

(2010) 11 GAU CK 0051
In the Gauhati High Court

Nabanita Baruah

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

Date of Decision : 11-11-2010

Acts Referred:

Citation : (2010) 11 GAU CK 0051

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

Bench : Single Bench

Advocate : U.Bhuyan, S.K.Goswami, S.D.Bhuyan, R.Kathkatia, P.Nayak, P.K.Sharma, K.M.Talukdar, D.Saikia, ., Advocates appearing for Parties

Judgement

1. The two petitioners involved in this two writ petitions are aspirants for promotion to the posts of Assistant Professor in the respective departments in the Regional Dental College (RDC). Presently they are holding the posts of Demonstrator/Resident Surgeon. They are aggrieved by application of the particular requirement for promotion to the post of Assistant Professor, which according to them is not applicable in respect of the posts to which they have claimed promotion. Be it stated here that the petitioner in WP(C) No. 2276/2010 is working in the Department of Prosthodontics, while the petitioner in WP(C) No. 2278/2010 is working in the Department of Orthodontics. Since the issue raised and the basic facts involved in both the writ petitions are one and the same, they are being heard analogously and are being disposed of by this common judgment and order. The writ petition being WP(C) No. 2276/2010 having been exclusively referred to by the learned counsel for the parties to bring home their point of argument, the said writ petition has been taken as the base case.

2. While the petitioner in WP(C) No. 2276/2010 was appointed with effect from 5.9.1989 pursuant to her selection by the APSC, the petitioner in WP(C) No. 2278/2010 was appointed with effect from 7.7.1999. As stated above their grievance is one and the same i.e. alleged denial of promotion to the post of Assistant Professor. Although their case for promotion was considered by the Departmental Promotional Committee (DPC), but they could not be

recommended for promotion as they do not have required experience i.e. 4 years of teaching experience after post graduation, which they obtained in May, 2009. It is this finding of the DPC, the petitioners have opposed in the writ petitions on the ground that such requirement of 4 years of teaching experience after post graduation is not applicable to the case of the petitioners and thus the same having been wrongly applied, they have been deprived of their legitimate promotions even after rendering more than 20 years and 10 years of service respectively.

3. According to the petitioners, in the RDC there is four tier system of staffing pattern in the academic field which are Professor, Reader (now Associate Professor), Lecturer (now Assistant Professor) and Tutor (equivalent to Demonstrator/Resident Surgeon/House Surgeon/Registrar etc.). In this connection, they have placed reliance on the notification dated 25.7.2007 published in the official gazette vide notification dated 10.9.2007 as well as the notification dated 29.1.2001 published by the Government of Assam in the Finance (Pay and Research Department). They have also placed reliance on the Medical Council of India Regulation, 1998.

4. As per the aforesaid notification dated 25.7/10.9.2007, the minimum basic qualification and teaching experience required for teachers for Undergraduate Dental Studies are as follows:

MINIMUM BASIC QUALIFICATION AND TEACHING EXPERIENCE REQUIRED FOR TEACHERS FOR UNDERGRADUATE DENTAL STUDIES.

(A) Dental Staff:

Principal/Dean: Same qualifications as prescribed for a Professor. Experience as professor for not less than 5 years in a Dental Institution.

Professors: A BDS Degree of an Indian University or an equivalent qualification with Postgraduate qualification/Diplomat of National Board in the subject and with 5 years teaching experience as Reader.

Readers: A BDS Degree of an Indian University or an equivalent qualification with Postgraduate qualification/Diplomat of National Board in the subject and with 4 years teaching experience after postgraduation.

Lecturers: A recognised MDS Degree of an Indian University/Diplomat of National Board or an equivalent qualification.

Tutors: A recognised BDS Degree of Indian University or an equivalent qualification with at least one year's experience.

Note:

In case of individuals with discrepancy between teaching experience and the postgraduate qualification, a reference may be made to the Dental Council of India through competent authority for consideration. This is not applicable for

future entrants.

5. As per the aforesaid Finance Department's notification dated 29.1.2001 issued under Article 309 of the Constitution of India, the Governor of Assam has extended the benefit of revised AICTE Pay Scales to the teachers of the RDC and the teachers of the Dental Wings of the Assam Medical College, Dibrugarh and Silchar Medical College of the State with effect from 1.1.1996 as specified below:

Name of post

Existing state's pay scale

Name of the scale AICTE Pay scale

No. of Posts

Principal

38255900

Supertime scale

1840050022400

Vice Principa

135755550

Selection grade

164004502090050022400

Professor

35755550

Selection grade

164004502090050022400

Associate professor, Dental Wing S.M.C.

33755200

Sr. scale II1

200042018300

Asstt. Professor RDC/Dental Wing AMC/SMC

32755050

Sr. scaleI

1000032515200

Resident Surgeon/Demonstrator/Registrar, RDC/AMC/SMC

18354325

Jr. scale

800027513500

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6. In the aforesaid notification dated 29.1.2001 it has been stated that promotion to the next higher grade will be regulated by availability of vacancies in the next higher grade (as per sanctioned posts mentioned above) as quoted below:

(i) Asstt. Professor Only after completion of 6 years of service

(Senior Scale I) and obtaining P.G. Degree, Demonstrator/Resident Surgeon may be promoted as Assistant Professor subject to vacancy.

(ii) Associate prof. Only after completion of 5 years service as Assistant Professor and subject to vacancy.

(iii) Professor Only after completion of 4 years service as (Selection Gr. Scale) Associate professor or 9 (nine) years of service as Assistant Professor.

(iv) Principal The prescribed scale would be admissible (Supertime scale) only on direct recruitment to the post of Principal.

3. Further, delinking of the scales from the designation will be implemented as follows:

(i) A teacher in Jr. Scale of Rs. 800013500/ may be designated as Asstt. Professor (Junior) on completion of 6 years of service if he cannot be promoted to the rank of Asstt. Professor due to nonavailability of vacancy or nonacquisition of requisite qualification or for any other reason.

(ii) An Asstt. Professor in the Sr. Scale I of Rs. 1000015200/ may be designated as Associate Professor (SSI) on completion of 5 years of service as Assistant Professor if he cannot be promoted to the rank of Associate professor due to nonavailability of vacancies or any other reasons.

(iii) An Associate Professor Sr. Scale II of Rs. 1200018300, may be designated as Professor (Sr. Scale II) on completion of 4 years of service as Associate professor if he cannot be promoted to the rank of Professor due to want of vacancies or any other reasons.

NOTE: All such redesignations may be done by the Health and Family Welfare Department by issue of Notification and the fact that they will continue in their existing scale, would be specifically mentioned in the said notification.

The Department will amend the Service Rules accordingly.

7. Laying down the terms and conditions for granting AICTE Pay Scales, the said

notification interalia provided that for the purpose the minimum qualification and experience would be as prescribed by the Dental Council of India (DCI) from time to time.

8. The MCI Regulation 1998, while describing the posts of Reader, Lecturer and Tutor also describes the new designation and/or the alternative designation as Associate Professor, Assistant Professor and Demonstrator/Resident/Registrar respectively. It is in the above context the claim of the petitioners is that in the hierarchy of various posts/cadre which are from Demonstrator to Professor, there are four categories, which are Demonstrator with equivalent grade/post of Resident Surgeon/Registrar/Tutor; Lecturer/Assistant Professor; Reader/Associate Professor and finally Professor. So far as the posts of Principal and Vice Principal are concerned, they are meant by the eligible and suitable Professors.

9. The petitioners have also referred to the letter dated 24.12.2007 (AnnexureXI) to show that there are vacancies in the cadre of Assistant Professor of Prosthodontia and Orthodontia. The respective case of the petitioners for promotion to the post of Assistant Professor was considered by the DPC in its meeting held on 10.11.2009. The DPC while considering their cases for promotion to the post of Assistant Professor, considered the same in the rank of Reader equivalent to Associate Professor and while doing so applied the criteria of such promotion one of which is four years teaching experience after post graduation. As the petitioners obtained their post graduation in May, 2009, the DPC opined that the petitioners having lacked in teaching experience of four years after post graduation, they could not be recommended for promotion against the vacancies.

10. It is the above finding of the DPC, which have offended the petitioners as their case is that their cases for promotion ought to have been considered against the vacant posts of Assistant Professor equivalent to Lecturer and not that of Reader which is equivalent to Associate Professor. Be it stated here that as per the aforementioned DCI Regulation of 2007, the requirement for the posts of Lecturer/Assistant Professor is a recognised MDS Degree only with no requirement of four years teaching experience after post graduation. On the other hand, as per the Finance Department's notification dated 29.1.2001 an incumbent in the post of Demonstrator/Resident Surgeon is entitled to get promotion to the post of Assistant Professor after completion of 6 years of service and obtaining PG Degree. As noticed above, both the petitioners, by now, have rendered more than 20 years and 10 years of service respectively.

11. The petitioners have placed reliance on the AnnexureXV chart indicating the initial posting of the teaching staff of RDC and their subsequent promotions so as to contend that the incumbents working in the post of Registrar/Demonstrator had been promoted as Assistant Professor immediately after obtaining MDS qualification without insisting for four years of teaching experience after post graduation. In this connection the statements made in paragraphs 18, 20, 21 and 22 of the writ petition are reproduced below:

18. That the Principal, Regional Dental College, Guwahati, is also a member of the Departmental Promotion Committee. On earlier occasion, the people working in the post of Registrar/Demonstrator were promoted to the post of Assistant Professor immediately after acquiring the MDS qualification. The Principal, Regional Dental College, Guwahati, with an ulterior motive mislead and convinced the members of the Departmental Promotion Committee that the post of Registrar/Demonstrator is equivalent to the post of Assistant Professor only with an intention not to give promotion to the petitioner to the post of Assistant Professor. Beside this, the scale of pay of Demonstrator and Lecturer is also different. It is worth mentioning here that on earlier occasions, promotions were made to the post of Assistant Professor from the post of Registrar/Demonstrator after acquiring the MDS degree in Regional Dental College, Guwahati. The Principal himself also got the promotion to the post of Assistant Professor from the post of Demonstrator in a routine manner and all the Assistant Professor and Professors were promoted from the post of Demonstrator after acquiring the MDS qualification. So, it is clear case of discrimination only to deny the legitimate right of the petitioner. The present petitioner had applied under the provisions of Right to Information Act and collected the data related to the initial posting of the teaching staff of Regional Dental College, Guwahati and their subsequent promotion(s).

A chart disclosing date of initial posting of the teaching staff of Regional Dental College, Guwahati and their subsequent promotion(s) is annexed herewith and marked as AnnexureXV.

20. That in the year 2009, one Dr. Dipanjal Saikia also obtained MDS degree from Regional Dental College, Guwahati in Oral and Maxillofacial Surgery along with the petitioner in the same year. His case was considered by the Departmental Promotion Committee for promotion to the post of Assistant Professor in the meeting held on 1.9.09 and the Departmental Promotion Committee has recommended the name of Dr. Dipanjal Saikia for promotion to the post of Assistant Professor in the Dentistry. As such, it is a clear case of discrimination in not considering the case of the petitioner for promotion to the post of Assistant Professor.

Copy of the pass certificate of MDS of Dr. Dipanjal Saikia and copies of the minutes of the meeting held on 1 .9.09 are annexed herewith and marked as AnnexureXVI and AnnexureXVII respectively.

21. That, at present, there are four persons working as Registrar/Demonstrator/Tutor in the Department of Prosthodontics Regional Dental College, Guwahati. Among these four persons, the present petitioner and Dr. J. Barman has acquired the MDS degree, which is the minimum qualification required for the post of Assistant Professor/Lecturer as per Dental Council of India rules. Dr. J Barman joined Regional Dental College, Guwahati on 9.8.2007 as Demonstrator/Tutor in the Department of Prosthodontics, Regional Dental College, Guwahati. But the present petitioner has joined as Registrar/Tutor in the Department of

Prosthodontics, Regional Dental College, Guwahati on 5.9.1989 as per the judgment and order passed by this Hon"ble High Court in Civil Rule No 2349/90 and in Review Application No. 15/92. The criteria for promotion is qualification along with seniority and the present petitioner not only possess the required qualification for promotion to the post of Assistant Professor/Lecturer in the Department of Prosthodontics, Regional Dental College, Guwahati but she is also the most senior Registrar/Tutor having the requisite qualification for promotion to the post of Assistant Professor/Lecturer in the Department of Prosthodontics, Regional Dental College, Guwahati. Presently, there are two posts of Assistant Professor lying vacant in the Department of Prosthodontics and the petitioner should be promoted to that post considering her seniority and eligibility. But the petitioner's valuable right for promotion was denied by the Departmental Promotion Committee on the basis of the misinterpretation of the principal, Regional Dental College, Guwahati.

A copy of the appointment letter dated 7.8.2007, whereby Dr. J Barman joined in the Department of Prosthodontics, regional Dental College, Guwahati as Demonstrator/Tutor and copy of the appointment letter dated 8.12.1992, whereby the present petitioner joined in the Department of Prosthodontics, regional Dental College, Guwahati as Demonstrator/Tutor w.e.f. 5.9.1989 are annexed herewith and marked as AnnexureXVIII and AnnexureXIX.

22. That the State Government also issued a notification in the name of Secretary, Finance granting All India Council for Technical Education (AICTE) scales to the teachers of Regional Dental College, Guwahati and prescribed the minimum qualification for promotion to different posts. As per the All India Council for Technical Education (AICTE) rules also there is four tier system of teaching staff in every department, which are:

Professor and Head of the Department

Associate Professor/Reader

Assistant Professor/Lecturer

Tutor/Demonstrator

But the Principal, Regional Dental College, Guwahati, with an intention to deny promotion to the eligible candidate, mislead the members of the Departmental Promotion Committee showing the post of Reader as equivalent to the post of Assistant Professor. But it is already established that the post of Assistant professor is equivalent to Lecturer and not Reader. The post Assistant Professor is equivalent to Lecturer in all academic/professional institutions including Universities and the post of Associate professor is equivalent to reader. But the misinterpretation of the Principal, Regional Dental College, Guwahati, bid goodbye to the rules of the Dental Council of India, of the 4 tier system of teaching staff. It is a clear case of discrimination only to deny the valuable right to the petitioner to consider her case for promotion. On earlier occasion, the

persons holding the post of Registrar/Demonstrator were promoted to the post of Assistant Professor after acquiring the MDS degree subject to vacancy. But, by showing the post of Reader as equivalent to the post of Assistant Professor, the Principal, regional Dental College, Guwahati, mislead the members of the Departmental Promotion Committee stating that 4 years teaching experience is required for promotion to the post of Assistant Professor though same is actually required for Associate professor.

12. The respondents have filed their counter affidavits, to which the petitioners have filed their reply affidavits. In the separate affidavits filed by the respondent No. 1 and 3, the basic ground urged resisting the claim of the petitioner is that in the RDC there is three tier system of different categories of post and not four tier system as has been claimed by the petitioners. Referring to the BDS Course regulation of 1983, it has been contended by the said respondents that there is only three tier system of uniform designations of dental teachers throughout India in all Dental Institutions, which are Professor, Reader and Lecturer. In this connection they have also referred to the revised MDS Course Regulations of 2007.

13. In the reply affidavits filed by the petitioners, they have reiterated their stand in the writ petitions. The basic thrust is that it is incorrect to say that in the prevailing system of the staffing pattern of teachers there is a three tier system. In this connection, they have specifically referred to the cases of Dr. A.C. Bhuiyan, Dr. Pronoy Kr. Sharma, Dr. Chandana Kalita and Dr. Ruby Kotoky. While it is their case that Dr. Bhuiyan is holding the post of Professor on being promoted from the post of Associate Professor, Dr. Sarma, Dr. Kalita and Dr. Kotoky are holding the posts of Associate Professor, Assistant Professor and Assistant Professor respectively. These instances have been referred to, to show that there are four tier system of categories of posts inclusive of the post of Associate Professor, which post, according to the respondents, is not in existence in the RDC.

14. Another significant contention raised by the petitioners is that one Dr. D. Saikia was promoted to the post of Assistant Professor as per recommendation of the DPC meeting held on 15.9.2009 although, he has obtained MDS Degree in June, 2009 and thus did not have four years of teaching experience after post graduation. In this connection the petitioners have also furnished the examples of Dr. A.K. Adhyapak, Dr. P.N. Sarma Dr. A.C. Bhuiyan, Dr. S.J. Das, Dr. Mitali Bora, Dr. B.K. Roy and Dr. C. Kalita, who had been promoted to the posts of Assistant Professor after 1 year 11 months, 1 year, 2 years 8 months, 1 year 11 months, 1 year, 2 years and 2 years respectively after obtaining MDS Degree and thus in their cases four years of teaching experience after MDS was not insisted upon.

15. During the pendency of the writ proceeding, the respondent No.4 got impleaded in WP(C) No. 2276/2010. Like wise, respondents No. 4 and 5 got impleaded in WP(C) No. 2278/2010. The respondent No. 4 in WP(C) No.

2276/2010 was initially appointed as Dental Surgeon under the establishment of Health Services vide notification dated 1.9.1994 and thereafter was temporarily attached to the RDC by notification dated 22.2.2006. He was transferred and posted as Demonstrator of Prosthodontics, RDC vide notification dated 7.8.2007 and finally he was appointed as such by notification dated 18.2.2008 on being selected for such appointment by the APSC. Thus he is a regular incumbent in the post of Demonstrator, RDC from the date of regular appointment on 18.2.2008 and by far junior to the petitioner in WP(C) No. 2276/2010. His case is that he having completed his post graduation in September, 2005 from Rajiv Gandhi University of Health Sciences, Karnataka and the petitioner having obtained post graduation only in May, 2009, he is a better candidate for promotion to the post of Assistant Professor, if at all the plea of the petitioner is accepted. However, like that of the official respondents, it is his contention that the DPC has rightly considered the case of the petitioners for the post of Assistant Professor equivalent to Reader in the three tier system of categories of posts.

16. So far as the respondents No. 4 and 5 involved in WP(C) No. 2278/2010 are concerned, it is the respondent No. 4, who alone has filed an affidavit in opposition, which reveals that his stand is same as that of the respondent No. 4 in the other writ petition i.e. WP(C) No. 2276/2010 referred for above. He was appointed as Demonstrator, RDC by notification dated 1.8.2007 under Regulation 3 (f) of the APSC (Limitation of Functions) Regulation 1951. He has been regularly appointed vide notification dated 25.8.2009 pursuant to his selection by the APSC. Thus, he is also by far junior to the petitioner, but as in the case of the respondent No.4 in the other writ petition, his case is also that he is a better candidate than the petitioner he having obtained his Masters Degree in September, 2007 from Rajiv Gandhi University of Health Sciences, Karnataka as against obtaining the post graduation by the petitioner in May, 2009. Be it stated here that the petitioners in both the writ petitions have obtained their post graduation under Gauhati University.

17. In the additional affidavit filed on 14.9.2010 by the respondent No. 1, while reiterating the stand in the earlier affidavit filed, it has been stated that the DCI has negated the plea of relaxation of teaching experience after post graduation for promotion of the petitioners. In the said affidavit, it has been admitted that the petitioners are seniormost in the rank of Registrar as per the gradation list. It has also been brought on record that the DCI on an earlier occasion rejected the plea of relaxation of teaching experience after PG Degree in respect of one Dr. A.B. Hussain, who was sought to be promoted to the post of Assistant Professor although he did not have four years of teaching experience after PG Degree.

18. On the other hand, the petitioners have filed an additional affidavit on 14.9.2010 bringing on record the notification dated 28.6.2010 issued by the Government of Assam in the Finance (Pay Research Unit) Department, by which the State Government has extended the benefit of AICTE/UGC Pay Scale to the

teachers of Technical Institutions including the RDC, in which different posts of teaching staff have been indicated as Principal, Vice Principal Professor, Associate Professor, Assistant Professor and Resident Physician/Resident Surgeon/Registrar/Demonstrator. The petitioners have also brought on record the advertisement dated 17.7.2010 issued by the Regional Institute of Medical Sciences, Imphal, an autonomous Institute under the Ministry of Health & Family Welfare, Government of India inviting candidatures for the posts of Professor, Reader/Associate Professor and Lecturer/Assistant Professor. While laying the down the qualification and experience in the advertisement for the post of Lecturer/Assistant Professor, same has been indicated as a recognised MDS Degree. It is only in respect of the post of Reader/Associate Professor, the qualification insisted upon is that of a BDS Degree with post graduate qualification and four years teaching experience after post graduation.

19. I have heard Mr. S.K. Goswami, learned counsel for the petitioners as well as Mr. D. Saikia, learned Standing Counsel, Health. I have also heard Mr. U. Bhuiyan, learned Sr. Counsel representing the private respondents. During the course of hearing they referred to the entire pleadings and the documents to bring home their respective points of arguments. Noticing the particular stand of the official respondents that there is only three tier system of uniform designations of Dental Teachers i.e. Professor, Reader and Lecturer and that under the said system the post of Demonstrator and Lecturer are equivalent in rank and status, a direction was issued on 30.9.2010 to furnish information as to whether the posts of Demonstrator and Lecturer carry the same pay scale. In the order, it was noted that as per AnnexureIX notification dated 29.1.2001, while the post of Demonstrator carried the pay scale of Rs. 18354325/(prerevised)/800013,500/ (revised) and that of Assistant Professor Rs. 32755000/(prerevised)/10 ,00015,200/ (revised).

20. In response to the said order, the respondent No.1 has filed an affidavit on 12.10.2010 in which it has been stated the four tier hierarchy of faculties like Professor, Associate Professor, Assistant Professor and Demonstrator/Registrar are created in the various departments of the Medical Colleges of Assam including the Dentist Department (Dental Wing) of the Assam Medical College and Silchar Medical College as per MCI Regulation. However, in case of faculties of RDC, Guwahati the three tier hierarchy of faculties like Professor, Assistant Professor and Demonstrator/Resident Surgeon have been adopted as per the aforementioned DCI Regulation of 1983. In the said affidavit, the respondent No. 1 has also referred to the notification dated 28.6 .2010 issued by the Government of Assam in the Finance (Pay Research Unit) Department which has also been brought on record by the petitioners in the affidavit filed on 14.9.2010 and referred to above.

21. The particular stand of the petitioners in paragraph 18, 20, 21 and 22 has been noted above, to which there is no specific denial on the part of the official respondents. In the counter affidavit filed by the respondent No. 3, the said

paragraphs have been dealt with as follows:

13. That as regards to the statements made in paragraph 18 of the writ petition, the deponent begs to state that the Dental Council of India (DCI) regulation is followed in the Regional Dental College and not the Medical Council of India (MCI) regulations. In Regional Dental College, the post of tutor and Associate Professor never existed. The entry level post in Regional Dental College is Demonstrator/registrar/Resident Surgeon as stated in the above paragraph.

Further in order to be promoted to the next higher post, from the post of Demonstrator/Registrar/Resident Surgeon, the candidate has to acquire teaching experience of 3 years (revised 4 years) after acquiring his/her post graduation qualification (MDS). The petitioner passed her MDS in May, 2009 only. So her name was not recommended for promotion by the Departmental promotion Committee, because she has not yet completed 4 years of teaching after passing her MDS.

15. That as regards to the statements made in paragraph 20 of the writ petition, the deponent begs to state that the decision/decisions taken by the Departmental Promotion Committee is/are collective decisions.

16. That as regards to the statements made in paragraph 21 of the writ petition, the deponent has no comments to offer.

17. That as regards to the statements made in paragraph 22 of the writ petition, the deponent begs to state that the seniority in the respective departments for promotion to the next higher post of Assistant Professor/Reader from Demonstrator/Registrar/Resident Surgeon/Lecturer is counted from the date of acquiring MDS degree by the candidates. The person has to complete 3 years (revised 4 years) experience after the date of acquiring P.G. (MDS) degree to be considered eligible to become Assistant Professor/Reader.

22. Like wise in the counter affidavit filed by the respondent No. 1, the aforementioned paragraphs have been dealt with as follows:

13. That as regards to the statements made in paragraph 18 of the writ petition, the deponent begs to state that the interpretation of the petitioner regarding the equivalency of post of Reader as Associate professor and post of Lecturer as Assistant Professor is erroneous as stated in paragraph 8 of this affidavit. The petitioner is holding the post of Resident Surgeon in Dentistry since 1999 and passed her MDS in May, 2009. As a post of Assistant Professor in the Department of Orthodontics is lying vacant the Selection Committee considered the incumbents in the rank of Resident Surgeon/Demonstrator in that Department for promotion to the next higher rank i.e. Assistant Professor. However, as both the incumbents have not fulfilled the criteria for promotion to the post of Assistant Professor, the Selection Committee could not recommended any names for promotion to fill up the vacancy.

15. That as regards to the statements made in paragraph 20 of the writ petition,

the deponent begs to deny the same.

16. That as regards to the statements made in paragraph 21 of the writ petition, the deponent begs to state that Dr. D. Saikia who was working as Registrar of Dentistry at Assam medical College, Dibrugarh. The Dental Wing/Department in the Medical Colleges is regulated as per the Medical Council of India guidelines for Dentistry Wing/Department of the Medical Colleges and such faculties are within the establishment of the Faculties of the Medical Colleges as per Assam medical Education Service Rules, 2008, whereas the different Departments and the Faculties of the Regional Dental College, Guwahati are as per the Dental Council of India guidelines. Dr. Saikia belongs to Assam medical Education Service which follows the guidelines framed by the Medical Council of India. Hence, it is stated that Dr. Saikia does not belong to the cadre of regional Dental College.

17. That as regards to the statements made in paragraph 22 of the writ petition, the deponent begs to state that the Departmental Selection Committee for promotion considered 4 (four) incumbents in the Department of Prosthodontics including the petitioner and recognised the petitioner as the senior most in the Gradation List. However, as all the incumbents did not fulfilled the requisite criteria, (i.e. 4 (four) years of teaching experience after Post Graduation) the Committee could not recommend anyone for promotion to fill up the vacant post of Assistant Professor. Thereafter, the Government in the Health Department, as per the advice of the selection committee, moved the Dental Council of India to accord relaxation as special case of the doctors vide its letter No. HLB.271/2009/164 dated 21.6.10. In response to the said letter dated 21.6.10, the Dental Council of India vide letter No. DE142010/A4287 dated 27.7.10 replied in negative by quoting the relevant portion of the MDS Course Regulation, 2007 wherein the qualification for the post of Reader/Assistant Professor is prescribed as post graduation with four years teaching experience after post graduation.

23. While dealing with the stand of the petitioner in paragraph 19 of the writ petition, which is that the respondent No. 3 with an ulterior motive to accommodate some of his interested persons denied promotion to the petitioners misleading the members of the DPC inspite of earlier instances of such promotion, the respondent No. 1 in his affidavit has stated thus:

14. That as regards to the statements made in paragraph 19 of the writ petition, the deponent begs to deny the same and further begs to state that Dr. P.D. Bora, present Principal, Regional Dental College, Guwahati completed MDS in the December, 1977 and was promoted in September, 1982 i.e. more than 4 years after MDS. Further, at that time Dental Council of India Regulation of 1983 was not applicable. Later there was exception in certain cases of promotion to the Dental Council of India norms. The Dental Council of India on their subsequent inspections did not raise objections in such exceptional cases. However, subsequently in case of promotion of Dr. A.B. Hussain to the post of Assistant

Professor, the Dental Council of India vide letter DE162006/3845 dated 2.6.06 stated that there is no provision in the Dental Council of India Regulation to condone/relax the minimum teaching experience as required for the post of Assistant Professor for teaching Dentistrt.