

(2003) 12 GAU CK 0074

In the Gauhati High Court

Case No : Writ Petition (C) No's. 2503, 2649, 2650, 4796, 8652, 8683 of 2001 and 730 of 2002

Seekha Phukan and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 15-12-2003

Acts Referred:

Assam Secondary Education (Provincialisation) Rules, 1977 — Rule 15, 4, 6, 7, 7(2)
Assam Secondary Education (Provincialisation) Service (Amendment) Rules, 1991 — Rule 6, 6(2)

Citation : (2004) GLT 859 Supp

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : C. Baruah, H. Rahman, M. Sarania and P.J. Phukan, for the Appellant; P.J. Phukan and B.J. Talukdar, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—Since the present batch of writ petitions is closely inter-linked, the same is being disposed of by this common judgment and order.

2. In a narrow compass, the undisputed material facts giving rise to all these writ petitions maybe put as follows:

(i) In the year 1996, Director of Secondary Education, Assam, had issued an advertisement inviting applications for filling up of about 1000 posts of Graduate Teachers in the provincialised High Schools/High Madrasa and about 200 vacancies of Subject Teachers in Higher Secondary Schools in various districts of Assam. Not only the writ Petitioners in W.P. (C) Nos. 2650/01, 4796/01, 2503/01 and 2649/01, but also the private Respondents in the said batch of writ petitions (who, later on, approached this Court as Petitioners in W.P. (C) Nos. 8652/01, 8683/01 and 730/02) had appeared in the interview held, in the year 1997, in pursuance of the said advertisement. The select list for Assistant Teachers in Science Stream was published on 06.04.98. Similarly, the select list for Assistant

Teachers in Arts Stream was published on 15.10.98. Some persons were appointed on the basis of the select lists so published. The State Government imposed a ban on all Government appointments including those of teachers on 06.12.98. The ban, so imposed, continued until 25.03.2001. While the ban was so continuing, Commissioner and Secretary to the Government of Assam, Education Department, vide Notification, dated 23.2.2001, constituted a new District Level Selection Board for selection of teachers of Higher Secondary Schools/High Schools in respect of Dhemaji district. The ban on appointment was lifted by the Government, on 25.3.2001, with direction that no new applications would be called for and that the list of candidates, who had already applied with treasury challan, stood extended up to 31.1.2001 and as per the recommendations of the new Selection Board, the private Respondents in W.P. (C) 2503/01, 2650/01, 2649/01 and 4796/01 (who, later on, became Petitioners in W.P. (C) Nos. 8652/01, 8683/01 and 730/02) were appointed as Assistant Teachers in different schools on fixed pay of Rs. 2,500/- per month. The names of some of these private Respondents had, however, appeared below the names of the writ Petitioners in the earlier select lists, which were, as hereinbefore mentioned, published on 06.04.98 and 15.10.98, the Petitioners in W.P. (C) Nos. 2503/ 01 and 2649/01 being candidates in Science Stream (whose select list had been published on 06.04.98) and the Petitioners in W.P. (C) No. 2650/01 and 4796/01 being candidates in Arts Stream (whose select list had been published on 15.10.98). Aggrieved by the appointments of the private Respondents aforementioned, the Petitioners in the said four writ petitions, namely, W.P. (C) No. 2503/01, 2650/01, 2649/01 and 4796/01 approached this Court seeking issuance of appropriate Writ or Writs setting aside and quashing the appointments of the private Respondents and commanding the State-Respondents to appoint the Petitioners as Assistant Teachers.

(ii) By an interim order passed, on 10.04.2001, in W.P. (C) 2503/01 aforementioned, which related to successful candidate in Arts Stream, (whose select list had been published on 15.10.98) this Court directed, inter alia, that no one outside the select list dated 15.10.98, be appointed and if the Respondents 4 to 10 had not been selected in accordance with the rules and were not placed in the said select list, their appointments shall remain stayed and they would not be paid their salary. By an interim order, dated 12.04.2001, passed in W.P. (C) 2649/01, which too related to a successful candidate in Arts stream, this Court directed, inter alia, that if the Respondent No. 4 to 7 had not been selected and were outside the select list, dated 15.10.98, their appointment shall remain stayed, they shall not be paid their salary and that henceforth, appointments, if made, shall be strictly in accordance with the merit of the candidates in the said select list subject to reservation.

(iii) By an interim order, dated 12.04.2001, passed in W.P. (C) 2650/01 aforementioned, which related to a successful candidate in Science Stream (whose select list had been published on 06.04.98), this Court directed that the appointments of the private Respondent Nos. 4 to 9, who had been, as indicated

hereinbefore, appointed as Assistant Teachers in the Science Stream, shall remain stayed, they shall not be paid their salary until further orders, no further appointment be made outside the select list and that appointments, if any, would, henceforth, be made strictly in accordance with the merit of the candidates in the earlier select list subject to reservation. To the same effect was the interim order, dated 06.07.2001, passed in W.P. (C) No. 4796/01, which too related to a successful candidate in the Science Stream.

(iv) The private Respondents in W.P. (C) 2650/01, which relates to alleged illegal appointments of Assistant Teachers in Science Stream, on becoming aware of this writ petition, appeared in the said writ petition but, instead of contesting the writ petition by filing affidavit, they came before this Court with a separate writ petition, namely, W.P. (C) 8683/01, contending, inter alia, that they stood duly selected as Assistant Teachers, but they had learnt that there was a "conspiracy afoot" to oust them from their service and accordingly, sought for regularization of their services without, however, indicating that W.P. (C) No. 2650/01 stood instituted against them and an interim order, dated 12.04.2001, as indicated hereinabove, already stood passed against them. On the writ petition, so moved, suppressing material facts, this Court, by an interim order, dated 02.01.2002, directed that the services of the Petitioners (who are private Respondents in W.P. (C) No. 2650/01) shall not be disturbed as Assistant Teachers. The private Respondents, who were appointed as teachers in Arts Stream, whose appointments as Assistant Teachers were under challenge in W.P. (C) No. 2503/01 and 2649/01 aforementioned chose not to file any affidavit in the said writ petitions and came before this Court by filing a separate writ petition, namely, W.P. (C) No. 8652/01 seeking similar reliefs and by suppressing material facts, as indicated hereinbefore, they too obtained almost similar interim directions as given in W.P. (C) No. 8683/01 aforementioned, subsequently, however, all these private Respondents jointly filed W.P. (C) 730/02 seeking regularization of their services, but no interim order was passed in this case.

3. Some of the other noticeable facts, which are also relevant for determining the individual merit of each of the writ petitions, may be noted as follows:

W.P. (C) No. 2650/01

The name of the Petitioner in this writ petition appeared at SI. No. 22 of the select list, dated 06.04.98, which was meant for Assistant Teachers in Science Stream. The Respondent Nos. 4, 5, 6 and 8 had appeared in the same selection process and their names had appeared at SI Nos. 23, 24, 11 and 21 respectively. So far as the Respondent Nos. 7 and 9 were concerned, they had never applied in pursuance of the said advertisement and they had not been selected. Some of the candidates from the said select list, whose names appeared at SI. Nos. 1, 3, 5 and 15, had been appointed in different schools in Dhemaaji district as Assistant Teachers on fixed pay of Rs. 2500/- per month. The appointments of Respondent Nos. 4 and 5, whose names appeared at SI. No. 23 and 24 respectively in the select list, dated 06.04.98, aforementioned were arbitrary inasmuch as they had

been according to this writ Petitioner, arbitrarily allowed to supersede the Petitioner, whose name had appeared at SI. No, 22, and so far as the private Respondent Nos. 7 and 9 were concerned, their appointments too were arbitrary inasmuch as they had never appeared in the selection process initiated in the year 1996. The appointments of these private Respondents were, thus, illegal and in denial of legitimate right of appointment of this writ Petitioner.

W.P. (C) No. 4796/01

The name of the Petitioner in W.P. (C) No. 4796/01 appeared at SI No. 7 of the select list, dated 06.04.98, which relates to the selection of Assistant Teachers in Science Stream. As far as the Respondent Nos. 4, 5, 6 and 7 are concerned, their names appeared in the said select list below the writ Petitioner, but so far as the Respondent Nos. 8 and 9 are concerned, they had never appeared in the said selection process, yet these private Respondents were, according to this writ Petitioner, illegally, arbitrarily and in denial of the legitimate right of this writ Petitioner, appointed as Assistant Teachers on fixed pay as indicated hereinbefore.

W.P. (C) No. 2503/01 and W.P. (C) No. 2649/ 01:

The name of the Petitioner in W.P. (C) No. 2503/01 appeared at SI No. 17 and names of the Petitioners in W.P. (C) 2649/01 appeared at SI. Nos. 19, 38, 18 and 21 respectively of the select list, dated 15.10.98, which relates to the selection of Assistant Teachers in Arts stream. The Respondent Nos. 4 to 7, who have been appointed as Assistant Teachers in the Arts Stream, had never applied in pursuance of the selection process, which recommenced following the advertisement published in the year 1996. Thus, while the private Respondents have been appointed without their names having appeared in the select list, dated 15.10.98 aforementioned, the Petitioners have been refused appointment. The appointment of the private Respondents is arbitrary and contrary to the relevant rules.

W.P. (C) No. 8683/2001:

The Petitioners in this writ petition are private Respondents in W.P. (C) No. 2650/01 afore mentioned, which relates to a successful candidate in Science Stream. According to these writ Petitioners, who are private Respondents in W.P. (C) No. 2650/01, they too had participated in the interview held, in the year 1997, in pursuance of the advertisement issued, in the year 1996, by the Director of Secondary Education and got selected as Assistant Teachers in Science Stream. By a Notification, dated 23.2.2001, issued by the Commissioner and Secretary to the Government of Assam, a District Level Selection Board for selection of teachers of High and Higher Secondary Schools in respect of the Dhemaji district was constituted and as per their recommendations, these Petitioners were appointed in various schools on fixed pay. The Petitioners have accordingly joined their respective schools and they have continued as Assistant Teachers in those schools since March, 2001, but there is a conspiracy afoot to oust the Petitioners from their posts. There are about 25 posts of Assistant

Teacher lying vacant under the hispector of Schools of Dhemaji district. These Petitioners accordingly sought for regularization of their services in this writ petition.

W.P. (C) No. 8652/2001:

The Petitioners in this writ petition, who are private Respondents in W.P. (C) No. 2503/01 and 2649/01, claimed that they too had participated in the-interview held, in the year 1997, in pursuance of the advertisement issued, in the year 1996, by the Director of Secondary Education and got selected as Assistant Teachers in Arts Stream. By a Notification, dated 23.2.2001, issued by the Commissioner and Secretary to the Government of Assam, a District Level Selection Board for selection of teachers of High and Higher Secondary Schools, in respect of the Dhemaji district was constituted and as per their recommendations, these Petitioners were appointed in various schools on fixed pay. The Petitioners have accordingly joined their respective schools and they have continued as Assistant Teachers in those schools since March, 2001, but there is a conspiracy afoot to oust the Petitioners from their posts. There are about 25 posts of Assistant Teacher lying vacant under the Inspector of Schools of Dhemaji district. These Petitioners too accordingly sought for regularization of their services in this writ petition.

W.P. (C) No. 730/2002

The private Respondents in W.P. (C) No. 2650/01, 2503/01, 4796/01 and 2649/01 aforementioned, who had already filed the writ petitions, namely, W.P. (C) No. 8683/01 and 8652/01 aforementioned, came jointly with the present writ petition, namely, W.P. (C) No. 730/02, wherein, on the basis of the facts already stated hereinabove, these private Respondents, as writ Petitioners, sought for regularization of their services as Assistant Teachers.

4. I have perused the materials on record. I have heard Mr. C. Baruah, learned Senior Counsel appearing on behalf of the Petitioners in W.P. (C) Nos. 2650, 2503 and 2649 of 2001, and Mr. M. Sarania, learned Counsel for the Petitioner in W.P. (C) No. 4796/01. I have also heard Mr. P.J. Phukan, learned Counsel for the Petitioners in W.P. (C) Nos. 8652, 8683 of 2001 and 730/02, who are private Respondents in all the said four writ petitions, namely, W.P. (C) Nos. 2650, 2503, 2649 and 4796 of 2001, and Mr. B.J. Talukdar, learned Govt. advocate appearing on behalf of State-Respondents in the present batch of writ Petitioners.

5. Presenting the case on behalf of the Petitioners in W.P. (C) No. 2650, 2649 and 2503 of 2001, Mr. Baruah has submitted that under Rule 7 of the Assam Secondary Education (Provincialisation) Rules, 1977 (hereinafter referred to as the "Rules of 1977"), the vacancies occurring each year, in every constituency, shall be assessed and the Board shall invite applications for filling up of the posts by issuing necessary advertisement in the news papers, the Board shall hold interview by calling those persons, whose applications are found valid, and the select list prepared by the Board shall be authenticated by the Director of

Secondary Education and upon such authentication, the select list of every constituency shall be published by affixing copy thereof in the Notice Boards of the Director of Secondary Education, Inspector of Schools and Deputy Inspector of Schools and in any other manner as the Government may decide and that the validity of the select list shall not exceed beyond the period of one year from the date of publication. In the case at hand, submits Mr. Baruah though the advertisement was published in the year 1996, the interview took place in the year 1997, some appointments were made from the select lists published, on 06.04.98 and 15.10.98, in respect of Science Stream and Arts Stream respectively, but the authorities concerned arbitrarily imposed ban on all appointments and thereby the legitimate rights of the Petitioners to be appointed as teachers were denied.

6. In the case at hand, points out Mr. Baruah, what is noticeable is that though the selection, eventually, took place in the year 1997, the selection had actually started under the old Rules, namely, the Rules of 1977, but, by the time, the selection was finalised, Assam Secondary Education (Provincialisation) Service (Amended) Rules, 1991, had already come into force, on 3.2.92, following its publication in the official gazette (hereinafter referred to as "Rules of 1991") and Rule 7(2)(f) of these rules provides that the Government may extend the validity of the select list for further period in the public interest in consultation with the Board. However, when the Government, in the present case, according to Mr. Baruah, decided to lift the ban, the appointments ought to have been made as per the select lists, which had already been published on 06.04.98 and 15.10.98, but the Government, contends Mr. Baruah, arbitrarily constituted a new Selection Board on, 23.2.2001, which was not in conformity with the provisions of Rule 4 and on the recommendations of such a Selection Board, the private Respondents were appointed and these appointments, according to Mr. Barua, were illegal and arbitrary inasmuch as no formal advertisement, as required under the relevant rules, was made nor was there any proper selection process for selection of candidates.

7. Mr. Baruah further points out that since the vacancies of 1996 were to be filled up, the same ought to have been done from the select lists, which had already stood published on 06.04.98 and 15.10.98. By acting in the manner, as has been done by the Government in the present case, the whole selection process has been, contends Mr. Baruah, made a farce. Mr. Baruah has also contended that since the Government had advertised for filling up of a large number of posts and due selection following the advertisement had already been made, the Government could not have estopped filling up the vacancies, so advertised from the said select lists and thereby make the whole selection process a farce. Support for his submissions is sought to be derived by Mr. Baruah from the case of Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others,

8. Assailing the appointment of the private Respondents, Mr. Baruah has also submitted that some of the private Respondents were placed below the writ

Petitioners in the relevant merit lists and some of them had not even participated in the earlier selection process and yet all these persons were appointed ignoring the legitimate rights and expectations of the writ Petitioners. Hence, these appointments are, contends Mr, Baruah, wholly arbitrary and may not be allowed to stand good on record. Mr. Baruah further pleads that the State-Respondents be directed to appoint the writ Petitioners and the illegal appointments of the private Respondents be set aside and quashed, who have, submits Mr. Baruah, obtained some interim reliefs from this Court by suppressing material facts, namely, that the writ petitions were pending against them and interim directions not to pay their salary had already been passed by this Court.

9. Mr. M. Sarania, learned Counsel appearing on behalf of the Petitioner in W.P. (C) No. 4796/01, has adopted the submissions made by Mr. Baruah.

10. Controverting the above submissions, Mr. P.J. Phukan, learned Counsel for the Petitioners in W.P. (C)Nos. 8683/01, 8652/01 and 730/02, has submitted that the Petitioners in tiiese writ petitions, who are, in fact, private Respondents in W.P. (C) No. 2503/01, 2650/ 01, 2649/01 and 4796/01, had also participated in the selection process in pursuance of the advertisement issued in the year 1996 and they too stood selected. This apart, submits Mr. Phukan, these writ Petitioners were, again, selected in a separate selection process, by the new Selection Board, which was duly constituted by the State Government, and in pursuance of the recommendations made by this Selection Board, the appointments were made. Mr. Phukan submits that though the posts to be filled up were vacant, these private Respondents-Petitioners were arbitrarily appointed on fixed pay basis. These private Respondents-writ Petitioners are all, according to Mr. P.J. Phukan, entitled to regularization of their services. Mr. Phukan, therefore, urges upon this Court to issue appropriate Writ or Writs commanding the State-Respondents to regularize the services of these private Respondents-writ Petitioners.

11. Appearing for the State Respondents, Mr. B.J. Talukdar, learned Govt. Advocate, has submitted that the mere fact that a person's name appears in a select list, this fact, in itself, does not confer upon the candidate concerned an indefeasible right to appointment. In the case at hand, points out Mr. Talukdar, the Government constituted a new Selection Board, which cancelled the select lists prepared earlier and made a fresh select list of some candidates for appointment on ad-hoc basis and accordingly, some of the persons were appointed on fixed pay basis. Mr. B.J. Talukdar has, however, candidly submitted that some of these appointments have been made against filled up/non-existent posts and hence, the State Government has an open mind in the matter and shall abide by whatever directions are passed by this Court.

12. Reacting to the above submissions, Mr. Baruah has submitted that a select list, which has been prepared by one Selection Board, cannot be cancelled by another Selection Board and that the earlier select lists were valid, when the private Respondents were appointed. The subsequent Selection Board, reiterates

Mr. Baruah, was constituted in violation of the provisions of the relevant rules and since no proper selection process was initiated and no proper selection took place in accordance with the rules, the selection and appointments of the private Respondents are invalid in law.

13. Before entering into the discussion of the merit of the rival submissions made before me, on behalf of the parties, it is pertinent to note the provisions of the relevant rules for selection and appointment of teachers in High Schools and Higher Secondary Schools. A combined reading of the Assam High School (Provincialisation) Rules, 1977, and Assam Secondary Education (Provincialisation) Service (Amended) Rules, 1991, shows that recruitment of teachers of provincialised High Schools/High Madrasa and Higher Secondary Schools shall be made by direct recruitment on the basis of advertisement, test and interview to be conducted by the District Level Selection Board. Following the test and interview, to be conducted, the Selection Board shall prepare the select list, which shall be authenticated by the Director of Secondary Education, Assam, and upon being so authenticated, the select list shall be published constituency-wise and on the basis of such select list, Inspector of Schools and Deputy Inspector of Schools, as the case maybe, shall appoint the selected candidates in order of merit. All such select lists shall remain valid for one year from the date of their publication unless the Government extends the validity of the select lists for further period in public interest in consultation with the Selection Board.

14. It clearly follows from what have been noted above that the recruitment of teachers in provincialised High Schools and Higher Secondary Schools shall be made only upon publication of necessary advertisement in terms of Rule 6 of the Rules of 1977. The second requirement is that the select list is to be prepared by the Selection Board constituted in terms of Rule 7(2). The third requirement is that the select list can be acted upon only when the same is authenticated by the Director of Secondary Education. The fourth requirement is that the select list, upon being authenticated, as aforesaid, shall be published and such a list shall remain valid for one year from the date of its publication unless the Government chooses to extend the validity of the list for further period in terms of Rule 6(2) (f) of the Rules of 1991. What further follows from the above discussion is that a select list, which lapses by efflux of time, cannot be extended by the Government, for, extension of a select list is possible only so long as the select list remains valid. In other words, once the select-list stands expired by efflux of time it ceases to be valid and its operation cannot, therefore, be extended by the Government.

15. Keeping in view the above aspects of law, let me, now, turn to the case of the Petitioners in W.P. (C) No. 2650/01, 2503/01, 2649/01 and 4796/01. Out of these four writ petitions, W.P. (C) 2650/01 and 4796/01, as indicated hereinabove, relate to the candidates of Science Stream and the remaining two writ petitions, namely, W.P. (C) 2503/01 and 2649/01 relate to candidates of Arts

Stream. The selection of these candidates was, admittedly, done following the recruitment process, which started with publication of the advertisement in the, year 1996. In respect of the candidates covered by W.P. (C) 2650/01 and 4796/01 (which relate to Science Stream) the result was published on 06.04.98 and in the case of the remaining two writ petitions, namely, W.P. (C) 2503/01 and 2649/01 (which relate to Arts Stream) the result was, admittedly, published on 15.10.98. In terms of the provisions of Rule 6(f), these two select lists stood expired by efflux of time on 05.04.99 and 14.10.99 respectively, for, the Government chose not to extend the validity period of the lists. Once these 2(two) select lists stood expired on 05.04.99 and 14.10.99 as hereinbefore mentioned, the question of either validating the select lists or extending the validity thereof did not arise at all. Thus, long before the ban on the appointment of the teachers was imposed by the Government on 16.12.99, both the said two lists already stood expired.

16. What logically follows from the above discussion is that when the Government constituted the new District Level Selection Board vide its order, dated 23.2.2001, and directed, vide WT Message, dated 25.3.2001, the new Selection Board to select the persons for appointment as teachers on fixed pay of Rs. 2500/- p.m. from amongst those, who had already applied with treasury challans, the same did not amount to extension of the select lists, dated 06.04.98 and 15.10.98, aforementioned inasmuch as these lists already stood expired by efflux of time and once the select lists aforementioned so stood expired, the question of appointing anyone including the Petitioners of W.P. (C) Nos. 2650/01, 4796/01, 2503/01 and 2649/01 on the basis of these lists did not arise at all. Thus, the directions given by the Government as contained in WT message, dated 25.3.2001, cannot be taken to have revived or injected life into the said two select lists, which had already stood expired. When the lists so stood expired and the Government constituted a new Selection Board for making selections, the Petitioners in these writ petitions did not remain entitled to claim appointment on the basis of the said invalid select lists.

17. I may pause here to point out that Mr. Baruah has placed reliance on the decision of this Court in W.P. (C) 2936/01 (Nilima Sutradhar v. State of Assam, decided on 4.9.2003 contend that some of the private Respondents (who are Petitioners in W.P. (C) 730/ 02, 8683/01,8652/01) were appointed out of the select lists, dated 06.04.98 and 15.10.98 aforementioned; though these Respondents were placed below the writ Petitioners in the respective merit lists aforementioned and, hence, the writ Petitioners in W.P. (C) Nos. 2650/01, 4796/ 01, 2503/01 and 2649/01 ought to have also been appointed.

18. While dealing with the above aspects of the matter, it is of paramount importance to note that though the names of some of the private Respondents did appear, admittedly, in the select lists, dated 06.04.98 and 15.10.98, aforementioned, the fact remains that there is absolutely no material on record indicating that the private Respondents, who were subsequently appointed on

fixed pay basis, were selected out of the said two select lists. Far from this, the Government issued no direction to make further selection and/or appointment out of the earlier select lists, dated 06.04.98 and 15.10.98, aforementioned. In fact, the selection of these private Respondents, whose names appear in the earlier select lists, aforementioned, were made in terms of the directions issued by the State Government in the WT Message, dated 25.03.2001, aforementioned by a new Selection Board. In the absence of even an iota of materials on record, it cannot be said that the State Respondents have acted on the select lists, dated 06.04.98 and 15.10.98 aforementioned. Whether the appointment of the private Respondents aforementioned is legal and valid or not is a question, which I will discuss in the succeeding paragraphs of this judgment, but the fact remains that the appointment of these private Respondents having not been made on the basis of the select lists, dated 06.04.98 and 15.10.98, aforementioned, the writ Petitioners, in W.P. (C) Nos. 2650/01, 2503/01, 2649/01 and 4796/01, cannot be heard to say that merely because the names of some of the private Respondents happened to appear in the select lists, dated 06.04.98 and 15.10.98, aforementioned, the Government shall be treated to have acted upon the said select lists and thereby a right to claim appointments arises in favour of the writ Petitioners aforementioned.

19. Coming back to the case of Nilima Sutradhar (supra), it is of immense important to note that in the case of Nilima Sutradhar(supra),the Court, for reasons recorded in its decision, came to the conclusion that though the select list already stood expired, the Government had acted upon the list by giving appointment to some persons, whose names had appeared in the relevant merit list below the names of the Petitioners. Taking the view that the writ Petitioners, on account of such appointments, also has legitimate expectations to receive appointment, the Court issued directions for appointment of the writ Petitioners like Nilima Sutradhar. The cases at hand are on entirely different footing, hi the cases at hand, there is, as already indicated hereinabove, no material on record to indicate that the appointment of the private Respondents were made on the basis of the merit lists, dated 06.04.98, and 15.10.98, aforementioned. Far from this, the materials on record indicate that many of the private Respondents had not even participated in the earlier selection process and their names had not figured in the earlier select lists. Thus, the question of denial of legitimate expectation, as sought to be raised by Mr. Baruah, has no legal foundation in the fact and circumstances of the present case. As the facts of the present case are wholly different from what the facts were in the case of Nilima Sutradhar (Supra), the decision of this Court in Nilima Sutradhar (Supra) does not help at all the case of these writ Petitioners.

20. Though Mr. Baruah has also sought to derive strength for seeking appointment of the writ Petitioners in W.P. (C) No. 2650/01, 2649/ 01, and 2503/01 on the strength of the Apex Court's decision in Asha Kaul (supra), the facts of the case of Asha Kaul (supra) are not akin to, or similar as, the case of the present writ Petitioners. In Asha Kaul's case, the Petitioners were selected,

but after making some appointments from the select list, the Government did, not appoint the remaining persons, whose names figured in the select list. On such denial of appointment, the Petitioners approached the Court and the Apex Court took the view that though mere inclusion of the name of a candidate in the select list as laid down in *State of Haryana v. Subhash Chander Marwaha*, reported in (1986) 4 SCC 632, does not confer upon the candidate included therein an indefeasible right to appointment, the Government has the obligation to act fairly and the whole exercise cannot be reduced to a farce inasmuch as the Government after holding the selection process cannot arbitrarily refuse to approve the whole list.

21. In the case at hand, the writ Petitioners in W.P. (C) Nos. 2650/01, 4796/01, 2503/01 and 2649/01, have not approached this Court on the ground that though they stood selected as per the select lists, dated 06.04.98 and 15.10.98, aforementioned, they have not been arbitrarily appointed by the Government and/ or that they ought to have been appointed. Far from this, these writ Petitioners did not react at all, when the Government stopped making appointment from the said lists. These writ Petitioners, in fact, allowed the select lists to expire and become invalid. Even after the validity period of the select list expired, these writ Petitioners did not agitate. Amazingly enough, after expiry of the lists, when ban was imposed on appointments by the Government and/or even when the ban, so imposed, was lifted, these writ Petitioners did not approach this Court with prayer to issue Writs commanding the State Respondents to appoint these Petitioners as Assistant Teachers on the basis of the said two expired select lists. It was only when the private Respondents were appointed that the writ Petitioners came to the Court with the contention that since some of the private Respondents were placed below these writ Petitioners in the earlier merit lists and since some of the private Respondents had not even figured in the earlier select lists, the Government shall appoint these Petitioners too. I have already held, as indicated hereinbefore, that since the appointments of the private Respondents have not been made on the basis of the earlier select lists, no corresponding right of appointment accrues to these writ Petitioners. Thus, to the case at hand, the law laid down in *Asha Kaul (Supra)* has no implication at all.

22. Had it been the case of the writ Petitioners that they ought to have been appointed before the lists were allowed to expire, this Court could have been in a position to find out from the Government as to how many vacancies really existed at the time, when the advertisement was issued, in the year 1996, for filling up of 1200 vacancies. In view of, however, the fact that the writ Petitioners approached this Court only with the plea that since some of the persons have been appointed from the select lists in which their names were placed below the names of the writ Petitioners and that some of the persons, so appointed, were the ones, whose names did not figure at all in the select lists, and since this Court has, now, ascertained that the appointments of the private Respondents aforementioned were not on the basis of the earlier selection process, no

corresponding right of appointment, on the basis of the appointments of the private Respondents, can be claimed by these writ Petitioners.

23. Though it has been contended by Mr. Baruah that the new Selection Board constituted by the Government, on 23.2.2001, had illegally cancelled the earlier select lists, dated 06.04.98 and 15.10.98, aforementioned and that such cancellation was illegal, suffice it to mention here that since the select lists aforementioned already stood expired by efflux of time, the question of cancellation of the said select lists did not arise at all and merely because of the fact that the new Selection Board committed the error of cancelling the said select lists, (which already stood expired) such error/mistake cannot and does not validate the select lists, which already stood expired. In other words, the mere fact that the new Selection Board illogjically cancelled the lists aforementioned, such act of cancellation gives no right of appointment to these writ Petitioners.

24. What emerges from the discussion held above, as a whole, is that the Petitioners in W.P. (C) Nos. 2650/01, 2503/01, 4796/01 and 2649/01 have not been able to prove any case for seeking issuance of Writ/Writs commanding the Respondents to appoint these Petitioners as Assistant teachers of provincialised High Schools, High Madrassas and/or Higher Secondary Schools. This does not mean, I must hasten to add, that this Court has approved the appointments of the private Respondents, who are writ Petitioners in W.P. (C) Nos. 8683/01, 8652/01 and 730/02, aforementioned.

25. On reverting to the case of the private Respondents (i.e., Petitioners in W.P. (C) 8683/01, W.P. (C) No. 8652/01 and W.P. (C) No. 730/ 02), what becomes glaringly noticeable is that the State Government's directions, vide the WT Message, dated 25.03.01, was to select candidates on the basis of the pending applications. There is absolutely no material on record to show nor is it averred anywhere in these writ petitions by these Respondents-Petitioners that any fresh advertisement was issued following the directions given by the Government vide its WT message, dated 25.03.2001 nor is there any material on record to indicate that the applications, which the Government, vide the WT message, dated 25.03.2001, directed to be considered by the new Selection Board had been filed, submitted pursuant to any public advertisement. How these applications came to be filed is really a mystery. This apart, there is also no material on record to show that any written test and/or interview took place of the candidates on, the basis of any advertisement issued in terms of the WT message, dated 25.03.2001, aforementioned. How these persons were selected is really shrouded in mystery.

26. In other words, in the case of the Respondents aforementioned, as already held above, no proper selection process in terms of the relevant rules was followed in selecting and appointing the private Respondents. Without entering into the controversy raised by Mr. Baruah as to whether the new Selection Board constituted by the Government, vide its order, dated 23.2.2001, aforementioned

was in accordance with the relevant rules or not, the fact remains, if I may reiterate, that before or after the directions contained in the WT message, dated 25.03.2001, aforementioned, no advertisement was published in terms of the relevant rules, no proper selection process took place and the private Respondents, as the materials on record stand, were arbitrarily recruited. This apart, the WT message, dated 25-03-01, aforementioned more than clearly, mentioned that the selection and appointment shall be on fixed pay basis of Rs. 2500/-. Acting upon this direction, appointment of these Respondents were also given on fixed pay basis. These Respondents happily accepted the appointments and started working. They did not agitate for giving them regular appointments. I have already indicated hereinabove that the selection of these candidates is shrouded in mystery and their appointments can, at best, be said to be de-hors the relevant rules. This apart, these Respondents-Petitioners knew, when they received appointments, that their selection as well as appointments were on fixed pay basis; hence, they cannot, now, claim that they ought to have been appointed as regular Assistant Teachers and their appointments deserve to be regularized. This kind of backdoor entry into service by adopting procedures alien to the recruitment rules cannot be encouraged by the Court.

27. Confronted with the above situation, Mr. P.J. Phukanhas submitted that Rule 15 of the Rules of 1977 empowers the Government to relax, if need be, the rules for appointment of teachers. Apart from the fact that essential conditions of recruitment to service, as laid down by the Division Bench of this Court in *Ananda Ram Baruah v. State of Assam*, reported in 2003 (2) GLT 78, cannot be relaxed, the Government, in the present case, having not made regular appointments, cannot be said to have relaxed the rigour of the relevant recruitment rules. The case at hand of the Respondents-Petitioners, is in fact, not a case of relaxation; rather, it is a case of unfair and illegal appointment and the Court must not encourage such selection and appointments.

28. Coupled with the above, one can also not lose sight of the fact that when the appointments of the private Respondents aforementioned were challenged by instituting writ petitions, namely, W.P. (C) Nos. 2650/01, 2503/ 01, 2649/01 and 4796/01, these private Respondents (who later on, became Petitioners in W.P. (C)Nos. 8652/01, 8683/01 and 730/02) appeared in the writ petitions as Respondents, but they did not file any affidavit-opposition. What they did was to move this Court byway of W.P. (C)Nos. 8683/01 and 8652/01. In these writ petitions, these Respondents-Petitioners, as already indicated hereinabove; suppressed the fact that their appointments were under challenge before this High Court and that interim directions had already been passed against them. Suppressing these facts, they, thus, approached this Court with the plea that there was a "conspiracy afoot" to oust them from service, though they stand duly selected and, on the strength of such pleas, they obtained interim directions, whereby their ouster was stopped by this Court. Subsequently, by filing writ petition i.e. W.P. (C) No. 730/02, all these Respondents combined together and sought regularization of their services.

29. It is, thus, clear that these Respondents-Petitioners were playing hide and seek with this Court and had not approached this Court with clean hands. A person, who approaches writ Court with such modus operandi, cannot inspire confidence of the Court and cannot claim any equitable relief from the Court in exercise of the writ jurisdiction.

30. What crystallizes from the above discussion is that the writ Petitioners in W.P. (C) Nos. 2650/01, 2503/01, 2449/01 and 4796/01 aforementioned are not entitled to any relief inasmuch as these writ Petitioners are found to have no legal or fundamental right to be appointed on the basis of Select lists, dated 06.04.98 and 15.10.98, aforementioned, particularly, when the period for each of these lists has expired and the State Respondents are not proved to have acted upon these lists for giving any appointment after the expiry of the validity period of the lists. In other words, since these writ Petitioners could not establish violation of any of their legal or fundamental rights by the appointment of the private Respondents on fixed pay basis, the appointments of the private Respondents cannot be interfered with. Moreover, as the present writ Petitioners tried to establish violation of their individual rights, present writ petitions cannot be treated as PIL and, therefore, when the appointments of the private Respondents have not, in any way, affected the individual rights of the present writ petitions, the question of setting aside the appointments of the private Respondents does not arise at all. So far as the private Respondents-cum-writ Petitioners in W.P. (C) Nos. 8652/01, 8683/01 and 730/02 aforementioned are concerned, they have no right, as indicated hereinabove, to obtain the relief of regularization of their services. Hence, these private Respondents-cum-writ Petitioners are also not entitled to any relief. However, it is imperative for this Court to mention that the appointment of the private Respondents aforementioned have been found to be grossly illegal and in view of the fact that their appointments are in the form of temporary arrangements and the State Respondents have been indicated in the preceding paragraphs of this judgment, have been submitted that the State Government has an open mind in the matter of appointment of the private Respondents and, further, in view of the fact that the appointment of the private Respondents fall in the domain of the public appointments, this Court, sitting as a writ Court, cannot wholly ignore the gross illegality committed by the State. Therefore, while not interfering, at this stage, with the appointments of the private Respondents as teachers on fixed pay basis, the State Respondents are hereby given the liberty to take appropriate steps in the matter in the light of the observations made hereinbefore.

31. In the result and for the reasons discussed above, all these writ petitions fail and the same are dismissed. The interim directions passed in all these writ petitions shall accordingly stand vacated. The State Respondents are, however, given the liberty to take appropriate steps in the matter of appointments of the private Respondents aforementioned in the light of the observations made hereinbefore.

32. No order as to costs.