
(2003) 08 GAU CK 0017
In the Gauhati High Court
Case No : Writ Appeal No. 536 of 2002

State of Assam and Others	Vs	APPELLANT
Paritosh Karmakar and Others		RESPONDENT

Date of Decision : 05-08-2003

Acts Referred:

Assam Elementary Education (Provincialisation) Rules, 1997 — Rule 3

Citation : (2005) 1 GLR 533 : (2003) 2 GLT 593

Hon'ble Judges : P.P. Naolekar, C.J.; Iqbal Ahmed Ansari, J

Bench : Division Bench

Advocate : G. Gopal, for the Appellant; A.S. Choudhury, S.K. Saha and M. Bhuiya, for the Respondent

Final Decision : Allowed

Judgement

I.A. Ansari, J.—A long list of legal battles has, eventually, brought this appeal for hearing and decision before us. For the purpose of effective decision in this appeal, it is imperative to look into some of the relevant facts as reflected from the materials on records and the submissions made on behalf of the parties appearing before us.

2. In a narrow compass, the facts leading to the present appeal may be narrated as follows :

Department of Education, Government of Assam, sanctioned vide order, dated 18.1.1995, forty posts of Assistant Teacher of LP Schools for Bilasipara Sub-Division in the District of Dhubri, twenty of these posts being meant for Bilasipara West Constituency and the remaining twenty posts being for Bilasipara East Constituency. As a result of a selection process set on move following the said sanctioning of posts, respondent Nos. 1 to 39 made applications seeking appointments. On 8.5.1995, Bilasipara Sub-Divisional Level Advisory Board for Elementary Education (for short, "Advisory Board") selected 40 numbers of candidates, 20 of these candidates being meant for Bilasipara West Constituency

and the remaining 20 numbers being meant for Bilasipara East Constituency. For the appointments made in respect of 20 candidates so selected for Bilasipara East Constituency, there is no dispute. The dispute is confined to selection and appointment of 20 number of candidates for Bilasipara West Constituency. The twenty candidates, who were selected as aforesaid, on 8.5.1995, are respondent Nos. 21 to 39 in the present appeal. This group of selected candidates is hereinafter referred to as "Group-A". Subsequently, another list of 20 candidates was finalised and approved by the Advisory Board on 18.8.1995 and these candidates are respondent Nos. 1 to 20 in the present appeal. This group of candidates is hereinafter referred to as "Group-B". Before, however, the candidates of Group-B was selected, candidates of Group-A filed a writ petition in this Court, namely, Civil Rule No. 3231/1995, wherein they contended, inter-alia, that the Government of Assam vide order, dated 18.1.1995, had sanctioned 40 posts of teachers for LP Schools and out of the 40 posts so sanctioned, 20 posts had been allotted to Bilasipara West Constituency by Resolution No. 11, dated 18.1.1995, of the Advisory Board and that in respect of Bilasipara West Constituency, the petitioners (i.e. Group-A) stood duly selected, but despite the fact that the select list had been prepared by the Advisory Board and approved by the Director of Elementary Education, Assam, the State-respondents were trying to make appointment of candidates on the basis of a list submitted by the MLA/Minster of the Constituency. Learned Single Judge, while disposing of Civil Rule No. 3231/1995 aforementioned, on 9.8.1995, directed the respondents to appoint selected candidates to the twenty number of sanctioned posts of the said Constituency strictly in terms of the selection made by the Advisory Board and approved by the Director of Elementary Education. After passing of this order, however, the Advisory Board gave, on 18.8.1995, approval to the another list of candidates, which formed Group-B. This list, it is alleged, was finalised in accordance with the list of names suggested/recommended by the local MLA. Subsequent thereto, PUBLIC INTEREST LITIGATION No. 1487/1997 was filed before this Court by one Md. Asraful Alam complaining against the selection lists, dated 8.5.1995, aforementioned, which had already become the subject-matter of consideration in Civil Rule No. 3231/1995 aforementioned. A Division Bench of this Court disposed of the said Public Interest Litigation by order, dated 25.4.2000, observing therein that the order dated 9.8.1995, passed by the learned Single Judge in Civil Rule No. 3231/1995 still hold good and remains operative and, hence, the Public Interest Litigation would not be maintainable. The candidates of Group-B, then, filed a writ petition, which came to the registered as Civil Rule No. 6332/1996. In this writ petition, the petitioners (i.e. members of Group-B) had sought for issuance of writ(s) commanding the State-respondents to appointed the petitioners therein, who, as hereinbefore indicated, stood selected as per the Advisory Board's decision, dated 18.8.1995. This writ petition was dismissed by order, dated 7.5.1997, by a learned Single Judge of this Court on the ground that a person selected has no right to receive appointment inasmuch as it is the prerogative of the authority concerned either to make or not to make appointment from a select list. This decision was

challenged in Writ Appeal No. 341/1997. This writ appeal was disposed of by a Division Bench, on 31.7.1997, with the direction to the State respondents to consider the provisions of Sub-rule (vi) of Rule 3 of the Assam Elementary Education (Provincialisation) Rules, 1997 (for the sake of brevity, "Rules of 1997") and to record approval to the list prepared by the Selection Committee within a period of two weeks. Following the direction of then Division Bench in Writ Appeal No. 341/1997 aforementioned, the select list, dated 18.8.1995, which related to the candidates of Group-B was approved by the Director of Elementary Education, Assam, on 10.5.1998 and acting upon this appointment orders were issued, on 26.6.1998, in respect of the candidates of Group-B and they joined their respective posts on 13.6.1998. The members of Group-B have accordingly undergone requisite training and received necessary pay scale. Thereafter, by WT Message, dated 23.3.1999, issued by the Secretary to the Government of Assam, Education Department, the Deputy Inspector of Schools, Bilasipara, was directed to terminate the services of the candidates of Group-B in view of the Contempt Case No. 1/1999 and to appoint the candidates of Group-A, who already stood selected by Advisory Board as far back as on 8.5.1995 and for whom the Director of Elementary Education, Assam, had already accorded approval. The directions contained in the said WT Message dated 23.3.1999, were challenged by the candidates of Group-B in Writ Petition (Civil) No. 1717/1999 and on the strength of the interim order dated, 8.4.1999, passed herein, the candidates of Group-B have continued in service. However, the said interim order was vacated by order, dated 16.2.2001, passed in Misc Case No. 752/1999. By judgment and order, dated 12.4.2002, the writ petition was ultimately allowed with direction that the services of the petitioners (i.e. candidates of Group-B) as well as the private respondents (i.e. candidates of Group-A) would not be disturbed. Feeling aggrieved, the State-respondents have preferred this appeal, their case being, briefly stated, thus : The candidates of Group-B were selected by the Advisory Board, on 18.8.1995, by resolution No. 11, dated 8.5.1995; out of 40 posts of LP School teacher sanctioned for Bilasipara Sub-Division, 20 number of posts were allotted to Bilasipara East Constituency and the remaining 20 posts to Bilasipara West Constituency. The Advisory Board, on 8.5.1995, selected and approved 20 numbers of candidates for Bilasipara East Constituency and also 20 numbers of candidates for Bilasipara West Constituency. Though approved by the Advisory Board, the selected candidates (who formed Group-A), could not be appointed for sometime. Subsequently, however, the Advisory Board vide resolution No. 16, dated 18.7.1995, requested the local MLA to submit a list of another 20 number of candidates for appointment as teachers for Bilasipara West Constituency on account of the fact that till then, no such list had been submitted by the local MLA. Thereafter, the Advisory Board vide its resolution No. 7, dated 18.8.1995, selected and approved 20 number of candidates (i.e. candidates of Group-B) as per the list submitted by the local MLA and communicated by the Director of Elementary Education Officer, Dhubri, vide his letter, dated 20.7.1995. After approval of the list of these candidates (i.e. members of Group-B), the Advisory

Board requested the Deputy Inspector of Schools, Bilasipara, to appoint the candidates of Group-B, but the Advisory Board did not cancel or reject the list of candidates already selected on 8.5.1995 vide resolution No. 11, dated 8.5.1995, (i.e. the select list in respect of the members of Group-A). Therefore, although there were altogether 40 number of sanctioned posts of teacher allotted for the whole of Bilasipara Sub-Division consisting of East as well as West Constituencies., the Advisory Board selected and approved 20 candidates for Bilasipara East Constituency, but in respect of Bilasipara West Constituency as many as 40 candidates have been selected. Thus, the total number of selected candidates became 60 as against 40 number of allotted/sanctioned posts and on realising this mistake, when the State-respondents attempted to correct the situation in accordance with law and issued W.T. Message, dated 23.3.1999, directing appropriate authority to terminate the services of those, who were appointed following the selection made on 18.8.1995, on the basis of the list furnished by the local MLA (i.e. the members of Group-B) and to appoint those, who already stood selected, on 8.5.1995, (i.e. the members of Group-A) and whose selection had remained unchallenged and uncanceled, the said directions were challenged in WP(C) No. 1717/1999 aforementioned and by the impugned judgment and order passed therein the learned Single Judge has directed the State-respondents not to disturb the services of any of the said two groups, which, in turn, commands the State-respondents to appoint altogether 40 teachers against the said sanctioned twenty posts meant for Bilasipara West Constituency. The directions, so issued by the learned Single Judge, is contrary to law and not maintainable.

3. We have heard Mr. G. Gopal, learned Government Advocate, Assam, appearing for the appellants, Mr. A.S. Choudhury, learned senior counsel appearing on behalf of respondent Nos. 1 to 20 and Mr. M. Bhuyan, learned counsel for the respondent Nos. 21 to 39.

4. Presenting the case, on behalf of the appellant, Mr. Gopal has submitted, inter alia, that so long as the select list, dated 08.05.1995, finalised and approved by the Advisory Board, whereas 20 candidates in respect of Bilasipara West Constituency had been selected, remained in force, the same Advisory Board, on the intervention of the local MLA and/or as per his suggestions/recommendations, could not have prepared and finalised another select list, dated 18.8.1995. The subsequent selection list was prepared, contends Mr. Gopal, against all constitutionally established norms and fair-play. It is also submitted by Mr. Gopal that in Writ Appeal No. 341/97 aforementioned, the Division Bench of this Court, on 31.7.1997, merely directed the State respondents to consider, in the light of the relevant provisions of the Rules of 1977, the question of according of approval to the list prepared by the Selection Committee. In this Writ petition, no direction was given by the Court to the State respondents, submits Mr. Gopal, to appoint the candidates selected under the second select list, dated 18.8.1995. In such a situation, points out Mr. Gopal, no appointment could have been made by the State Government to the respondent

Nos. 1 to 20 on the basis of the select list, dated 18.8.1995, but on erroneous view taken by the Government, the appointments of the candidates covered by the select list, dated 18.8.1995 were made ignoring the lawful claim of the candidates of the first select list, dated 18.8.1995. When the Government realised that mistake, which it had so committed, it, submits Mr. Gopal, directed, vide W.T. Message, dated 23.03.1999 aforementioned, termination of the appointments of the candidates of select list, dated 18.8.1995, and in order to undo the wrong done to the candidates of the first select list, dated 8.5.1995, the Government further directed that the candidates selected as per the select list, dated 8.5.1995 (i.e. the select list in respect of Group-A) shall be appointed.

5. In support of his contention that the subsequent select list, dated 18.8.1995 (i.e. select list in respect of Group-B) had been prepared on the basis of the names suggested/recommended by the local MLA, Mr. Gopal has drawn our attention to a photostat of letter, dated 10.6.1995 (Annexure-A), whereby the local MLA is shown to have recommended the names of the candidates, whose names appear in the select list, dated 18.8.1995 (i.e. members of Group-B).

6. It is further submitted by Mr. Gopal that by the impugned judgment and order dated 12.04.2002, passed in W.P. (C) No. 1717/1999, the learned Single Judge has directed the Government to not only maintain the appointments of the candidates, whose names appeared in the first select list, dated 18.8.1995, but also of the candidates, whose names were embodied in the second select list, dated 18.8.1995. Thus, the effect of these directions, points out Mr. Gopal, is that the Government is required, now to appoint not only 20 candidates covered by the select list, dated 8.5.1995 (i.e. members of Group-A) but also to maintain the appointment of the 20 candidates embodied in the second select list, dated 18.8.1995 (i.e. members of Group-B) forcing thereby the Government to appoint as many as 40 teachers of L.P. Schools, whereas the posts, which stand sanctioned and allotted to Bilasipara West Constituency, are, admittedly, 20 in number. The directions so given by the learned Single Judge to appoint 40 teachers as against the sanctioned and allotted posts of 20 teachers are, according to Mr. Gopal, wholly illegal, unjust and arbitrary. Mr. Gopal, therefore, submits that the impugned directions may be set aside and quashed and the W.T. Message, dated 23.3.1999, aforementioned be upheld.

7. Appearing on behalf of the respondent Nos. 21 to 39, Mr. M. Bhuyan, learned counsel, has, while adopting the submissions made on behalf of the appellants, presented before us a photostat of the resolution No. 7, dated 18.8.1995, whereby the Advisory Board is shown to have approved the list of the names of the candidates recommended by the local MLA without, however, cancelling or rescinding the first select list dated 08.05.1995.

8. Controverting the above submissions made on behalf of the appellants and the respondent Nos. 21 to 39, Mr. A.S. Choudhury, learned senior counsel for the respondent Nos. 1 to 20, has pointed out that the list of names shown to have been recommended by Annexure-A (dated 10.6.1995) is merely a photostat of

the letter, in question, and since this letter was not filed before the Court, which was in seisin of W.P. (C) no. 1717/1999, this letter cannot, now, be considered in the present appeal against the respondent Nos. 1 to 20 and the same cannot be relied upon. It is also pointed out by Mr. Choudhury that even the photostat of the resolution No. 7, dated 18.8.1995, adopted by the Advisory Board (indicating to the effect that as per the list of names recommended by the local MLA, the second select list, dated 18.8.1995, was prepared) did not form part of the records of WP(C) No. 1717/1999 and since this document too was not considered by the learned Single Judge, the same cannot be submitted and relied upon before the appellant Court. Hence, the two papers/documents aforementioned, namely, photostat of the letter, dated 10.6.1995 (Annexure-A to the present writ appeal) and photostat of the Resolution No. 7 dated 18.8.1995, may be kept, submits Mr. Choudhury, excluded from the purview of this Court's consideration.

9. It is also submitted by Mr. Choudhry that even if it is assumed that the names of the respondents Nos. 1 to 20 had been recommended by the local MLA, the fact remains that during the relevant point of time, the MLAs, all over the State, used to make such recommendations. In the case at hand, however, respondent Nos. 1 to 20 have been selected by the Advisory Board on 18.8.1995, contends Mr. Choudhury, in accordance with its own powers and after observing due selection process and, hence, these appointments were wholly legal. According to Mr. Choudhury, these respondents, upon being so selected and legally appointed, have already undergone necessary training and they have been given their requisite scale of pay and, hence, in such a situation, learned Single Judge was correct in holding the appointments of these respondents wholly legal and the same can not, now, be terminated under the law. It is pointed out by Mr. Choudhury that the appointment of the respondent Nos. 1 to 20 were sought to be terminated with the help of the said W.T. message without giving them any notice to show cause or hearing and this was in denial of the principles of the natural justice.

10. It is further submitted by Mr. A.S. Choudhury that the respondent Nos. 21 to 39 have already been appointed as teachers by the State respondent by appointment letters issued on 08.04.1999. In support of this submission, Mr. Choudhury has submitted photostat of the appointment letters of respondent Nos. 21 to 39. This submission made by Mr. Choudhury has been seriously disputed on behalf of the appellants as well as the respondent Nos. 21 to 39.

11. Having heard the rival submissions made before us on behalf of the parties and upon careful consideration of the materials on record, we are of the view that since the letter, dated 10.06.1995 (Annexure-A to the present Writ appeal), whereby the names of the members of Group-B are shown to have been recommended by the local MLA, did not form part of the record of WP(C) No. 1717/99 and also the photostat of the Resolution No. 7, dated 18.8.1995, adopted by the Advisory Board finalising/approving the selection as per recommendations made by the local MLA (presented before us at the time of

hearing of this appeal) did not form part of the records of WP(C) No. 1717/99, the same cannot be considered by us, for the first time, at the time of hearing of the present appeal. We, therefore, keep excluded from the purview of our consideration both the papers/documents aforementioned.

12. What, however, emerges from the above submissions made on behalf of the parties concerned and the materials available on record is that in respect of Bilasipara West Constituency, only 20 numbers of posts of Assistant teachers for L.P. Schools stand sanctioned and allotted and as against these posts, a select list, dated 8.5.1995, was, admittedly, prepared. This list (which relates to Group-A) was not cancelled at any point of time. Nothing has been submitted before us to show that the list prepared, on 08.05.1995, was not in accordance with law. In fact, the validity of the select list, dated 8.5.1995, has never been questioned by the Government or the respondent Nos. 1 to 20. This apart, the persons appearing in the select list, dated 8.5.1995 (i.e. the members of Group-A) were the ones, who had, first, knocked at the doors of this Court by instituting Civil Rule No. 3231/95 aforementioned.

13. In Civil Rule No. 3231/1995 aforementioned, the petitioners clearly submitted that against the said 20 number of sanctioned/allotted posts of assistant teachers of L.P. Schools in respect of Bilasipara West Constituency, the petitioners had already been selected by the Advisory Board and that their select list already stood approved by the Director of Elementary Education, Assam, but the local MLA/Minister had directed the respondents not to appoint any person from the said select list and to cancel the same. It was also agitated therein that the local MLA/Minister was contemplating to forward a list prepared by them in order to fill up the said posts and such an attempt, if permitted, would amount to filling up of the posts on political considerations, which would be contrary to the due process of law. The petitioners expressed in their said writ petition that they were apprehending that the select list prepared by the Advisory Board and approved by the Director of Elementary Education, Assam, might be cancelled and in the place of the petitioners (i.e. in place of the members of the Group-A) some other persons, on political choice, might be appointed. The petitioners further submitted that the select list so prepared and approved as aforesaid cannot be allowed to be cancelled at the behest of local ML A/Ministers.

14. In short, thus in Civil Rule No. 3231/1995, Group-A has contended that though they stood duly selected against the said 20 posts, they were being unlawfully denied the appointment and the local MLA/Minister was trying to get the said select list cancelled and in their place, the State Government was trying to appoint candidates on the basis of the list submitted by the MLA/Minister of the said constituency. In this writ petition, the legality of the selection of the members of Group-A was not disputed. Moreover, it is of immense importance to note that in this writ petition, the members of Group-B (i.e. respondent Nos. 1 to 20 of the present appeal) were not parties inasmuch as they did not even stand selected on the day, when the said writ petition was filed by the members of

Group-A. In such a situation, learned Single Judge disposed of the said writ petition, on 09.08.1995, with the directions to the State respondents to appoint the selected candidates to the 20 sanctioned posts of Bilasipara West Constituency strictly in terms of selection made by the Elementary Education Advisory Board and approved by the Director, Elementary Education. It was further directed therein that no candidate from outside the select list shall be appointed against the said 20 sanctioned posts.

15. From a bare reading of the above directions, it is clear that the respondents Nos. 1 to 20, (i.e. members Group-B) were not even within the zone of consideration for appointment in respect of the said 20 sanctioned posts, when the order, dated 09.08.1995, aforementioned was passed in Civil Rule No. 3231/1995 and appointments were directed to be made of the candidates, who stood selected in terms of the selection made by the Advisory Board and whose selection already stood approved by the Director of Elementary Education, Assam, inasmuch as when the directions for making appointments were so issued, the members of Group-B did not even stand selected. This order has remained unchallenged till date. This order has attained finality. No wonder, therefore, that the Division Bench of this Court, which came in seisin of PIL No. 1487 of 1997 aforementioned, held, as already indicated hereinabove, that the order,, dated 09.08.1995, aforementioned "still holds good and remains operative". We see, now, no reason to take a view different from what the Division Bench had earlier taken to the effect that the directions given" by order, dated 09.08.1995, aforementioned still holds good.

16. However, ignoring the directions given by the learned Single Judge, on 09.08.1995, in Civil Rule No. 3231/1995 aforementioned, the same Advisory Board selected another 20 numbers of candidates i.e., members of Group-B, as already indicated hereinabove, and gave its approval on 18.08.1995. This selection was made, without rescinding or cancelling, in accordance with law, the select list, dated 08.05.1995. In other words, no subsequent select list like the one, dated 18.08.1995, which relates to Group-B, could have been legally prepared and approved in the face of the specific and cogent directions contained in the order, dated 09.08.1995, aforementioned passed in Civil Rule No. 3231/1995.

17. Thus, even if we do not take into consideration the two documents produced before us at the time of hearing, namely, the photostat of the select list, dated 10.6.1995, made by the then MLA and the resolution, dated 18.08.1995, adopted by the Advisory Board, the fact remains that the selection of the members of Group-B (i.e. respondent Nos. 1 to 20) is contrary to law and in contravention of the clear directions given by the learned Single Judge, on 09.08.1995, in Civil Rule No. 3231/1995.

18. We have given more than adequate time to Mr. Choudhury for making his submissions, but he has not been able to submit anything to show that the select list, dated 08.05.1995, (which relates to Group-A) is/was illegal. Mr. Choudhury

has also not been able to show as to how, in the face of the selection already made as far back as on 08.05.1995 and in the face of the directions contained in the order, dated 09.08.1995, passed Civil Rule No. 3231/1995, the Advisory Board could have, once again, recommended the names of the respondent Nos. 1 to 20, (i.e. Group-B) nor has he been able to show as to how it could have been held in WP(C) 1717/99 that the selection made by the Advisory Board, on 18.08.1995, was legal, just and valid.

19. Coupled with the above, when Group-B, as already indicated hereinabove, instituted Civil Rule No. 6332 of 1996 seeking directions for their appointment, the learned Single Judge dismissed the writ petition on 07.05.1997. In this order, it was clearly mentioned that no person selected has a right to receive appointment. This order, therefore, did not vest any right to appointment in the respondent Nos. 1 to 20, i.e. in the members of Group-B. Aggrieved by their failure to seek the order, which Group-B had sought for, the Group-B preferred Writ Appeal No. 341/97 aforementioned. This writ appeal was disposed on 31.07.1997. What was directed by the order, dated 31.07.1997, was that the State respondents shall consider and approve the list, which had been prepared by the Selection Committee as per Sub-rule (vi) of Rule 3 of the Rules of 1977. There was no direction from the Division Bench of this Court to appoint the members of Group-B. This apart, since the members of Group-B had been selected, as indicated hereinabove, against all established norms and fair-play, no right of appointment can be said to have ensued to them from the directions contained in the order, dated 31.07.1997, aforementioned. However, on an erroneous view of the matter, the State Government appointed the members of Group-B, but when the members of Group-A instituted COP No. 1/99 and though this contempt petition was, eventually, dismissed, the State Government realised the gross illegality that it had committed and incalculable injustice that it had caused to the members of Group-A. The State Government, therefore, passed necessary directions to terminate the appointments of the members of Group-B and to appoint, in their place, the members of Group-A. Though as a result of illegal appointments received by the members of Group-B, the Group-B had already undergone necessary training and received requisite pay scale, the fact remains that their original appointments being without jurisdiction, the same were void ab initio and no right accrued to them to seek continuation of their such appointments on the mere ground that they had already undergone necessary training and received, requisite pay scale. However, learned Single Judge, vide the impugned judgment and order, passed in W.P.(C) No. 1717/99, directed the State respondents not only to maintain the appointment of the members of Group-B, but also to continue to keep in service the members of Group-A. The fall-out of the directions so passed, as rightly contended by Mr. Gopal, is that against the 20 sanctioned posts aforementioned, the Government is required to make 40 appointments, which is ex-facie illegal and without jurisdiction. This apart, though the learned Single Judge has observed in the impugned judgment and order that the appointment of the members of Group-B

was legal, no cogent reason has been assigned by him to show as to how their appointment, in the face of what have been pointed out above, could be described as legal and valid.

20. We, now come to the submission of Mr. Choudhury that the respondent Nos. 21 to 39 (i.e. Group-A) have already been appointed as teachers in LP Schools and in this view of the matter, the learned Single Judge did not commit any error of law in directing the Government to maintain the appointments of not only respondent Nos. 1 to 20 (that is of Group-B) but also of respondent Nos. 21 to 39 (i.e. Group-A). In this regard, it is imperative to note that the appointments of the respondent Nos. 21 to 39 (i.e. Group-A) are, admittedly, not against the said 20 sanctioned/allotted posts of teachers of LP Schools meant for Bilasipara West Constituency and in respect whereof respondent Nos. 21 to 39 (i.e. Group-A) stood selected long before the Advisory Board prepared the second select list relating to respondent Nos. 1 to 20 (i.e. Group-B). Viewed from this angle, it cannot be said that the respondent Nos. 21 to 39 (i.e. members of Group-A) stand appointed against the said 20 sanctioned posts meant for Bilasipara West Constituency as per the Government notification, dated 18.01.1995, aforementioned.

21. Thus, when the appointments of the respondent Nos. 21 to 39 (i.e. Group-A) are not against the said 20 sanctioned posts, which were notified by the Government as far back as on 18.01.1995, their appointments against some other posts, which are not regularly sanctioned posts, does not affect the lawfully vested rights of the respondent Nos. 21 to 39 to be appointed against the said 20 sanctioned/allotted posts of Bilasipara West Constituency.

22. Coming to the submission made by Mr. Choudhury that by the said W.T. Message the State respondents have sought to terminate the appointment of the respondent Nos. 1 to 20 without giving them any opportunity of showing cause or hearing, which is against the principles of natural justice, we are of the view that notwithstanding the said W.T. Message, since the respondent Nos. 1 to 20 have continued to remain in service and since these respondents (who instituted the W.P.(C) No. 1717/99) have failed to show completely that their appointments were made in accordance with law, no legal or equitable purpose will be served by issuing directions to the State Government to give them, first notices to show cause and/or hearing before cancelling/terminating their appointments. Hearing that has taken place before the learned Single Judge in W.P. No. 1717/99 and before this Court have adequately satisfied, in our view, the principles of natural justice inasmuch as more than ample opportunity and time stand received by the respondent Nos. 1 to 20 to show as to why their appointments can not be treated as void ab initio. As already indicated above, Mr. Choudhury has completely failed to show that the selection of Group-B was valid. Hence, the question of appointment of this group merely on the ground that they have worked, for sometime, on erroneous and extraneous considerations, as teachers cannot be a reason for issuing a Writ of mandamus commanding the State

Government to continue with such appointments, while, at the seem time, denying the right of appointment to the members of Group-A against the said 20 sanctioned posts.

23. Situated thus, we have no hesitation in holding that the impugned judgment and order dated 12.04.2002, passed in W.P.(C) No. 1717/1999 deserve to be set aside and quashed and the directions contained in the W.T. Message dated 23.3.1999, aforementioned, being legal and valid, deserved to be maintained.

24. In the result and for the reasons discussed above, this writ appeal succeeds. The impugned judgment and order shall accordingly stand set aside and quashed. The appellants are hereby given the liberty to cancel the appointments of the respondent Nos. 1 to 20 as against the said 20 sanctioned posts of teacher for Bilasipara West Constituency and they are also directed to issue appointments to the respondent Nos. 21 to 39 against the said 20 sanctioned posts of Bilasipara West Constituency. The whole exercise, so directed, shall be completed within a period of one months from today.

25. With the above observations and directions, this writ appeal shall stand disposed of.

26. No order as to costs.