

---

**(2013) 05 GAU CK 0067**  
**In the Gauhati High Court**  
**Case No : WP (C) No. 2346 of 2008**

|                                      |            |
|--------------------------------------|------------|
| Sri Bharat Chandra Sarkar and Others | APPELLANT  |
| Vs                                   |            |
| The State of Assam and Others        | RESPONDENT |

---

**Date of Decision :** 08-05-2013

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 162, 309

**Citation :** (2013) 05 GAU CK 0067

**Hon'ble Judges :** Hrishikesh Roy, J

**Bench :** Single Bench

**Advocate :** B. Ahmed, Mr. N. Hoque, Mr. S. Rahman, Mr. S.K. Deori and Mr. H.I. Choudhury, for the Appellant; M.R. Pathak, SC, Education for the Respondents 1, 2, 4, 5, 6 and 7 and Mr. D. Gogoi, SC, Finance for the Respondent No. 3, for the Respondent

**Final Decision :** Allowed

---

## Judgement

Hrishikesh Roy, J.—Dr. B. Ahmed, the learned Counsel argues for the petitioners. The respondents 1, 2, 4, 5, 6 & 7 are represented by Mr. M.R. Pathak, the Standing Counsel, Education. The respondent No. 3 is represented by Mr. B. Gogoi, Standing Counsel, Finance. The private respondents 8 to 132 are un-presented although notices were duly served on them. The petitioners in the WP(C) 2346/2008 are unemployed and are aspiring for appointment to the post of Teacher in L.P./ME Schools, in Bongaigaon district. They challenge the Government circular dated 10.8.2000 issued by the Commissioner and Secretary to the Government of Assam, Education Department, whereby, decision was taken to regularize the services of irregularly appointed teachers. The petitioners specifically challenge the order of the Director of Elementary Education (DEE), Assam, issued on 30.1.2006 and the order dated 22.4.2008 issued by the District Elementary Education Officer (DEEO), Bongaigaon, whereby services of 125 teachers in Bongaigaon district were regularized, purportedly in pursuant to the finding of the S. Monoharan Enquiry Committee (hereinafter referred to as "the Monoharan Committee") and the recommendation of the Task Force/Districts

Level Screening Committee.

2. The petitioners project that after advertisement was issued on 3.9.1991, the last regular selection of teachers in Bongaigaon District was held on 6.5.1993 and in that process, 54 in L.P. and 44 in M.E. Schools were selected for appointment. Since the regularization of teachers in Bongaigaon District was unauthorizedly attributed to the finding of the Monoharan Committee, Dr. Ahmed made elaborate submissions on the scope and ambit of the functioning of the Monoharan Committee:

3. The 3 petitioners in the WP(C) 7492/2005 are serving as honorary teachers in L.P. Schools of Karimganj district. They challenge the regularization of service of the 123 irregular teachers of Karimganj district (private respondents 16 to 138). The petitioners contend that such regularization is impermissible in law and regular vacancies in Karimganj district should not be exhausted through connivance and manipulation of the departmental authorities and self-serving beneficiaries.

4.1 On 16.11.1991, the Assam Government sanctioned 5474 posts of Teachers for the Middle Schools in the State. Of these newly created posts, 3775 posts were similarly utilized for provincialising of service in 755 Middle Schools and the remaining sanctioned posts were similarly utilized for provincialising teachers in schools, under the Tribunal Sub Plan (TSP) and schools in Schedule Caste (SC) areas in Assam.

4.2 Thereafter 64 posts for teachers in Middle Schools in Cachar district were allotted. Appointments to 64 were given in Cachar district but since these appointments were made without any advertisement and selection and the allotment of the 64 posts to Cachar district by the then Additional Director of Elementary Education was found to be without any authority, instruction was issued by the DEE, Assam on 20.12.1994 to terminate the services of the illegally appointed teachers of Cachar district. Consequentially by the order dated 26.12.1994 the DEEO, Cachar cancelled the appointment of 63 (from the group of 64) teachers in Cachar district.

4.3 The 63 aggrieved appointees of Cachar challenged the termination by filing Civil Rule 324/1995 and this Court passed interim order to protect the ouster of those petitioners. But since the appointments were made without due sanction of posts, salary was not paid to the appointees and to decide on the resultant confusion in Cachar district, Mr. S. Monoharan, IAS, the then Commissioner of Lower Assam Division was ordered to enquire on the appointment made to non-existent posts in Cachar district. The Committee gave its report on 16.9.1996 where the Commissioner indicated that appointment to the 63 persons in Cachar district was made for extraneous consideration through blatant misuse of power by the departmental officers and political leaders.

4.4 After the preliminary report was submitted by Mr. S. Monoharan, this Court on 12.3.1996 in the W.A. 59/1995 and connected appeals directed Mr.

Monoharan to conduct a wider enquiry into illegal appointments at the State level and the Government through notification dated 9.9.1996 ordered for an administrative enquiry to be conducted by Mr. S. Monoharan. The ambit of the enquiry was stipulated as follows:

Government of Assam Orders by the Governor Elementary and Secondary Education Department

Notification

Dated, Dispur, the 9th September, 1996.

No A(1) E.425/96/15: Whereas the Governor of Assam is of the opinion that it is necessary to inquire into the irregular and illegal appointment of school teachers in Primary Middle High and Higher Secondary Schools of Assam during the period of 1st March 1991 to 30th April 1996 and whereas the Governor in his address to the Assam Legislative Assembly on 13th June 1996 had announced that the Government of Assam in the Education Department would take firm and effective steps to put an immediate end to the widespread irregularities in the appointment of teachers and the rampant corruption and malpractices prevailing in the department during the tenure of the erstwhile Government and all such case of irregularities and malpractices will be enquired into

Now, therefore, in pursuance of above, the Governor of Assam is pleased to order an administrative inquiry, to be conducted by Shri S. Manoharan, IAS, Commissioner of Lower Assam Division and Hills and Barak Valley Division.

The terms of references of the inquiry are stated below:

1. The inquiry will cover the Higher Secondary, Secondary as well as Elementary Education in the whole State of Assam.
2. The period to be covered by the inquiry will be from 1.3.1991 to 30.4.1996.
3. The inquiry will find out the following separately for (1) Lower Primary Schools (2) Upper Primary Schools (3) Secondary Schools (viz. High Schools including Madrasa and High Madrasa) and in respect of the stage upto and including Class X in the Higher Secondary Schools and (4) the stage covering Class XI and XII in the Higher Secondary Schools
  - a)(i) Total number of permanent and temporary posts of teachers as on 1.3.1996 states separately for each category of posts viz. Asstt. Teachers Junior Teacher, Graduate Teacher, Subject Teacher, Classical Language Teacher etc.
  - (ii) Total number of temporary posts of teachers created by the Government during the period from 1.3.1991 to 30.4.1996 for each category of posts stated under a(i) above.
  - (iii) Total number of vacancies in the teacher posts caused due to retirement death, promotion etc. within the period from 1.3.1991 to 30.4.1996 for each category of posts stated under a(i) above.

b) Total number of teachers appointed during the period from 1.3.1991 to 30.4.1996 under each category of posts stated under a(i) above.

c) Details of appointments made under each category of posts stated under a(i) above during the period from 1.3.1991 to 30.4.1996 stating specifically

Whether the appointment were made as per the procedure prescribed by rules or staring circulars of the Government.

Whether any appointments were made for which posts did not exist and if so the names and designations of the authorities who made such appointments mentioning the present place of posting of such authorities.

d) Any other relevant matter arising out of (a), (b) and (c)

4. The inquiry will also make recommendations to stop and check recurrence of such illegal appointments in future.

5. All concerned Departments and authorities are hereby asked to make available necessary records and information/data to the inquiry authority and also to provide facilities and cooperation to him in connection with the inquiry. They are also hereby asked to make available to the inquiry Authority any officer or staff as required by him for examination in connection with this inquiry and the said officer or staff when so required shall appear before the inquiry authority for examination and furnish faithfully and accurately the information as available with him to the inquiry authority.

6. This inquiry will not cover any matter which is covered by the inquiry ordered by the Hon'ble Gauhati High Court or any other Court in any pending cases before these Courts.

7. The inquiry Authority will submit his report to the Government within 31st October, 1996.

Sd/- (T.K. Kanilia) Chief Secretary to the Government of Assam 9.9.96

5. Mr. Monoharan found that illegal appointments of 4908 in Primary Schools; 3399 in Middle Schools; 1612 in High Schools and 115 in Higher Secondary Schools were made.

The Committee also found a category of irregularly appointed person and in the report, 7668 in Primary Schools; 5000 in Middle Schools; 1658 in High Schools and 218 irregularly appointments in Higher Secondary Schools were specified.

6. After the report of the Monoharan Committee was placed before the State Cabinet, separate Task Force headed by J.P. Prakash, IAS and another by U.S. Banerjee, IAS were constituted. The job of the task force was to identify the officials responsible for making illegal/irregular appointments and also to identify the beneficiaries of the illegal process.

In May, 1997, the Task Force found that during the tenure of the then Director of

Secondary Education, Assam, Director, Elementary Education, Assam and the tenure of the DEEO's of Sivasagar, Karimganj, Kamrup, Tezpur, Bongaigaon, Dhemaji and the D.I. of Schools of Guwahati, Lakhimpur and Tinsukia, large scale illegal appointments of teachers were made. The modus operandi of the illegal appointments conversion of single teacher primary schools to double teachers schools, appointment of non-selected persons and appointment beyond the available vacancies. The Task force recommended termination of non-selected and excess appointees.

The 2nd Task Force in their report of September, 1998 found that 15424 persons were appointed irregularly without following the Rules of Recruitment and 6659 persons were appointed illegally i.e. without posts being available. Around 96 officers of the Education Department involved in the process of illegal appointment were identified by the Task Force. The State Cabinet on 10.10.1998 considered the report of the Task Force and decided to compulsorily retire, the identified officers, who have completed 25 years of service and recommended disciplinary action against the other identified officers including retired officers.

7. According to the petitioners, the Monoharan Committee while examining the issue of illegal appointments in Cachar and few other districts, never made any enquiry into appointments in Bongaigaon or Karimganj district. When the Monoharan Committee's report on the 63 illegal appointments in Cachar district was placed for consideration before the State Cabinet, the figures of illegal appointees was deliberately inflated and according to the petitioners, from the 63 illegal appointments identified by the Monoharan Committee, the figures were initially raised to 149 and to 193 thereafter. The State Cabinet on the basis of inflated figures mischievously furnished by the departmental officials, considered the report of the Monoharan Committee on 21.2.2000 and 24.2.2005.

8. In the Cabinet Memorandum dated 15.9.1997, the report given by the 6 Members Task Force was considered and it was recorded that 15424 persons were irregularly appointed in Assam without following the Rules of Recruitment and another 6659 persons were appointed illegally, without any posts being available. Thus total 22083 irregularly and illegally appointed cases were detected by the Task Force. The Government then decided to regularize those irregularly appointed persons through a screening process against the existing vacancies. But for the illegally appointed persons, a decision was taken for fresh recruitment in a phased manner, by discharging them at first instance.

9. In pursuant to the Cabinet decision dated 21.2.2000, the Assam Government decided to regularize 3511 irregularly appointed teachers through a screening process. Simultaneously a decision was taken to terminate the illegally appointed persons, who were appointed against non-existent posts.

10. In pursuant to the Government decision, on 24.1.2002 information was sought by the DEE, Assam on the names of irregular and illegally teachers. When the services of teachers irregularly appointed during 1.3.1991 to 30.11.1996

were found to have been made without any posts and consequently the appointees couldn't be paid their salary, the Government through the communication dated 3.4.2002 asked for proposals to be submitted, for retention of the posts against which, the irregularly appointed teachers were regularized.

11. Thereafter when intimation was received that services of 3511 irregularly appointed persons were not yet regularized, the Government prepared a District wise list of 1921 persons appointed in LP/ME/High Schools and ordered for adjustment of services of those 1921 appointees through upto date retention of their posts. But upon regularization, through the letter dated 25.11.2002, the appointees were held disentitled to claim any post unpaid salary.

12. Although the Monoharan Committee never made any enquiry into appointments in Bongaigaon district and consequently the adjustment exercise wasn't applicable to the Bongaigaon appointees, an illegal process for regularizing services of illegal appointees in Bongaigaon district was started and initially the DEE, Assam referred to 125 such persons of Bongaigaon alleged to have been considered by the Monoharan Committee. These 125 ME School Teachers was proposed to be regularized by the Government purportedly through the Cabinet decision dated 24.2.2005 and curiously this was recorded in the impugned communication of the DEE, Assam made on 30.1.2006.

13. In the next communication of 22.4.2008, the DEEO, Bongaigaon reported that 505 ME School Teaches were appointed in Bongaigaon during 1993-94 by the then DEEO and these appointees were allegedly considered by the Monoharan Committee and the District Screening Committee. Accordingly recommendation was made for regularizing the services of 505 excess teachers of Bongaigaon district, in addition to 125 teachers who were earlier recommended to be regularized in the district.

14. It is argued by the petitioners that soon after the Government Circular of 10.8.2000 was issued indicating the modalities of District wise regularization of the irregular appointees, fake appointments were fabricated by unscrupulous elements at the District Level to project that, the private respondents were appointed during 1991-1996-----the period covered by the recommendation of the Monoharan Committee. Thus although Monoharan Committee had never identified any irregular/illegal appointees of either in Bongaigaon or Karimganj districts, vested groups fabricated documents to falsely project that appointments in these 2 districts were covered by the Monoharan Committee and accordingly list(s) of fake appointees were prepared and process was started to prepare the Pay Bills of those undeserved beneficiaries.

15. In order to confer underserved benefits in Bongaigaon and Karimganj district, wrong interpretation of the Manoharan Committee's recommendations was made to fabricate fake list(s) of appointees. The names figuring in these fake lists were never subjected to any screening exercise nor they had appeared before any selection board. Therefore even by the State evolved process, legitimacy can't

be conferred to these undeserved beneficiaries in these two districts.

16. Significantly in the report dated 25.8.2000 given by the D.I. of Schools, Karimganj it was reflected that none of the 123 so called teachers were issued appointment letters from the office of the D.I. of Karimganj and in fact fictitious and forged appointment letters were prepared to project that appointments were genuinely made. On the basis of this fraudulent exercise, 123 persons were falsely projected to have been identified by the Monoharan Committee as irregular appointees of Karimganj District and on this false premises, 123 persons were sought to be regularized, through the impugned order dated 5.2.2005.

17. Through a similar modus operandi in Bongaigaon district, separate lists of irregularly appointed teachers were generated as those purportedly identified by the Monoharan Committee's report and the list of fake teachers in Bongaigaon district were notified, modified, re-modified through connivance of departmental officials and illegal beneficiaries and consequently the service of 125 (respondent No. 8 to 132) persons were regularized, in vacancies of elementary teachers in Bongaigaon district.

18. Before proceeding any further it may be appropriate now to take note of the Assam Elementary (Provincialization) Rules, 1977 [hereinafter referred to as "the 1977 Rules", which governs the mode of recruitment of teachers in elementary schools. Under Rule 3 of the 1977 Rules, applications are to be invited by the Director, Elementary Education through advertisement in newspapers. Thereafter the applications are to be processed by the Selection Board and constituency wise Select List is required to be prepared. The Select List is required to be authenticated and published and appointments are to be made on merit from the authenticated Select List.

19. A bare reading of the mode of recruitment prescribed by the 1977 Rules shows that services of the private respondents were sought to be regularized dehors the Rules since, none of the private respondents were selected by a competent Selection Board. The Rules do not approve constitution of Inquiry Committee/Task Force headed by senior officials to make departure from the prescribed process of appointment and consequently the premises on which the private respondents were regularized, is contrary to the statutory prescription.

20. It must also be noted that the 1977 Rules were framed under Article 309 of the Constitution of India and the Rules were published in the Assam Gazette, on 16th March, 1977. Therefore when the Rules framed under Article 309 cover the field, it is difficult to see how an unknown process of recruitment and regularization of service of teachers, can be adopted by the State. In any case when the 1977 Rules provide for the mode of recruitment, a so called process of regularisation can't be evolved to accord legitimacy to illegal process whereby, hundreds of people whose names were inserted in fabricated list(s) of appointees, are sought to be regularized in service.

21. The Supreme Court in *Nazira Begum Lashkar and Others Vs. State of Assam and Others*, held that appointment made without following the Statutory Rules, through tampering of records, will disentitle the appointees to claim any equitable relief. On the Government's power to regularize service of irregular appointees, the Apex Court in *A. Umarani Vs. Registrar, Cooperative Societies and Others*, declared that when appointments were made in contravention of Rules, the State can't invoke the power under Article 162 of the Constitution to regularize such illegal appointment. Similarly in *Punjab Water Supply and Sewerage Board, Hoshiarpur Vs. Ranjodh Singh and Others*, , the Supreme Court held that a scheme under Article 162 can't prevail over Statutory Rules or Rules framed under Article 309 of the Constitution. In another often quoted decision in *Ashwani Kumar and Others Vs. State of Bihar and Others*, , the Apex Court was examining appointment in excess of sanctioned posts. Since appointments were made without following the Rules, the Court held that such appointments were illegal and no right would accrue to the appointees.

22. The decision of the State Cabinet to regularize the service of the illegal/irregular appointees only because they possessed the qualification can't at all be approved since it will amount to appointment without following the due process. If this is permitted, fair opportunity of appointment prescribed by Article 14 and 16 will be rendered meaningless.

23. The report of the Deputy Commissioner, Karimganj given on 22.6.1997 to the government reveal that large scale appointment orders were fabricated in the district and clever attempts were made to cover up the fake appointments. The illegalities were confirmed by a few departmental officials (who were not involved in the illegal process) and they reported that forged appointment orders were issued. Moreover the records of appointment were not found in the office of the D.I. of Schools, Karimganj. Yet although the Monoharan Committee hadn't recommended the case of any L.P. School teachers in Karimganj district, a list of 123 so called appointees was prepared to project that they were appointed during 1991-96. Records were fabricated to project that the appointees are working continuously and through such manipulation, undeserved regularization benefit was given to the private respondents.

24. The private respondents in these two cases were not selected or appointed through due process under the 1977 Rules. The prescribed mode doesn't permit entry into regular service through process of adjustment/regularization. Therefore the decision of the State Cabinet (assuming that Cabinet decision applies to the beneficiaries in Bongaigaon and Karimganj district) being contrary to the statutory Rules can't in my view, be legally applied for regular appointment.

25. The beneficiaries/respondents herein were shown to be appointed through a non-legitimate process as there was no selection or interview and records were fabricated to falsely show that appointments were given. In such circumstances, the private respondents do not deserve any equitable consideration. Significantly,

although notices of these cases were published in newspapers, the private respondents have chosen to abstain from the proceeding. Therefore it can be reasonably presumed that the beneficiaries are aware of their vulnerability and that is why, they have not appeared to defend their appointment.

26. In the above backdrop this Court is to consider how the illegalities can be addressed. The private respondents are beneficiaries of Bongaigaon and Karimganj districts and it is seen that they were not recruited through any legally permitted process. In Karimganj, appointment letters were fabricated since the office of D.I., Karimganj doesn't have record of any of those 123 appointments. But taking advantage of the Government decision to regularise the service of irregular appointees identified by the Manoharan enquiry committee, the private respondents in the WP(C) 7492/2005 were falsely projected as appointees of this category. Thereafter through the impugned order of 5.2.2005 (Annexure-22), the beneficiaries of the fraudulent process were regularized.

27. Likewise in Bongaigaon district, different list(s) of irregularly appointed teachers were generated by falsely projecting the names in the list as those identified by the Manoharan Committee and the task forces. But in reality, the last regular appointment in Bongaigaon was made in the year 1993 and since none in this district was identified to be a irregular appointee, it is obvious that the regularization of beneficiaries in Bongaigaon district, couldn't have been based on the recommendation of Manoharan Committee. Therefore it is clear that in this district also, so called list of irregularly appointed teachers were generated.

28. The appointments in Bongaigaon and Karimganj districts in these 2 proceedings were made by ignoring the Statutory Rules. The decision of the Government to regularize the service of the irregularly appointed teachers, was taken advantage of by unscrupulous elements to regularise the service of those who never participated in selection process. Moreover these beneficiaries were not appointed through any competent appointment order. Therefore, the private respondents can't be put in the category of irregular appointees and it has to be declared that their appointments are absolutely illegal. In such circumstances, the State can't invoke the powers under Article 162 of the Constitution to regularize the service of people who were appointed through fraudulent process. Here appointment orders were fabricated and fake appointment lists were generated and there was no declaration by the Manoharan Committee that the private respondents are in the category of irregular appointees. In such backdrop having regard to the ratio of the Supreme Court decisions referred to above, I feel that the petitioners have made out a case for judicial intervention. Consequently the regularization of the respondent Nos. 8-132 in the WP(C) No. 2346/2008 is held to be unsustainable and it is declared accordingly by quashing the impugned orders. On the same reasoning, the adjustment/appointment in Karimganj district of respondent Nos. 16-138 in the WP(C) 7492/2005 are held to be illegal and consequently the impugned order dated 5.2.2005 (Annexure-22)

issued by the DEE, Assam is quashed. In view of this conclusion the State is directed to ensure that their services are discontinued forthwith. The writ petitions are allowed accordingly.