economic, Assamese, Mathematics, etc. The Government of Assam took a policy decision vide the Office Memorandum dated 22.2.1995 directing the Director of Secondary Education, Assam to regularize all ad hoc appointees working against vacant posts to give finality to the vexed problem of about 880 subject teachers throughout Assam and the selection was primarily made to regularize these 880 teachers and then accommodate fresh candidates through the process of selection by the Selection Board along with fresh candidates. The answering respondent appeared before the Selection Board, got her selected whereafter her service came to be regularized against the post in which she has been working for the last 18 years. She denies that she was below the petitioner in the select list of 1995: the petitioner is a fresh candidate, who had appeared in the selection process arising out of the advertisement of 1995 whereas the answering respondent was working against a sanctioned post since 1993, was called for interview on 1.3.1995 and her service got regularized on 21.5.1997 pursuant to the policy decision taken by the Government vide the Office memorandum dated 22.2.1995. This vital fact was overlooked by the SIT and only 14 Subject Teachers on Zoology were victimized and their services illegally terminated vide the order dated 7.6.2011/25.7.2011 leaving out similarly situated 880 Subject Teachers of different disciplines like History, Political Science, Mathematics, Physics, Chemistry, etc., but their termination orders were, however, quashed by this Court in WP(C) No. 3755/11. The SIT also did not consider at all the policy decision taken by the Government which was taken as early as 22.2.1995: in fact, the selection was process undertaken as a device to regularize the old Subject Teachers whose services were utilized by the Government for the last 13 to 15 years and if the policy decision of the Government dated 22.2.1995 is examined in the context of the old Subject Teachers vis-?-vis the fresh

candidates like the petitioner, the case of answering respondents is clearly distinguishable and constitutes a class by itself and eligible to be treated as a separate class. The petitioners have already completed more than twenty years of service, and cannot be removed on such flimsy grounds: the official respondents are also barred by the doctrine of estoppel from doing so. It is submitted by the answering respondent that the petitioner had already approached in WP(C) No. 3178/2008 and PIL No. 14/2010 on the same causes of action, which were already decided by this Court.

8. In affidavit-in-opposition filed by the respondent No. 5 (Lini Barua), she submits that the writ petition is not maintainable inasmuch as

a) The issues raised in this writ petitioner have already been decided by this Court in its judgment dated 6.8.2010 of PIL No. 14 of 2010 (earlier WP(C) No. 3178/08) and its judgment dated 29.2.2012 passed in WP(C) No. 3345/08 and its common judgment dated 29.2.2012 passed in WP(C) No. 3089/11, WP(C) No. 3093/11 and WP(C) No. 3105/11. The petitioner has also filed a contempt petition in MC No. 3978/10, which had been disposed by the order dated 25.1.2012; this is, therefore, an abuse of process of Court.

b) The validity of the select list in question expired long ago.

c) The petitioner has no locus standi to challenge the appointment of the answering respondent inasmuch as the latter was not a candidate for the 20 vacancies advertised on 22.6.1992.

9. According to the answering respondent, she joined the post of Subject Teacher for Margherita Public H.S. School 3.11.1995 following her temporary appointment on 31.10.1995 against the vacancy of one SP Das whereafter her service was extended for three months from time to time. She denies that her initial appointment as well as his subsequent regularization were due to extraneous considerations. In the meantime, the Selection Board, Assam initiated the selection process wherein she, eligible for the post, participated and got selected by the State Selection Board. Thereafter, considering her ad hoc appointment and selection by the state Selection Board, the respondent No. 2 by the order dated 31.5.1997 regularized the service of the answering respondent. She denies that despite her selection below the rank of the petitioner by the State Selection Board in the year 1995, she was given regular appointment. She also asserts that the vacancy arose out of the retirement of the said SP Das was not one of the 20 posts advertised in the year 1992, which fell vacant only on 1.4.1995 due to the retirement of the incumbent i.e. the said SP Das: her service was regularized considering her ad hoc service and selection by the State Selection Board. She further denies that her appointment including others referred by the SIT except two persons i.e. Subhash Bhattacharjee and Madhumia Sen are illegal and that the appointment of candidates through the screening process without appointing the previously selected and approved candidates through a screening process from the list of 1995 cannot be justified as stated by SIT report, which

was prepared without hearing her and other affected persons. She, therefore, contends that there is no merit in the writ petition, which is liable to be dismissed at the very threshold on the ground of non-maintainability.

10. Coming now to the affidavit-in-opposition of the respondent No. 6, it is stated by her that she was initially appointed as Vocational Subject Teacher of Mandia Higher Secondary School, Barpeta by the order dated 15.3.1995 issued pursuant to the order by the respondent No. 2 whereafter she used to take classes of Zoology during the absence of the incumbent subject teacher of the school. Subsequently, on 25.9.1995, the incumbent was transferred from Mandia Higher Secondary School and she had been taking Zoology class since the transfer of the said incumbent. On 6.10.1995, she applied for appointment to the said vacancy. The Principal of the school had issued a certificate dated 16.10.1995 regarding her service as Subject Teacher, Zoology. However, when the respondent No. 2 appointed one Amulya Goswamy as the subject teacher of the school instead of her, she filed CR No. 4405/95 before this Court, which by the order dated 20.11.1996 directed the respondent authorities to consider the case of the petitioner for appointment as subject Teacher in Zoology in the next vacancy which might arise subject to her fitness. Pursuant to the order of this Court, the respondent No. 2 appointed the answering respondent as subject teacher of Zoology in Machkhowa H.S. School, Dhemaji against the vacant post of Indibar Buragphain who had resigned from that post. The answering respondent thereafter joined the post against which post she was confirmed, was then transferred to Kharupetia H.S. School, Darrang on her request against the post lying vacant on the retirement of the incumbent. She joined the post on 28.5.2004 and is still continuing in that post. In the meantime, the State Selection Board conducted the selection process for the appointment of subject teachers in various subjects: the answering respondent appeared in the interview and got selected against the said vacancy of Indibar Buragohain, who had resigned from service. It is claimed by the answering respondent that the 20 posts of subject teacher in Zoology so advertised in the year 1992 did not include the post held by her as this vacancy occurred much after the said 20 posts were advertised. According to the answering respondent, apart from the persons who got selected by the State Selection Board, the respondent authorities had also initiated the process for regularization of the services of ad-hoc employees through selection by the Screening Committee by the order dated 16.10.1998. On the basis of the selections made by this Committee, about 820 ad hoc subject teachers in various subject teachers have been regularized in their respective posts. It is pointed out by the answering respondent that this Court in WP(C) No. 3345/11, while quashing her termination order dated 7.6.11 and disposing of the writ petition on 29.2.2012 along with other cases had observed that her case was altogether on a different footing, and there is no adverse comment made by the SIT in its report against her appointment and the appointments of other petitioners therein and directed that she should be deemed to ob in service all throughout with all consequent benefits. The indictment made by the SIT against

her appointment was without hearing her and other affected persons. These are the principal contentions of the answering respondent.

11. The respondent No. 7, in her counter-affidavit, has stated that she is the founder teacher of Dinjoy Hazarimal H.S. School, Chabua, and was appointed as Subject teacher of Zoology in the month of October, 1991 by the Governing Body of the school. Subsequently, taking into account her honorary service from 1991 and on the recommendation of the Managing Committee of the school, the respondent No. 2 by the order dated 11.5.1992 temporarily appointed her as the subject teacher of the school for a period for three months against one of the posts sanctioned by the Government on 16.11.1991. She accordingly joined the post on 12.5.1992 whereafter her services extended for a period of three or four months from time to time. In the meantime, the State Selection Board initiated a selection process wherein the answering respondent participated and got selected by the State Selection Board for the post of subject teacher in Zoology. Considering the long period of service rendered by her and her selection by the State Selection Board, the respondent No. 2 issued the order dated 2.6.2007 regularizing her service. Her service was subsequently confirmed by the order dated 4.3.2003: she is still continuing in that post. She also claims that the post held by her was not included in the 20 posts of subject teacher in Zoology advertised in the year 1992. Her contentions are also in pari material with the contentions of the respondent No. 6 and need not be referred to for the sake of brevity.

12. The case of the respondent No. 9 projected by her in her counter-affidavit is that by the order dated 19.12.1994, she was originally appointed as subject teacher of Zoology on ad hoc basis in Nazira Higher Secondary School, Savasagar for a period of three months and her ad hoc appointment was thereafter extended from time to time. Ultimately, as in the previous case, the respondent No. 2 issued the advertisement dated 28.10.1998 constituted a Screening committee for regularization of ad hoc teachers and invited testimonials for verification. In response to this, the answering respondent also submitted her testimonials and appeared for interview on 3.11.1998 before the Screening Committee. The Joint Secretary to the Government of Assam, Education (Secondary) Department by his letter dated 13.1.2000 informed the respondent No. 2 that the services of the answering respondent along with 48 other subject teachers have been regularized. The name of the answering respondent appeared in Serial No. 37 of the list of teaches for regularization. Subsequently, the respondent No. 2 by his order dated 5.2.2000 adjusted the answering respondent against the post which was allotted by various Government letters at Nazira Higher Secondary Schools as subject teacher in Zoology w.e.f. 1.12.1996 whereafter her service cam to be regularized by the order dated 11.2.2000. It is asserted by the answering respondent that the services of about 820 teachers who had been initially appointed by the State-respondents in different Higher Secondary Schools in different subjects on ad hoc basis were regularized on the recommendation of the said Screening Committee.

Apart from this, the contentions of the answering respondent are one and same with the stance taken by the other private respondents referred to earlier and need not be referred to.

13. In so far as the respondent No. 10 is concerned, it is her case that she was initially appointed as subject teacher of Zoology in Grahampur H.S. School, Kokrajhar on ad hoc basis for a period of three months vide the order dated 5.10.1993. Her ad hoc appointment was extended from time to time till her service, like the service of the respondent No. 9, was regularized on 22.3.2000: she has since then been working as subject teacher of Kamrup Academy H.S. School, Guwahati. It is also her case that the post held by her was not one of the said 20 vacancies advertised on 22.6.1992. The rest of her pleadings are one and the same with that of the respondent No. 9. Similarly, the respondent No. 11 was temporarily appointed as subject teacher of Zoology at Rajgarh Higher Secondary School on 17.5.1994 by the order of the respondent No. 2 for a period of three months, which was extended from time to time till his service came to be regularized on 30.1.2001 on the recommendation of the said Screening Committee: she was among those 820 ad hoc teachers whose services were regularized on the recommendation of the Screening Committee. The rest of his pleadings and contentions are one and the same with that of the respondent No. 10 and, as such, they need not be reproduced.

14. Coming now to the affidavit of the respondent No. 12, it is her case that she was initially appointed as subject teacher of Zoology in Lakhipur Higher Secondary School on 21.9.1994 on ad hoc basis against the lien vacancy of one Bharati Das, who, however, had resigned from her post in the year 1996. Like other private respondents, her service was regularized by the order dated 16.11.1999 issued by the respondent No. 2 w.e.f. 21.9.1994 on the recommendation of the Screening Committee. She was among those 820 ad hoc teachers whose services were regularized. According to her, the post held by her was no included among the 20 vacant posts of subject teachers advertised on 22.6.1992. Her contentions are also akin to the contentions of the respondent No. 11 and the same need not be referred to for the sake of brevity. It is also the case of the respondent No. 13 in her affidavit-in-opposition that he was appointed as subject teacher of Zoology on ad hoc basis at Jaleswar H.S. School by the order dated 12.4.1993 of the respondent No. 2 for a period of three months. Like the previous private respondents, her service was regularized on 16.11.1999 by the order issued by the respondent No. 2 on the recommendation of the Screening Committee after his appearance in interview. His service was subsequently confirmed on 5.5.2006. She, however, admits that the post against which he was initially appointed on ad hoc basis was one of the 20 posts advertised on 22.6.1992. In response to the said advertisement, she had applied for the post but was not called for the interview. Her service was, however, regularized along with over 800 subject teachers on the recommendation of the said Screening Committee. According to the answering respondent, the SIT hailed to appreciate that the post against which he was appointed and his service

subsequently regularized had fallen vacant only in the year 1996. He, therefore, contends that the writ petition has no merit and is liable to be dismissed with costs.

15. Mrs. S.P. Hussain, the learned counsel for the petitioner, however, maintains that the State-respondents have made a mockery of the judicial process of this Court by halfheartedly issuing the show cause notices, under the guise of complying with the direction of this Court, to the respondent No. 4 to 16 to ensure their reinstatement by this Court on the ground of violation of principles of natural justice and then hurriedly reinstated them to service once the termination orders were quashed by this Court: this nothing but a facade or a sideshow. According to the learned counsel, the cynical action of the respondent authorities in arbitrarily terminating the services of the private respondents to circumvent the various orders of this Court must be exposed and appropriate corrective measures made to uphold the majesty of law as otherwise wrong signals would be sent to various departments that they could flout the directions of this Court with impunity. On the other hand, Mr. B.D. Das, the learned senior counsel for the private respondents, argues that the emotional submissions made by the learned counsel for the petitioner is bereft of substance and cannot substitute legally tenable submissions. He submits that the petitioner did not even come within the top twenty of the select list and cannot possibly have any legitimate grievance for not appointing her when she managed to come within the 47th position of the select/merit list. Whatever illegality or irregularity perceived by her in the selection process, contends the learned senior counsel, had now been subjected to judicial scrutiny and decided against her in the interlocutory order as well as the common order, which has now attained finality and cannot be re-opened except by an appellate court. He, therefore, strenuously urges this Court to dismiss the writ petition. As already noticed, the writ petition initially filed by the petitioner was by the order dated 8.9.2008 ordered to be entertained as PIL. However, the Division Bench by the judgment and order dated 6.8.2010 disposed of the PIL, now registered as PIL No. 14 of 2010, by directing that departmental action be taken against the persons identified by the SIT as responsible for causing illegal recruitments and by making the following observations:

"(9) From the report of S.I.T., it is therefore crystal clear that several undeserving persons were given appointments on regular basis. The relevant records pertaining to such appointments as well as the proceeding of the Screening Committee could not however be made available for Courts own scrutiny. It also appears that incorrect and false information was furnished to the petitioner, wrongly informing her that the select list, where the name of the petitioner figures at Sl. No. 47 was not approved. In fact to the prejudice of the petitioner before the State Information Commission was ordered to be closed on 7.9.2007 on the basis of the incorrect information furnished on 14.8.2007 to the petitioner.

(10) In the case it has become quite apparent that undeserving candidates were appointed during 1995-2001 to the 20 posts of Zoology Subject Teachers in different provincialized Higher Secondary Schools in Assam. When such illegal appointments are found to have been made appropriate judicial order (s) for termination of such illegal appointment has to follow. In the present case however all such appointees are not before the Court i.e. Smti. Manimala Kakoti, Smti. Banti Talukdar, Smti. Gitanjali Deka (from Group-A); Smti. Bijuli Chakraborty (from Group-B) and Smti. Dipali Bora (from Group-C). All the relevant facts i.e. circumstances in which the 7 regularization under Group-B and 3 regularization under Group-C were made are not before the Court. Whether such regularization was against the advertised posts and if not what had happened to the advertised posts is also not known with certainty. In such circumstances it may not be appropriate for the Court to pass any order for cancellation of the appointments. But considering the information gathered by the S.I.T., we deem it appropriate to direct the State to take into account the report of the S.I.T. and thereafter take appropriate steps to discontinue the services of such appointees who got undeserved appointments. Of course if any adverse action is to be taken against any appointee, they ought to be given an opportunity before termination orders are issued.

(12) In so far as the relief claimed by the petitioner, considering that she is at merit position No. 47 in the select list, she can claim appointment only as per her turn. If vacancies become available through termination of illegal appointees and if appointment is refused by those who are in higher merit position than the petitioner, only then the petitioner can be offered appointment. Accordingly if the petitioners turn comes in order of merit she may then be appointed to the post of Subject Teacher of Zoology by virtue of her selection. However, considering the fact that the petitioner had largely conducted the present proceeding on her own and her painstaking efforts and perseverance have had same impact on attempts at cleansing public life the Court directs that the petitioner should be suitably compensated for the efforts by payment of cost of Rs. 25,000/- (Rupees twenty five thousands) only which will be paid to her by the State Government in the Education Department within 30 days from today."

(Underlined for emphasis)

16. In purported compliance with the directions contained in the foregoing paragraphs 10 of the judgment extracted above, halfhearted exercises were taken by the respondent authorities to issue individual notices upon the private respondents to show cause as to why their appointments should not be cancelled and thereafter abruptly cancelled their appointments. This prompted three of the said appointees, who are the private respondents herein, to file a batch of five writ petitions being WP(C) No. 3345/2011, WP(C) No. 3089/2011, WP(C) No. 3093/2011, WP(C) No. 3105/2011, WP(C) No. 3191/2011, WP(C) No. 3260/2011 challenging the cancellation order. This Court by the order dated 29.2.2012 in WP(C) No. 3345/2011 and by the common order dated 29.2.2012 in the

remaining writ petitions quashed the cancellation order and declared that they should be deemed to be in service throughout with consequential benefits. The petitioner thereafter filed MC No. 3978/2010 before the Division Bench of this Court praying for further order to be passed for enforcement of the said order dated 6.8.2010 passed in PIL No. 14/2010. The Division Bench of this Court in its order dated 11.8.2011 in the Misc. Case had held thus:

"On perusal of both affidavits, it appears that both the first direction given by the Division Bench has been complied with inasmuch as the services of 20 Zoology Subject Teachers were terminated. It is another matter that some of the persons terminated have approached this Court and have obtained an interim order. In so far as the respondents are concerned, necessary action has been taken pursuant to the order of this Court.

As regards departmental action to be taken against officers responsible for the records that are missing, the affidavit discloses essentially that three persons are responsible. They are Mr. Karuna Gogoi, Shri M. Rahman and Shri G.N. Talukdar.

It is not clear whether any action has been taken against Shri Karuna Gogoi. Learned counsel for the respondents should inform us on the next date fixed the action taken against Shri Karuna Gogoi.

In so far as Mr. M. Rahman is concerned, it is not stated whether any action has been taken against him.

The respondents will file an affidavit whether any action has been taken against Mr. M. Rahman, even though he has retired.

In so far as Mr. G.N. Talukdar is concerned, the affidavit states that he retired from service long ago and the service rules do not permit any action to be taken against him.

Under these circumstances, it appears that the direction has not yet been fully complied, subject to what the respondents may say in the affidavit that should be filed by them.

With regard to appointment of the petitioner as Zoology Subject Teacher, it is stated by learned counsel for the respondents that the entire selection process was completely vitiated and it has been quashed, as mentioned in paragraph 3 of the affidavit dated 9th August, 2011.

Since the entire process has been quashed the appointment of the petitioner obviously cannot be made.

With regard to the fourth direction, that is, payment of cost, the petitioner says that the cost has been paid to her.

The only issue that, therefore, survives in this case is whether departmental action has been taken against Shri Karuna Gogoi and Shri M. Rahman.

The respondents would file an affidavit in this regard within 10 days from today.

List this case on 12th September, 2011."

(Underlined for emphasis)

17. Aggrieved by this order, which is interlocutory in nature, the petitioner had approached this Court again in Review Petition No. 117 of 2011. The Division Bench of this Court by the common order dated 25.1.2012 had disposed of both Review Petition No. 117/11 and Misc. Case No. 3978 of 2010 in the following manner:

"We have heard Mrs. S. Pervin, learned counsel appearing on behalf of the petitioner-in-person, Smt. Julekha Wahida Ahmed on the issue of further order required to be passed for enforcement of the order dated 6.8.2010.

In the order of this case dated 11.8.2011, it was noticed that the order dated 6.8.2010 stood complied with except for action against Sri Karuna Gogoi and Sri M Rahman for which the State was to file an affidavit. It is now stated by Sri A. Deka, learned Standing Counsel, Education Department, that an affidavit in this regard has already been filed stating that action has been taken in terms of the order of this Court.

In view of the above, no further order is necessary for compliance of the order of this Court dated 6.8.2010.

As regards the claim of Mrs. Julekha Wahida Ahmed in Review Petition No. 117 of 2011, for appointment in terms of order of this Court dated 6.8.2010, it was noticed in our order dated 19.12.2011 that the petitioner had to show preferential right to appointment against available vacancy in terms of order dated 6.8.2010. It has not been shown that any person lower in merit to the said petitioner has been considered or that no person higher in merit to the petitioner is available for appointment. This being the position, in these proceedings, no further order is required to be passed.

Misc. Case No. 3978 of 2010 and Review Petition No. 117 of 2011 stand disposed of accordingly."

18. At this stage, I may also reproduce below the reliefs claimed by the petitioner in this writ petition:

- i. To direct the respondent authorities to initiate fresh show cause notice on the aspect of induction of the respondent No. 4 to respondent No. 14 in service with respect to their position in the Select List.
- ii. To appoint the petitioner in the vacancy caused due to the demise of Pradip Das, or pass such further order/orders as your Lordships may deem fit and proper.

19. In so far as the first relief prayed for, namely, to issue fresh show cause for inducting respondent No. 4 to respondent 16 in service is concerned, as already noticed, the Division Bench of this Court in the common order dated 11.8.2011

had already decided that the first direction was complied with inasmuch as the services of 20 Zoology Subject Teachers including the private respondents herein were terminated; that it was another matter that some of the persons terminated had approached the Court and had obtained an interim order and that in so far as the respondents were concerned, necessary action had been taken pursuant to the order of the Court. Thus, in the light of the aforesaid decision of the Division Bench, it is obvious that this Court had already declined to interfere with the reinstatement of the respondent No. 4 to respondent No. 16 in service after they obtained an interim order there-against. According to the Division Bench, necessary action had already been taken pursuant to the said order of this Court. In the common order dated 25.1.2012 passed by the Division Bench disposing of both Review Petition No. 117 of 2011 and Misc. Case No. 3978 of 2010 filed by the petitioner, it was reiterated that no further order was necessary for compliance with the order of this Court dated 6.8.2010. As for the second relief claimed in this writ petition, the Division Bench in the said common order referring to its earlier order dated 19.12.2011 held that the petitioner had to show preferential right to appointment against the available vacancy in terms of the order dated 6.8.2010 and that it had not been shown that any person lower in merit to the petitioner was considered or that any person higher in merit to her was available for appointment and no further order was, therefore, required to be passed in that proceeding. The net effects of both the decisions of the Division Bench in the common order dated 25.1.2012, in my considered view, are that the prayer of the petitioner for enforcement of the order dated 6.8.2010, namely, which included issuing fresh show cause notices to the respondent No. 4 to respondent No. 16 as to why their services should not be terminated after their reinstatement to their services following half-hearted show cause notices issued to them earlier and further that the relief claimed by the petitioner for her appointment in terms of the order dated 6.8.2010 have been refused time and again: no appeal was preferred by her there-against. Consequently, the common order dated 25.1.2012 has attained finality and shall now operate as *res judicata* between the petitioner and the State-respondents. This Court cannot keep on issuing the same order *ad nauseam*. I am not, however, oblivious of the fact that the petitioner must have exhausted all the means available at her disposal by now and can ill-afford to approach the Apex Court at this stage, but the enormous hardship already faced by her cannot be a ground for granting the reliefs claimed by her when her case is now barred by the principles of *res judicata*. There were twenty vacant posts of Zoology Subject Teachers for which the impugned recruitment process was held, but she admittedly did not make it to the top 20 of the select list. How could she then be appointed at the expense of the more meritorious candidates? As for the illegalities and irregularities highlighted by her, these were already gone into and decided, rightly or wrongly, by the Division Bench of this Court and, in the absence of appeal, have now attained finality. This Court cannot come into the assistance of the petitioner unless she proves that her legal or constitutional right is violated by the respondent authorities. The offshoot of the foregoing

discussion is that there is no merit in this writ petition, which is, therefore, dismissed. Considering the public service rendered by the petitioner in exposing the scandalous recruitment scam in the Education (Secondary) Department, Assam which, I hope, will go a long way in eliminating or minimising the extent of corruption in the Department, I direct the Education (Secondary) Department to pay another Rs. 25,000/- (Rupees twenty five thousand) only to her by way of cost within one month from the date of receipt of this judgment.