
(2009) 02 GAU CK 0070

In the Gauhati High Court

Case No : Writ Petition (C) No's. 2651, 2735, 2811, 3044, 3076 and 3437 of 2008

Kusha Kanta Dutta and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 05-02-2009

Acts Referred:

Assam Elementary Education (Provincialisation) Rules, 1997 — Rule 3, 7
Constitution of India, 1950 — Article 14, 16, 162, 309

Citation : (2010) 3 GLT 508

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : D. Mazumdar, S. Saikia, R. Sarma, R.D. Bhuyan, S. Borthakur, A. Gohain, K.K. Mahanta, K. Konwar, P.K. Das, P. Talukdar and S. Baruah, for the Appellant; U.K. Goswami, for the Respondent

Judgement

Amitava Roy, J.—The factual settings though present peripheral variations, having regard to the commonness of the grievance conveyed thereby the Respondents being also the same, the petitions were analogously heard and this adjudication would answer the issues raised.

2. I have heard Mr. D. Mazumdar, learned Counsel for the Petitioners in WP(C) 2651/2008, WP(C) 2735/2008 and WP(C) 3076/2008, Mr. S. Barthakur, learned Counsel for the Petitioners in WP(C) 2811/2008, Mr. K.K. Mahanta, learned Counsel for the Petitioners in WP(C) 3044/2008 and Mr. P. Talukdar, learned Counsel for the Petitioners in WP(C) 3437/2008. Mr. U.K. Goswami. appeared for the State Respondents.

3. To appropriately comprehend the competing arguments, an abridged version of the pleaded cases of the Petitioners petition wise is imperative. The State Respondents have abstained from presenting their pleadings.

WP(C) 2651/2008

4. The Petitioners' claim to be academically qualified for being appointed as Assistant Teachers in L.P. Schools of the State. They were initially on the basis of their candidature appointed in such capacity in various L.P. Schools on honorary basis in the District of Dhemaji by their respective Managing Committees. As inspite of the services rendered, they, in view of the nature of their appointment were not paid any salary and further steps were not taken for regularization of their services, they approached this Court with writ petitions in the year 1989 praying for a writ of mandamus for necessary redress. By a common judgment and order dated 15/2/1991, several writ petitions being CR 1637, 1638, 1748, 1926 of 1989 were disposed of with a direction to the State Respondents to regularize the services of the honorary teachers who had served for more than 10 years. The Petitioner No. 5, Smt. Malati Handique, was one of the Petitioners in CR 1637/99. The other Petitioners followed suit and were granted similar reliefs by this Court. All of them were thereby finally appointed as Assistant Teachers in various L.P. Schools in Dhemaji District against substantive vacancies. Their appointment particulars for a ready reference are provided in the table below.

Name	Appointment as honorary teacher	Writ petition and order	Order of appointment-appoint against substantive vacancy	Post in which appointed	Pay scale	Present posting
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Shri Kusha Kanta Dutta (Petitioner No. 1)	Kopahtoi Primary School, Dhemaji on 6.3.1984	CR3057/ 91 and 3.12.1992	By D.I. of Schools, Dhemaji, pursuant to the letter dated 26.2.1999 of the Director of Elementary Education, Assam.	Assistant Teacher. Kopahtoli L.P. School	Rs.1185/- -Rs. 2395/-	Headmaster. Kapahtali L.P. School. Dhemaji.
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Smt. Taruni Handique (Petitioner No. 2)	Hahsora L.P. School on 9.5.1981	CR 756/93 and 1.4.1993	By D.I. of Schools, Dhemaji, in compliance of the order dated 11.11.1993 of the Joint Director of Elementary Education, Assam.	Assistant Teacher in Akajan L.P School, Dliemaji		
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Assistant Teacher in Padumoni L.P. School. Dhemaji.						
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Shri Mohan Chandra Ngaty (Petitioner No. 3)	Missing Adikalison L.P. School on 1.3.1989	CR7383/ 94 and 19.10.1994	By D.I. of Schools, Dhemaji, in compliance of the order dated 4.9.1995 of the Director of Elementary Education, Assam.	Assistant Teacher in Kamchibam L.R. School, Dhemaji	Time scale of pay after completion of basic training course from May2000	Headmaster, Rampur Baleswari L.P School. Laipulia, Dhemaji.
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Shri Chandi- ram Narah (Petitioner No. 4)	Balkate Dilphung L.P School. Dhemajion 12.9.1981	CR97/94 and 15.9.1994	By D.L of Schools, Dhemaji, in compliance of the order dated 20.10.1995 of the Director ofElementary Education. Assam.	Assistant Teacher. Bhehpara L.P School. Dhemaji.		
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Headmaster, Bahbari L.P School. Sisi- bargaon Revenue Circle. Dhemaji.						
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Smti. Maioti Handique (Petitioner No. 5) Gergeri Ka- pahtali L.P. School, Dhemaji in the year 1981. CR 1637/89 and 15.2.1991 Appointed by the D.I. of Schools, Dhemaji. Sripani L.P. School, Dhemaji. Sanctioned regular scale of pay and allowed to cross efficiency bar on 13.6.2007. Assistant Teacher in Gergeri Kapahtali L.P. School

Name Appoint ment as honorary teacher Writ petition and order Order of appointment-appoint against substantive vacancy Post in which appointed Pay scale Present posting

Shri Pradip Sarma,(Petitioner No.6) Tarajan Dhunaguri L.P. School. on 1.9.1982 CR806/93 and 1.9.1982 By D.I. of Schools, Dhemaji, in compliance of the order dated 15.7.1993 of the Director of Elementary Education, Assam. Assistant Teacher in Patiri L.P. School, Dhemaji. Time scale of pay after completion of basic training course. Obtained certificate on 21.6.2006 Assistant Teacher in Patiri L.P. School. Dhemaji.

5. The Petitioners have contended that they have been rendering their services without any blemish till date. As their salary had been withheld from the month of September, 2007. they made necessary enquiries and were informed that their names appear in the list of 752 teachers determined to have been appointed against non-existent posts in the Dhemaji Sub-Division in the year 1989. According to them, though necessary clarifications have been provided by the jurisdictional Deputy Inspector of Schools to the Director of Elementary Education, Assam, that 39 teachers including the Petitioners had been released their salary in view of their fresh appointments after 1989, for no justifiable reason they stand deprived of their legal dues.

WP(C) 2811/2008

6. The Petitioners claim to have passed the H.S.L.C. examination and contend to be possessed of the requisite qualification to be appointed as Assistant Teachers of the L.P. Schools of the State. They assert that following their selection by the competent authority, they had been appointed as Assistant Teachers of various schools by the Deputy Inspector of Schools, Dhemaji, consequent upon which they have joined their posts and are rendering their services. To better appreciate their service particulars at a glance, the same are furnished here in below.

Petitioner Name Year of selection Board conducting the Selection for L.P. Schools Post

1. Smti. Bijoy Lakhi Pegu 1994 Sub-Divisional Level Advisory Board, Dhemaji
2. Smti. Binumai Gohain 1994 Sub-Divisional Level Advisory Board, Dhemaji
3. Smti. Karabi Baruah (Handique) 1994 Sub-Divisional Level Advisory Board, Dhemaji
4. Smti. Padmawati laid 1994 Sub-Divisional Level Advisory Board, Dhemaji

Petitioner Name Year of selection Board conducting the Selection for L.P. Schools Post

5. Smti. Nilima Gogoi 1994 Sub-Divisional Level Advisory Board, Dhemaji
6. Sri Duleswar Gogoi 1994 Sub-Divisional Level Advisory Board, Dhemaji
7. Smti. Lichi Dutta 1994- Sub-Divisional Level Advisory Board, Dhemaji
8. Smti. Indu Baruah 1994 Sub-Divisional Level Advisory Board, Dhemaji
9. Smti. Nibedita Gogoi 1994 Sub-Divisional Level Advisory Board, Dhemaji
10. Smti. Anjali Chutia 1994 Sub-Divisional Level Advisory Board, Dhemaji
11. Smti. Padma Devi 1994 Sub-Divisional Level Advisory Board, Dhemaji
12. Sri LohitSaikia 1994-95 Sub-Divisional Level Selection Board, Dhemaji Quota reserved for sons and daughters of retired teachers
13. Sri Rama Kanta Doley 1994-95 Sub-Divisional Level Selection Board, Dhemaji Quota reserved for sons and daughters of retired teachers
14. Smti. Ranju Gogoi 1994-95 Sub-Divisional Level Selection Board, Dhemaji Quota reserved for sons and daughters of retired teachers
15. Smti. Kanmai Deori 1994-95 Sub-Divisional Level Selection Board, Dhemaji Quota reserved for sons and daughters of retired teachers
16. Smti. Nanima Chutia 1992 Sub-Divisional Level Advisory Board, Dhemaji
17. Sri Tuleswar Deori 1995 Sub-Divisional Level Advisory Board, Dhemaji Retired vacancy in Dhemaji District.

7. The Petitioners have admitted that their earlier appointments in the year 1989 in various L.P. Schools had been cancelled in the year 1992. They have maintained that in the meantime they have completed their basic training course and are enjoying regular time scale of pay. According to them, their services have also been confirmed by the competent authority from the date of passing of the basic training and that the Petitioners No. 7, 8 and 16 have in the meanwhile been promoted to the post of Headmaster. Their grievance is that their salaries have been withheld from August, 2007 on the ground that they had been earlier appointed in the year 1989 and that the payment of the salary of 752 teachers identified to have been appointed against non-existent posts has been decided to be stopped. They have similarly contended that the Deputy Inspector of Schools, Dhemaji, though on verification have clarified that the Petitioners' claim for salary is genuine, appropriate steps have not been taken for the release thereof.

WP(C) 3044/2008

8. The Petitioners, nine in numbers are peeved by the non-payment of their salary from the month of September, 2007. They reiterate that being qualified to

be appointed as L.P. School teachers they had applied in response to an employment notice issued by the Director of Elementary Education, Assam. They thereafter appeared in an interview held on 16.10.1986 conducted by a duly constituted Selection Committee. In the select list dated 19.12.1989 published for Dhakuakhana Sub-Division of Lakhimpur district, they were empanelled and thereafter appointed against clear vacant posts available due to the retirement of the earlier incumbents. Though they were duly appointed on 19.12.1989 their salary was not disbursed till 1997. The stalemate cleared with the regularization of their services by the order bearing Memo No. 6107-15 dated 30.9.1996 of the Deputy Inspector of Schools, Dhakuakhana, from the respective dates of their joining and following the necessary budget allocation, their salary was released. The same having been held up suddenly again from the month of September, 2007, on enquiries, they were informed that as the services of the teachers illegally appointed in the year 1989 have been terminated in the year 1992 payment of salary has been stopped.

WP(C) 3437/2008

9. According to the Petitioners, they having been selected in the year 1986-87 were accordingly appointed as Assistant Teacher under Memo No. 20067/850 dated 19.12.1989 of the Deputy Inspector of Schools, Dhemaji. The Petitioner No. 1 was appointed and posted at Betoni Gaon L.P. School and Petitioner No. 2 at Bkakat Kaibatta L.P. School and since then they are rendering their services without any break. Their services were confirmed vide order No. DIS/DMJDE-19/98-99 and DE/19/97-98/6829-33 dated 18.6.1999 and 25.9.98 of the Deputy Inspector of Schools, Dhemaji w.e.f 18.12.1994 and 19.12.1994 respectively. They claim that their service books have been opened and deductions are being made from their salary for contribution to the respective GPF accounts. They contend to be not in receipt of their salary from October, 2007 and assert that the Respondent authorities when enquired of the reason have failed to provide any satisfactory reason therefor.

WP(C) 2735/2008

10. The Petitioners have pleaded that they being qualified to be appointed as Assistant Teachers in L.P. Schools were initially inducted on temporary basis or against leave vacancies and as they lacked in the necessary training as prescribed, their appointment on regular basis appeared to be elusive. They along with others approached this Court with WP(C) 2921/87 which was disposed of on 25/4/1998 observing that untrained teachers were not totally debarred from appointments and directed consideration of the cases of the Petitioners. As the Respondent authorities still omitted to consider their cases they instituted Cont. Case (C) No. 105/98 and by order dated 6.10.98, this Court directed the Respondents therein not to act in violation of the orders passed in CR 2921/1987. The Petitioners were thereafter, pursuant to the orders passed at the appropriate administrative levels, appointed on various dates in the year 1992-93 against sanctioned vacancies on regular basis. This Court by order

dated 18.6.1990 in the above contempt petition having directed payment of their salary, the same was released to them. Their service particulars in brief are as herein below.

Name Date of appointment-authority Place of posting

Shri Lekhan Borgohain, Petitioner No. 1. 30.10.1993, Deputy Inspector of Schools, Dhemaji Sonarigaon L.P. School

Smti. Dipamani Gogoi, Petitioner No. 2. 05.11.1992, Deputy Inspector of Schools, Dhemaji Sonarigaon L.P. School

Sri Shyamanta Saikia, Petitioner No. 3. 5.11.1992, Deputy Inspector of Schools, Dhemaji Anochapari L.P. School

Smti. Trishna Bora, Petitioner No. 4 5.11.1992, Deputy Inspector of Schools, Dhemaji Amguri L.P. School

Smti. Arunima Chetia, Petitioner No. 5 5.11.1992. Deputy Inspector of Schools, Dhemaji No. 2 Deogharia L.P. School

Smti. Tongila Chutia, Petitioner No. 6 12.5.1993, Deputy Inspector of Schools, Dhemaji Naharani L.P. School

11. Petitioners have insisted that thereafter their services were confirmed in their respective posts, service books were opened and they were also allowed to cross the efficiency bar. According to them, they have also successfully undergone the Sarbasiksha Training Course imparted by the District Institute of Educational Training (DIET), Bordoloni and Dhemaji. Their salary from the month of August, 2007, having been withheld, the Deputy Inspector of Schools, Dhemaji, on being confronted could not furnish any persuasive reason except disclosing that their names were included in the list of 752 teachers who have been discovered to be appointed against non-existent posts.

WP(C) 3076/2008

12. The Petitioners have averred that the Government of Assam, with a view to promote Tai Language introduced the same in the L.P. Schools and with the objective of selecting eligible candidates for teaching the same had requested the Purbanchal Tai Sahitya Sabha to conduct the interview of selecting suitable candidates for appointments. Accordingly the said Body selected 50 persons including the Petitioners 1 to 3. The Director of Elementary Education, Assam, after necessary approval on 31.12.1993 forwarded the list of recommended candidates for appointment. The Deputy Inspector of Schools, Dhemaji, thereafter appointed them on various dates where after they joined their duties and have been performing their duties to the satisfaction of all concerned. They claimed to have also passed the basic training course from the District Institute of Educational Training (DIET), Biswanath Chariali, and have been accorded regular time scale of pay. According to them, their services have also been normalized from plan to non-plan sector by order dated 17.2.2004.

13. The progression of facts vis-a-vis the Petitioner No. 4, 5 and 6 culminating in their appointment as claimed by them is projected herein below.

Name of Petitioner	Date of appointment	Post/quota	Confirmation	Name of School	Scale
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Shri Ranjan Chutia (Petitioner No. 3)	10.12.1989	Quota of retired teacher's son			
	16.9.1998	Majgaon L.P. School	Rs.470/-	Rs. 820/-	

Shri Nabal Changmai (Petitioner No. 5)	9.05.1992	Compassionate ground			
	16.9.1998 w.e.f. 12.5.1996	Kechukhana L.P. School	Rs. 1065/--	Rs. 2015/-	

Shri Keshab Dutta (Petitioner No. 6)	16.06.1995	Rehabilitation scheme of the Government of Assam for the ULFA militants	Perabhari Primary School, presently Headmaster of Nilakh Co-operative L.P. School.	Stipendiary teacher at a monthly stipend of Rs. 900/-.	
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14. The Petitioners have averred that they have in the meantime been confirmed in service. their service books have been opened and they have also been allowed to cross the efficiency bar. They also claim to have undergone the Sarbasiksha Training Course imparted by the District Institute of Educational Training (D.I.E.T.), Biswanath Chariali. Bordoloni and Dhemaji. Their grievance is that their salary has been withheld from the month of August 2007 on the purported ground that their names are included in the list of 752 teachers allegedly appointed against non-existent posts. The Petitioners, however, admit that their earlier appointments in the year 1989 in some L.P. Schools had been cancelled before their subsequent induction to the present schools in which they are saving. They contend that the Deputy Inspector of Schools, Dhemaji, by his official correspondences though have clarified that their claim for salary is genuine, the higher authorities have turned a blind eye thereto to their great prejudice and sufferings.

15. The Respondents have neither filed their counter nor have produced the records.

16. Mr. Mazumdar has urged that the appointments of the Petitioners having been made against regular vacancies pursuant to the orders of this Court, they by no means, can be identified with those said to have been inducted against non-existent vacancies and, therefore, the reason professed by the Respondents as a justification for withholding their salary being ex-facie fallacious and frivolous, an appropriate writ ought to be issued to redress their grievance. As the appointments of the Petitioners, by no means, as is demonstrable by the attendant facts, can be said to have any perceptible nexus with those of the 752 allegedly illegally appointed teachers, the impugned action of the Respondents in denying the Petitioners their salary is illegal, arbitrary, unfair and unconstitutional and is liable to be adjudged as such. Mr. Mazumdar has urged that it being obvious as well from the clarifications provided by the Deputy Inspector of Schools. Dhemaji, that the Petitioners' claim for salary is authentic,

the impassive disposition of the higher authorities is a demonstration of imperious display of executive fiat mutilative of the basic tenets of fair play in State action. As the Petitioners are admittedly rendering their services, their appointments not having been terminated as on date, the Respondents are constitutionally obliged to pay their salary, he urged.

17. Mr. Borthakur while endorsing the above has contended that as in the meantime the services of the Petitioner have been regularized and they have been treated to be such for all intents and purposes, the justification assigned by the Respondents to withhold their salary being on the face of it purported and unreal is liable to be rejected in limine.

18. Mr. Mahanta has argued that the appointments of the Petitioners being valid and accepted to be so for which they had been earlier paid their salary for the services rendered the endeavour on the part of the Respondents to associate them with the allegedly illegally appointed teachers of 1989 besides being wholly indefensible in law and on facts lacks in bonafide as well. As the Petitioners are admittedly rendering their services, the said Respondents are constitutionally committed to release their salary, he pleaded.

19. Mr. Talukdar while subserving to the above submissions has accented upon the undue hardship and privation that accost the Petitioners, due to unfair and unjust denial of their legitimate dues and has entreated judicial intervention for succour.

20. Per contra, learned Standing Counsel, Education Department, has insisted that as the names of the Petitioners on enquiries have been included in the list of 752 teachers detected to have been appointed against non existent posts, no direction for payment of their salary ought to be made and that the Respondents may be permitted to make further scrutiny for an appropriate decision on the issue. Mr. Goswami underlined that as the process has been initiated to purge the system of illegal appointments and stem unwarranted drainage of State exchequer, a circumspective and regulated approach is required in public interest.

21. I have extended my due consideration to the pleadings and the documents available as well as the arguments advanced. Absence of a counter on behalf of the official Respondents or the records notwithstanding, it can-not be gainsaid that the Petitioners' entitlement for salary would assuredly be contingent on the validity of their initial appointments and not their mere continuance in service. Recruitment to the post involved being mandatorily required to be made in conformity with the Assam Elementary Education (Provincialisation) Rules, 1977 (hereafter for short referred to as the Rules), any departure therefrom or alteration or modification of the mode of induction prescribed thereby would indubitably be invalid unless sanctioned by the provisions thereof. The Rules being an yield of the constitutional empowerment of the Governor under Article 309, it would enjoy a primacy so much so that any contravention or denudation thereof in exercise of executive fiat per se would be impermissible unless

legitimized by it.

22. Viewed from that perspective, the issues raised for judicial scrutiny would thus have to be assayed on legally approved parameters. The letters dated 12.10.2007 and 17.6.2008 of Deputy Inspector of Schools, Dhemaji, recommending release of their salary by implication and relied upon by most of the Petitioners as acknowledgement of the validity of their claim would by no means be decisive, if otherwise nonest on the touchstone of the Rules.

23. The Petitioners' averments demonstrate the reason for non-payment of their salary to be their inclusion in the list of 752 teachers allegedly appointed against non-sanctioned posts in the then Dhemaji Sub-Division of North Lakhimpur District in the year 1989. The Petitioners per contra have endeavoured to establish that some of them though initially appointed in the year 1989, their appointments had been cancelled whereafter they were validly recruited anew and. therefore, cannot be bracketed with those professed to have been appointed against non-existent posts. They thus contend that they have been wrongly associated with them. The reasons in full for non-disbursement of the Petitioners' salary, however, are not forthcoming for the failure of the Respondents to file their affidavit and/or the records. Nevertheless in the estimate of this Court, as the posts are lodged in public offices and State revenue is involved, the Petitioners ipso facto are not entitled to a direction as prayed for on default sans any adjudication.

24. The Petitioners in WP(C) 2651/2008 insist that as their appointments are in compliance of the directions of this Court in various writ proceedings instituted by them, not only are the Respondents obliged in law to release their salary, withholding of the same is contumacious in content. A Division Bench of this Court in Smti. Kunjalala Gogoi and Ors. v. State of Assam and Ors. 1993 (1) GLJ 278 while dilating on inconveniences and hardship of the honorary teachers serving in L.P. Schools in the Dhemaji District, figuring as Petitioners therein evolved a criteria of 10 years of service to confer on them the benefit of regular appointment. Thereby, the Petitioners, as identified on the application of the said norm, were directed to be appointed as regular teachers from the month of March, 1991, to be paid their salary therefrom, The State authorities were left at liberty to work out the modalities vis-a-vis the period of 10 years for the purpose of pension and other retiral benefits. The cases of other Petitioners who failed to meet the test so applied, were not accorded any relief.

25. Though a plain reading of the decision so rendered does not unequivocally proclaim enunciation of any principle for uniform application. it transpires that in individual cases thereafter following this determination similar directions were issued. The Petitioners in WP(C) 2651/2008 citing various such orders have pleaded a right to receive salary as regular incumbents in service. Their appointment orders also contain reference amongst others of such orders of this Court. Though the Petitioner No. 4, Shri Chandi Ram Narah initially had stated that his appointment was in compliance of the order dated 15.9.1994 passed by

this Court in CR 97/94 of this Court, by an additional affidavit, he has clarified that the order ought to be dated 19.5.1994 and that the mistake had crept in inadvertently in his appointment order as well.

26. In the face of the Rules, which in categorical and emphatic terms lay down the procedure for recruitment of teachers to the Elementary Schools of the State, the rendering in Smt. Kunjalata Gogoi(supra), cannot be construed to be prescriptive of an additional mode therefore by way of amendment/modification of the statutory provisions. The criteria formulated and applied to the incumbents seeking adjudication in the case reported could not have been intended for uninhibited and general application dehors the Rules. The fact that in individual cases thereafter, by invoking the same precept, identical reliefs had been granted does not detract from the above proposition. This Court on a compassionate evaluation of the attending facts and circumstances devised a rough and ready measure to tide over the distressful lot of the then serving honorary teachers in the exercise of its equitable jurisdiction. By no means and the text of the decision does not proclaim either that it was desired to be acted upon as an alternative or added course of recruitment to the service otherwise governed by the Rules. Any other interpretation would spell supercession of the Rules to a limited extent though, which could never had been contemplated by this Court. The binding effect of the orders passed in individual cases, on an analysis of the accompanying facts by the State authorities, however, cannot be doubted.

27. Incidentally the appointments of the Petitioners in WP(C) 2651/2008 claimed to be pursuant to the orders of this Court as above are after the year 1989. The documents evidencing passing of the training course and grant of regular scale of pay to some of them have also been appended to the writ petitions. Documents to establish that a few of them have in the meantime been regularized in service and have been allowed to cross the efficiency bar have also been brought on record. Prima facie, therefore, these Petitioners, in the opinion of this Court, subject to materials to the contrary cannot be said to have been appointed against non-existent posts or be otherwise comprehended as illegal appointees.

28. Though appointment orders of the Petitioner No. 1, 2 and 3 in WP(C) 2811/2008 has a reference of a selection, those of the other Petitioners do not bear any indication whatsoever thereof The Petitioners No. 4 to 11 and 13 had been appointed as stipendiary teachers at a monthly stipend of Rs. 900/-. The appointment orders of Petitioner No. 12, 14, 15,16 and 17 clearly indicate that the same had been dehors any selection as mandated by the Rules. Though the documents annexed to the writ petition disclose that some of them shown to be selected in their appointment orders have in the meantime passed the junior basic training course and have been favoured with regular scale of pay, in the teeth of the Rules, no direction ought to be issued without further verification of their service profile for release of their salary as claimed. These Petitioners in absence of regular selection as enjoined by the Rules cannot be entitled to their salary only on passing the junior basic training course or for having earlier

extended the benefit of a pay scale.

29. The Petitioners in WP(C) N03044/2008 have in clear terms averred that their appointments are dated 19.12.1989. Copies of their appointment orders produced in course of their arguments also endorse the above plea. This assumes significance in view of the stated inclusion of their names in the list of 752 teachers appointed in the year 1989 against non-existent post. The order dated 13.3.1996 of the Deputy Inspector of Schools, Dhakuakhana, regularizing their services subject to the condition that they would have to complete the junior basic training course within three years cannot be accepted to be of any conclusive relevance, their appointment orders being conspicuously silent of any selection prescribed by the Rules before their recruitment thereby. The document, Annexure 7, evidencing budget allocation for payment of their salary for the period 20.12.1989 to 30.8.1996 also ipso facto does not attest the validity of their appointments.

30. Likewise the appointment orders of the Petitioners in WP(C) 3437/2008 also dated 19.12.1989 do not wear a modicum of the compliance of the Rules as a testimony of the validity thereof. Though documents have been appended to the petition to demonstrate their confirmation in services, initiation of P.F. Accounts and Service Books, in the opinion of this Court, unless their induction is established to be in conformity of the Rules, these are of no determinative worth.

31. Though the appointment orders of the Petitioners in WP(C) 2735/2008 are construed to be in compliance of the orders dated 25.4.1998 passed in C.R. 212/1987 and 18.6.1990 passed in COP(C) 105/1988, a perusal thereof (Annexure A and D to the writ petition) does not reveal any direction to the said effect. Whereas in the first order, this Court had observed against any bar in the appointment of untrained teachers qua Sr. Basic, Normal and Junior Basic Training courses as required under Rule 3(iii) of the Rules, though preference is to be accorded to the candidates trained in such courses, in the latter the concerned Respondents were directed to pay the salary and allowances of the Petitioners in the contempt proceeding from the date of their appointment within the time frame fixed thereby. No direction for appointment of the Petitioners dehors the Rules is discernible in any of the orders. In a way, therefore, the presupposition of any such direction as mentioned in their appointment orders appears to be erroneous. The materials on record do not evidence the appointments of the Petitioners in accordance with the Rules. The documents evidencing confirmation of the Petitioner No. 1, 4 and 5 in service in face of the above do not further their case for salary.

32. The Petitioner No. 1, 2 and 3 in WP(C) 3076/2008 claim appointments on the basis of selection conducted by the Purbanchal Tai Sahitya Sabha, an entity to which no such role is ascribed by the Rules. The appointment order of Petitioner No. 4 is conspicuously silent of any selection under the Rules preceding it. The appointment order of Petitioner No. 5 though indicates to be on compassionate ground does not per se evidence compliance of the procedure prescribed

therefor. The order of appointment of the Petitioner No. 6 dated 16.6.1995 by itself reveals that no selection had been held. As a matter of fact, the induction of this Petitioner appears to be on the basis of a Government circular to facilitate rehabilitation of the members of a militant organization named therein. Whereas such a wholesome endeavour in public interest on the part of a Government in our democratic polity, ought to be endorsed, the same by no means can be conceded a dominion over a statutorily prescribed scheme unless sanctioned thereby. The State sponsored initiatives how so ever salutary for deft governance would be eventually subversive of public interest, if liquidatory of the constitutionally mandated ordainments. The Rules having been framed in exercise of constitutionally conferred legislative powers, any executive policy confrontative therewith cannot be assigned an extinctive superiority. The appointments of the Petitioners, therefore, need be scrutinized for their validity and tenability of their claim for salary in the touchstone of the Rules. The documents testifying grant of time scale of pay to Petitioner No. 1 and 2 and confirmation of Petitioner No. 4 and 5 in service in the above view of the matter are of no conclusive bearing.

33. Rule 3 of the Rules dealing with the method of recruitment of teachers of the elementary schools outline in meticulous details, the stage wise progression of the exercise to be undertaken for such appointments. It proclaims a public participatory process with advance intimation of the initiation thereof to culminate with a select list prepared in order of merit of the contending candidates. The aspirants are to be selected on the basis of their testimonials and interviews and the appointments are to be made from the list authenticated by the Director of Elementary Education, Assam. Any appointment from outside the select list, the Rules predicate, would be invalid except those provided on compassionate ground by the Government as per the Rules framed in that regard. A well propounded paradigm with statutory edicts has thus been codified for rigorous compliance thereof subject, however, to the power of relaxation exercisable by the Government in eventualities enumerated in Rule 7. Adherence to the enacted procedure of recruitment as embodied in Rule 3 otherwise is an inflexible essentiality and any unauthorized departure wherefrom would be at the pain of invalidation of the process or any order or action occasioned thereby.

34. The principles expounded by the Apex Court in *M.P. State Coop. Bank Ltd., Bhopal Vs. Nanuram Yadav and Others*, to obligatorily inform appointments to public office are demonstrably apt at this juncture and amply deserves extraction.

(1) The appointments made without following the appropriate procedure under the rules/government circulars and without advertisement or inviting applications from the open market would amount to breach of Articles 14 and 16 of the Constitution of India.

(2) Regularization cannot be a mode of appointment.

(3) An appointment made in violation of the mandatory provisions of the statute

and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularization.

(4) Those who come by back door should go through that door.

(5) No regularization is permissible in exercise of statutory power conferred under Article 162 of the Constitution of India if the appointments have been made in contravention of the statutory rules.

(6) The court should not exercise its jurisdiction on misplaced sympathy.

(7) If the mischief played is so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefitted or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show cause notice to each selectec. The only way out would be to cancel the whole selection.

(8) When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place and the entire selection has to be set aside.

35. The binding dicta, amongst others prohibit regularization of an appointment otherwise illegal, being in transgression of the mandatory provisions of a statute in exercise of power conferred under Article 162 of the Constitution of India. While reiterating that regularization cannot be an accepted mode of appointment, their Lordships ruled that appointments made without following the appropriate procedure under the rules/government circulars and without advertisement or inviting applications from the open market would be violative of Articles 14 and 16 of the Constitution of India and cautioned a Court against exercise of its jurisdiction on misplaced sympathy.

36. Noticeably there is yet no refutation of the fact that the Petitioners are rendering their services as on date. As alluded hereinabove, appointment of some prima facie appear to be in compliance of the orders of the Court as well as on the basis of selection held. Be that as it may. having regard to the nature of the proceedings and the inherent limitations in the extent of probe into factual details, it is not possible for this Court to arrive at any unhesitant conclusion with regard to their entitlements of salary as claimed, "the materials on record are not adequate enough to sustain the claim made and facts and circumstances warrant further verification of the records for an appropriate decision.

37. The omission on the part of the Respondents to offer their counter or to produce the records is an appalling failure of State. While recording my strong displeasure on this inexplicable default on the part of the Respondents which has the potential of undermining the process of administration of justice deserving judicial censure, in my estimate, having regard to the interest of the State revenue, the best course advisable would be, to remit the issue to the appropriate State authorities for due verification of the Petitioners' claim for

salary as made and take a decision in accordance with law. Ordered accordingly.

38. The Commissioner and Secretary to the Government of Assam, Education (E and S) Department, would cause immediate steps to be taken in this regard. Needless to say, the Petitioners, in view of their stake in the matter would be afforded all reasonable opportunities of participating in the process, the aforementioned State authority would, if felt necessary, delegate the exercise to any subordinate competent departmental authority preferably the Director of Elementary Education, Assam, to conduct the process. In doing so, the enquiring authority would examine all relevant records, with due opportunity to the Petitioners and determine the issue on the basis thereof as well as the backdrop of the observations made hereinabove. The exercise, as ordered, should be completed within a period of two months from the date of receipt of certified copy of this order and the resultant decision would be communicated to the Petitioners forthwith thereafter. Needless to say, in case the Petitioners or any one or more of them are found entitled to their dues, immediate steps would be taken to disburse the same. Any slackness or failure to comply with the directions made hereinabove would be viewed very seriously occasioning stringent actions against the erring authorities.

The petitions stand disposed of in the above terms. No costs.