

(2008) 07 GAU CK 0036
In the Gauhati High Court

State of Assam

APPELLANT

Vs

Nirmalibora and Others

RESPONDENT

Date of Decision : 01-07-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 162, 21A, 226

Citation : (2008) 3 GLT 543

Hon'ble Judges : H. Baruah, J;Aftab H. Saikia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Aftab H. Saikia, J.—The State of Assam through its Commissioner and Secretary, Department of Education has preferred the instant writ appeal assailing the common Judgment and Order dated 8.4.2002 passed by the learned Single Judge in a batch of writ petitions, being preferred by the writ petitioners/respondents herein (hereinafter referred to as "the respondents") who being appointed under the scheme of "Operation Blackboard" (for short "OB") as Assistant Teachers in various ME./M.V./M.E.M Schools in the State of Assam seeking for regularization of their respective services against the regularity sanctioned post thereof with a further prayer made therein to direct the State respondents to refrain from terminating their services at the end of month of March, 2002, pending regularization of their services, whereby the writ petitions were disposed of with a direction to the Government of Assam and other State respondents to regularize the services of the respondents appointed as Assistant Teachers against those posts created under OB Scheme by adjustment/absorbing them in regularized sanctioned post of Assistant Teachers of L.P./M.E. Schools in a phrased manner and not to terminate their services pending such regularizations and allowing them to continue their services from 31.3.2002 by sanctioning those temporary posts created under the OB Scheme till the completion of process of such regularization with further direction to pay the monthly salary to the respondents along with the arrears for the period they have been found actually rendering services as teachers in their respective

schools within 3 months from the date of passing the order.

2. In India which lives in villages and where illiteracy and poverty dominate the civil society, everyone has a reason to rejoice and celebrate when Right to Education has been grafted as a fundamental right in the Part-III of the Constitution of India by the Constitution (86th Amendment) Act, 2002. It is universal that Education is the backbone of a true democracy. It plays the paramount role in shapping up a well defined democratic policy governed by the Rule of Law. The nation, therefore, depends increasingly on educational institutions for knowledge, prosperity, health and policy thinking. Schools, Colleges and Universities are engines of development of people, institutions and democracy in general. It is equally pivotal the role and contribution of teachers, the most responsible cluster of the society who have, relentlessly, continuously, consistently been dedicating their yeoman"s services to the nation building in nursing, shaping and moulding children from their elementary level to make them good citizens in future.

3. With this basic background, the fundamental issue raised herein is as to whether the teachers appointed in the elementary schools under OB Scheme for a very short tenure are entitled to get their services regularized.

4. Before making a thorough examination of the issue for its proper resolution, it would be pertinent to look into the various constitutional provisions relating to free and compulsory education to all children and the scheme of OB. Those are noticed hereunder:

5. Article 21A has been incorporated as under:

Right to Education :- The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

6. Simultaneously, Article 45 of the Constitution, being one of the Directive Principles of State Policy in Part-IV which provides,

Provision for free and compulsory education for children -- The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years,

has also been substituted by the Constitution (86th Amendment) Act, 2002 by the following provision:

Provision for early childhood care and education to children below the age of six years -- The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

7. Apart from the above fundamental and constitutional provisions, Article 41 under the Directive Principles of State Policy envisages as under:

Right to work, Education, and public assistance in certain cases -- The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

8. In order to achieve the aforesaid constitutional obligation with a view to eradicating illiteracy and educating every citizens compulsory from its elementary stage, the Government of India, in addition to existing educational policies, in the year, 1987 through its Ministry of Human Resource Development, Department of Education launched the Scheme of OB with the aim and object for universalization of elementary education being one of the goals of educational development. Under "The Policy and Perspective" of the scheme, the following has been provided:

Universalization of Elementary Education (UEE) has been one of the goals of educational development. Provision of free and compulsory education to all the children until they complete the age of 14 years is a Directive Principle of the Constitution. It is a part of the Minimum Needs Programme as well as the 20-Point Programme 1986. The National Policy on Education, 1986 also gives an unqualified priority to UEE. It resolves that it shall be ensured that all children who attain the age of about 11 years by 1990 will have had 5 years of schooling or its equivalent through the Non-formal stream, and, likewise, by 1995 all children will be provided free and compulsory education upto 14 years of age.

2. The policy embodies the concept of a National System of Education that lays emphasis on elimination of disparities in the educational system and on improvement in the quality of publicly funded schools so that whatever the socio-economic background of the student, upto a given level he/she has access to education of a comparable quality. The Programme of Action of the NPE aims at achieving the goal of a Common School System, through strategies that focus effort on the under-privileged, the economically weak, the educationally disadvantaged, and the areas that need special attention. It recommends that at the elementary level a child-centred approach will be adopted and the academic programme and school activities built around the child. It also propose measures to effect improvement in the quality of education through reform of the content and process of education, improvement in school facilities, provision of additional teachers, laying down minimum levels of learning etc.

3. The Union Government has accepted a larger responsibility in regard to maintenance of quality and standards of education at all levels of the education process throughout the country. But the role and responsibility of the States remain undiminished-implementation of the NPE must engage the States full attention and it is only if the task of implementation is taken up with vigour, persistence and a sense of urgency that the new scheme of quantitative expansion and qualitative improvement, aimed eventually at a transformation of the whole system, have any chance of being realised.

9. Under the scheme there are three independent components which can be quoted asunder:

4. The scheme for a substantial improvement in facilities in primary education has symbolically been named Operation Blackboard (OB). OB lays down the minimum level of facilities to be provided in all primary schools which have been established so far, and it also prescribes the minimum level of finding for all new primary schools to be opened in future. There are three interdependent components of OB:

(1) Provision of at least two reasonably large rooms that are usable in all weather with a deep varandah along with separate toilet facilities for boys and girls.

(2) Provision of at least two teachers, as far as possible one of them a woman in every primary school.

(3) Provision of essential teaching and learning material including blackboards, maps, charts, a small library, toys and games and some equipment for work experience.

OB is to be implemented in municipal areas as well as villages, Its scope is confined to primary schools (viz. Schools upto Class-IV or V depending upon the structure in different States/UTs) upper primary schools and secondary schools, even if they have Classes I to IV/V are not covered under this scheme.

5. The coverage of OB is to be extended to all primary schools run by Government, local bodies, Panchayat Raj institutions and recognized aided institutions. It need to be kept in mind that this scheme is meant for educational institutions which have remained deprived of facilities and resources in the past.

10. Initially on 28.12.96, the Director of Elementary Education, Assam, issued an advertisement for filling up 7500 posts of Assistant Teachers lying vacant in the provincialised L.P./M.E./M.V. Schools in different districts of Assam in regular time scale of pay. The copy of the above advertisement had been appended as Annexure-I to the W.P. (C) No. 8764/2001 Smti. Nirmali Bora and 201 Ors. v. State of Assam reported in 2002 (1) GLT 462. In that advertisement itself, it was specially noticed:

The selection will be made on the basis of a test, qualification and experience. The selection will depend on previous experience as Assistant Teacher, marks secured in different examination and the oral test.

11. Pursuant to such advertisement, the petitioners submitted applications and took the interview and they were also selected by the Sub-Divisional Level Advisory Board (for short, "Board") in accordance with the Rules prescribed. Even their names were found placed in the respective select lists being selected for appointment in various L.P./M.E. Schools. However, when the selection process was over, a complete ban on appointment was imposed by the

Government of Assam and accordingly, the respondents could not be appointed.

12. Meanwhile with a view to implementing the centrally sponsored scheme of OB, Government of Assam on 28.04.98 created 4040 posts of Assistant Teachers in regular time scale of pay under the OB Scheme as first batch stipulating thereof that those posts would be abolished after the Ninth Plan was over and the incumbents would have to be adjusted/absorbed in existing vacancies as Government of India would not reimburse the expenditure after the end of Ninth Plan. Admittedly, the teachers were appointed against those posts and they were even adjusted against the vacant posts in phase manner and the respondents had no grievance against those appointments and subsequent regularizations.

13. On 8.3.2001, Government of Assam created 7066 posts for L.P. Schools/M.E. Schools under OB scheme in the fixed pay of Rs. 1900/- p.m. for L.P. Schools and Rs. 2000/- p.m. for Middle Schools for a period from 8.3.01 to 31.3.02. The order dated 8.3.01 creating 7066 posts as indicated above may be quoted as under:

GOVERNMENT OF ASSAM EDUCATION (XXXXXXXXX) BRANCH.

No. PMA. 24/96/215 Dated, Dispur the 8th March, 2001 To, The Director of Elementary Education, Assam Sub: Creation of 7066 posts of L.P. & Middle School Teachers under OBB scheme. Sir, I am directed to convey the sanction of the Governor of Assam to the creation of 7066 (LP. 4376 & 2090 Middle) posts of L.P. and Middle School Teachers in the fixed pay of Rs. 1900/-pm for L.P. and Rs. 2000/- pm for Middle Schools w.e.f. 8.3.2001 to 31.3.2002 subject to the following conditions. (Breakup of 7066 posts is enclosed).

1. The appointment letters are legally voted to make it absolutely clear that the appointments, on stipendary contract basis, terminate automatically on 31.3.2002.

2. If the GOI is not agreed to continue these posts beyond Ninth Plan period under CSS then these posts would stand abolished from 1.4.2002.

The expenditure is debitable under the head of account "2202-Govt-Edn-III-CSS-01 -II) 102-Asstt. To non-Govt. pry-school-(o)-OBB.

(i) Salary for Pry Schools - (Plan) for the (ii) Salary for Middle - year 2001-02 Schools The sanction is issued with the concurrence of the Finance Deptt. vide their U.O. No. FC(III) 1696/2001 dtd 8.3.2001.

Yours faithfully, Sd/- Secretary to the Govt. of Assam, Education Deptt.

14. Be it noted herein that on 8.3.01 on the same date, the Government of Assam by a WT Message lifted the ban on appointment of fixed pay teachers for appointment to L.P./M.E./M.V./M.E.M. Schools created under OB Scheme on conditions that - i) no new application would be called for, ii) the candidates who had already applied with treasury challans should only be called for interview and iii) earlier select list might be placed before the new Boards for verification etc.

15. The W.T. Message dated 8.3.01 is extracted as under:

W.T. Message Dated 8.3.2001

From: Shri P. Dutta, IAS Secretary to the Govt. of Assam, Education Department, Dispur. To: All District Elementary Education Officer/Deputy Inspector of Schools(.) Kamrup by Hand/Director Elementary Education Assam by Hand (.) Info: All Depcoms(Kamrup by Hand) No.(B) S. 119/2001 DTD 8.3.2001(.) Government have decided to lift ban on appointment of fixed pay Teachers for appointment to L.P. and M.E./M.V./M.E.M. Posts created under OBB(.) Repeat OBB only with immediate effect(.) The following guidelines should be strictly adhered to(.) One(.) No new applications will be called for(.) The candidate who had already applied with treasury challans should only be called for interview(.) Earlier select list may be placed before the new Boards for verification Etc(.) Two(.) Appointments are upto 31.3.2002 and will stand terminate on 31.3.2002(.) Three(.) Appointment of Selected Candidates will be made as per the model appointment letter as enclosed and on a consolidated pay of Rupees eighteen hundred per month for L.P. Schools (Comma) Rupees Two thousand for M.E. Schools and M.E.M.(.) Four(.) Roster should be maintained strictly alongwith three percent reservation for physically handicapped candidates(.) Five(.) Government circular No. A(1) E. 425/95/PT.II/140 DTD. 10.08.2000 along with the enclosures regularizing the irregular candidates under Monoharan committee report be placed before the Board for information and verification (.) Six(.) Minimum qualification for L.P. School Teachers is HSLC with 35% marks/HSSLC for Middle School and M.E.M. with 35% Marks(.) Seven(.) The validity of me list of the candidates who have applied with treasury challans earlier is extended upto 31st March/2001(.)

The officers making any appointment in violation of the guidelines like excess appointments or appointments in the manner other than the prescribed format be held personally responsible and will face departmental proceedings(.) Concerned Headmaster or field officers allowing the appointees to continue beyond 31.3.2002 will be held personally responsible and salary of such teacher will be recovered from the concerned Headmaster/Officer for the period of over stay by the appointees(.) MSG. Over(.)

16. Since, no fresh applications were entertained in terms of the communication/ order dated 8.3.01, the respondents who submitted their applications pursuant to advertisement dated 28.12.96 as indicated above, and also having been selected for the post of Assistant Teachers could not be appointed . due to ban, again called for interview and selected by the competent authority and their names were placed in the select list. Thereafter, they were given appointments to their respective posts in L.P. Schools and M.E./M.V./M.E.M. Schools on the fixed pay scale of Rs. 1900/- p.m. and 2000/- p.m. respectively for a term of 1 year upto 31.3.02 in terms of order dated 8.3.01.

17. Since their appointments were only for one year till 31.3.02, apprehending

termination from the services by the end of March, 2002, the respondents moved this Court through various writ petitions making the following common prayer:

In the premises aforesaid, it is therefore prayed that Your Lordships be pleased to issue Rule calling upon the Respondents to show cause as to why the services of the petitioners should not be regularized against regularly sanctioned posts of Assistant Teachers of M.E./M.V./M.E.M. Schools and as to why a direction should not be issued to the respondents to refrain from terminating the services of your petitioners at the end of the month of March, 2002 pending regularisation of their services and further as to why all the petitioners should not be paid their monthly salary at the rate of Rs. 2000/- per month with effect from the date of their joining as per the budgetary allocation made in this respect, call for the records of the case and on perusal of the records and hearing the parties be pleased to make the Rule absolute:

(i) direct the respondents to regularize the services of your petitioners in regularly sanctioned posts of Assistant Teachers of M.E./M.V./M.E.M. Schools;

(ii) direct the respondents not to terminate the services of your petitioners at the end of March, 2002 pending regularization of your petitioners services; and

(iii) direct the respondents to pay the monthly salary of your petitioners with effect from the date of joining at the rate of Rs. 2000/- per month;

and/or pass such further or other order/s as Your Lordships may deem fit and proper.

-And-

In the interim be pleased to direct the respondents to pay the arrear and current salary of your petitioners immediately at the rate of stipulated in their appointment orders and further be pleased to direct the respondents to allow the petitioners to continue in their services and not to oust the petitioners from service.

18. The Government of Assam contested the entire bunch of writ petitions filed by the respondents, countering and refuting all the statements and averments made in those writ petition by taking the firm stand that although admittedly no fresh advertisement could be made due to paucity of time in that second batch of appointment under OB Scheme, the appointments were made by giving opportunities to all those applicants who earlier applied against those 7500 posts and selected for such purpose to avail the appointment against the newly created 7066 numbers of OB posts and basically they were all aware of the fact that such appointments would be only for 1 year as stipulated in their appointment letters itself and as such they cannot claim for their service regularizations in their respective posts after expiry of the said contractual period. Further, there was no Cabinet decision in respect of such appointments. Moreover, the terms and conditions of 7066 OB posts were completely different from earlier 4040 posts under the scheme of OB and the terms and conditions laid down in the

appointment letters, hence, will govern the appointment of the respondents against 7066 OB posts.

19. The learned Single Judge having heard the learned Counsel for the parties including the learned Advocate General, Assam, and also on close scrutiny of the entire materials available on record rejected the contentions made on behalf of the State Government and allowed the batch of writ petitions with a specific direction as under:

25. In view of what has been stated above, the above mentioned batch of writ petitions are disposed of with a direction to the Govt. of Assam and other State respondents to regularize the services of the writ petitioners appointed as teachers against the post created under the Operation Blackboard Scheme by adjusting/absorbing them in regularly sanctioned posts/vacancies of Assistant Teachers of L.P./Middle Schools of Assam in a phased manner and not to terminate their services pending such regularization allowing them to continue in service beyond 31.3.2002 by sanctioning retention of these temporary posts created under the Operation Blackboard Scheme till completion of the process of such regularization.

26. The State respondents are further directed to pay the monthly salary to the writ petitioners along with arrears for the period they have been found actually rendering service as teachers in the respective schools, within three months from the date of this order.

20. Being aggrieved by the observations and findings recorded and the directions given in the impugned common judgment and order, Mr. Choudhury, learned Senior Counsel, reiterating his contentions made before the learned Single Judge, has, in this writ appeal, contended that this impugned Judgment and Order needs to be interfered with basically on two grounds; namely--

1) no regularization is permissible as all those appointments were made to the respondents dehorse the Rules,

2) since the appointments of the respondents were admittedly on contract basis i.e., for a stipulated period of one year w.e.f. 8.3.01 to 31.3.02, being manifestly reflected in the letter/order dated 8.3.01 itself as well as in the appointment letters issued to the respondents wherein it was clearly put to the knowledge of the respondents to the effect that the appointment was for a fixed period only, no legal right being accrued to the respondents for continuation of their services beyond the fixed term upto 31.3.02. (Annexures-6 series at page-109 of the paper book of this writ appeal).

21. To substantiate his submission, the learned Senior Counsel for the appellant has relied on the following decisions:

- i) A. Umarani Vs. Registrar, Cooperative Societies and Others,
- ii) Secretary, State of Karnataka and Others Vs. Umadevi and Others,

22. In A. Umarani's case (supra), the Supreme Court in Paragraphs 43, 44 and 45 held as under:

43. This Court yet again in R.N. Nanjundappa v. T. Thimmiah held:

If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution illegality cannot be regularized. Ratification or regularization is possible of an act which is within the power and province of the authority but there has been some noncompliance with procedure or manner which does not go to the root of the appointment. Regularisation cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules.

44. The said decisions of this Court have received approval of a three-Judge Bench of this Court in B.N. Nagarajan v. State of Karnataka wherein it was held that the procedures for appointment as contained in the Rules framed under Article 309 of the Constitution of India must be complied with.

45. No regularization is, thus, permissible in exercise of the statutory power conferred under Article 162 of the Constitution if the appointments have been made in contravention of the statutory rules.

23. In Umadevi's case (supra), the Apex Court held observed as follows:

17. One aspect arises. Obviously, the State is also controlled by economic consideration and financial implications of any public employment. The viability of the department or the instrumentality of the project is also of equal concern for the State. The State works out the scheme taking into consideration the financial implications and the economic aspects. Can the Court impose on the State a financial burden of this nature by insisting on regularization or permanence in employment, when those employed temporarily are not needed permanently or regularly? As an example, we can envisage a direction to give permanent employment to all those who are being temporarily or casually employed in a public sector undertaking. The burden may become so heavy by such a direction that the undertaking itself may collapse under its own weight. It is not as if this had not happened. So, the Court ought not to impose a financial burden on the State by such directions, as such directions may turn counterproductive.

....

34. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the

appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of adhoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

....

36. While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has ward for sometime and in some cases for a considerable length of time. It is not as if the person who accept an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain --not at arm's length--since he might have been searching for some employment so as to eke out of his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mood of public employment which is not

permissible. If the court were to avoid a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. The total embargo on such casual or temporary employment is not possible, given the exigencies of administration and it imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.

....

38. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the state has held out by promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

....

40. It is contended mat the State action in not regularizing the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner

we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of mis-nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

24. Per contra, Mr. Goswami, learned Senior Counsel representing the respondents has strenuously argued that both the grounds so taken by the State appellant are not sustainable in law on the face of the record itself. His basic contention against the first argument of the State is that the appointments of the respondents cannot be said to be *dehors* the Rules. It is an admitted position that all the respondents were initially selected through the regular selection process pursuant to advertisement made on 28.12.96 and it is also accepted by the State Government that due to paucity of time only they could not advertise for filling up the posts of 7066 posts sanctioned under OB Scheme. The same is evident from the communication dated 8.3.01 and W.T. Message dated 8.3.01 wherein it was specifically stipulated that the candidates already applied earlier and the candidates from the earlier select list need not apply again. Since the earlier appointment and subsequent selection of the respondents were in accordance with law, the question of their appointments *dehors* the Rules does not arise.

25. Coming to the second point as regards contractual appointment, Mr. Goswami contended that contractual appointment of the respondents of one year as indicated in the appointment letter of the respondents itself was arbitrary, unreasonable and unjust. He has expressed his utter surprise stating that how, why and on what basis the State of Assam could put such an absurd condition in the appointment letter that was not earlier brought to the knowledge of the respondents. All the respondents were selected candidates pursuant to the earlier selection process of advertisement dated 28.12.1996 as already mentioned and as such the plea that respondents were contractual appointees does not hold water.

26. It is contended on behalf of the respondents that those two cases namely, Umarani's case (*supra*) and Umadevi's case (*supra*) so relied upon by the State counsel are distinguishable. According to the learned Senior Counsel for the respondents the ratio laid down in those two cases is not at all applicable in the

instant case in its facts and circumstances because the appointments of the respondents ex-facie were neither dehors the Rules nor on contractual basis.

27. Relying on a recent decision of the Apex Court reported in (2007) 11 SCC 92 U.P. State Electricity Board v. Pooran Chandra Pandey and Ors., Mr. Goswami, the learned Senior Counsel has submitted that Umadevi's case (supra) is not panacea for each and every case and the same has no applicability to the present case. The facts and circumstances of the instant are wholly and totally different from those in Umadevi's case (supra). He has referred to paragraph-16, wherein it was clearly held that:

16. We are constrained to refer to the above decisions and principles contained therein because we find that often Uma Devi's case (supra) is being applied by Courts mechanically as if it were a Euclid's formula without seeing the facts of a particular case. As observed by this Court in Bhavnagar University (supra) and Bharat Petroleum Corporation Ltd. (supra), a little difference in facts or even one additional fact may make a lot of difference in the presidential value of a decision. Hence, in our opinion, Uma Devi's case (supra) cannot be applied mechanically without seeing the facts of a particular case, as a little difference in facts can make Uma Devi's case (supra) inapplicable to the facts of that case.

28. A thorough analysis of the entire facts situation would go to reveal that the appointments of the respondents in the case in hand were made in accordance with the law. Significantly the State Government failed to take the plea in their Appeal Memo that the appointments of the respondents were dehors the Rules. Only fundamental plea taken by the State Government is that there is financial constraint and it is, therefore, difficult for the State Government to create the posts under the non-Plan budget for continuation of 7066 teachers and after Ninth Plan i.e. from 1.4.2002. Admittedly, as per the list of incumbents working under 7066 OB Scheme so kept herewith to form part of records, presently 3697 and 2093 teachers out of 4378 L.P. Schools posts and 2690 M.E. Schools posts (total 7066 posts) respectively have been working in different schools in the State of Assam.

29. We have heard Mr. M.K. Choudhury, learned Senior Counsel assisted by Mr. M.R. Pathak, learned State Counsel, Education Department representing the State of Assam/Appellant as well as Mr. P.K. Goswami, learned Senior Counsel assisted by Mr. D.K. Saikia, learned Counsel appearing for the respondents as length and also meticulously scanned the materials available on record so placed before this Court.

30. On due consideration of the submissions of the learned Counsel representing the parties, we have found that the appointments itself candidly demonstrate that those were made under the centrally sponsored OB Scheme with the sole objective of substantial improvement of facilities in primary education and the same was being under the Ninth Plan which would come to an end by 31.3.02. Under the Scheme of OB, as already mentioned above, amongst the three

components, are the basic thrust was on provision of at least two teachers in every primary school. Even under the Scheme of OB itself under the head "Provision of second teacher in single teacher schools" it was in Clause 14(a) specifically provided that the State Government would need to give a categorical assurance that all new primary schools opened would provided two teachers.

31. That apart, under the said scheme under the head "Financial Pattern and Procedure for Sanction in Clause 20", it was provided as under:

20. OB is a centrally sponsored scheme. No separate funds have been provided under it , for construction of primary school buildings in rural areas. It is to form part of NEEP, RLEGP and other appropriate schemes, including special area development schemes such as Tribal Sub-Plans, Hill Areas development Programme, Border Area Development Programme etc. Funds for appointment of second teachers in single teacher schools and for purchase of instructional/ learning material will be provided by the Central Government on hundred per cent basis upto the end of the Seventh Plan. It shall be necessary for the State Governments to draw up, and adhere to, a detailed plan for construction of primary school buildings as envisaged in OB. Wale sanction may be issued in 1987-88 releasing Central Funds for second teachers and equipment, etc. on the basis of the detailed plans in the subsequent two years the progress of construction building will be evaluated before consideration of proposals for funds under OB. The liability in respect of teachers posts will get transferred to the State Governments after the Seventh Plan. Necessary steps should be taken now itself to ensure that the liability during the Eighth Plan gets treated as committed expenditure by the Ninth Finance Commission. The Central assistance is contingent upon the State Governments and/or local bodies and/or the local community taking responsibilities as spelt out in this and the proceeding paragraphs.

32. It is further seen that since the funding for appointment of second teacher in a single teacher school along with providing for on instructional/learning facilities was on 100% basis from the Central Government, vide order dated 8.3.01, the respondents were appointed on the basis of 100% fund provided by the Central Government under the Ninth Plan till 31.3.2002 and thereafter it would be the liability of the State Government for payment of the salaries of those teachers.

33. As referred to by Mr. Goswami, in support of his submission to the effect that those particular appointments were not contractual appointment, as stressed by the State Government, we have carefully gone through two communications dated 22.11.2000 and 13.2.2002. It would be apt and necessary to reproduce those two communication herein.

34. The order dated 22.11.2000 reads as under.

GOVERNMENT OF ASSAM EDUCATION (ELEMENTARY/SECONDARY) DEPARTMENT
Memo No. PMA/337/95/Pt-VI/50 Dated, Dispur the 22nd November, 2000 From:

Shri D.C. Barman, IAS, Commissioner & Secretary to the Government of Assam, Education Department To: Shri Anil Gulall, Director (OD), Ministry of Human Resource, Department of Elementary Education Literacy, Shastri Bhawan, New Delhi Sub: Reimbursement of Salary of 2378 teachers appointed under O.B.B. Ref: This Department's letter No. PMA 337/95/Pt-VI/49 dtd. 20.11.2000 (Faxed) Sir, With reference to the letter cited above and as per Telephonic discussion with you on 21st November, 2000, I am directed to say that the teachers so appointed against O.B.B. posts will not be retrenched after Ninth Plan period but will be adjusted against the State Plan/Non-Plan State vacant posts.

You are, therefore, requested kindly to release the salary at the earliest as proposed.

Yours faithfully,

Sd- Commissioner & Secretary to the Government of Assam, Education Deptt.

35. The order dated 13.2.2002 reads as follows:

NO. F.9-8/98-OB GOVERNMENT OF INDIA MINISTRY OF HUMAN RESOURCE DEVELOPMENT DEPARTMENT OF ELEMENTARY EDUCATION AND LITERACY OB SECTION

Dated, Delhi, Feb., 13,2002

To: Shri P. Dutta, Commissioner & Secretary (Edu.), Government of Assam, Sashibalay, Dispur, Guwahati-781006. Subject: Reimbursement of Salary of Primary and Middle School Teachers appointed during March, 2001 Sir,

I am directed to refer to your letter No. PMA.24/96/554 dated 2nd January, 2002 on the subject noted above. As per the appointment orders of new teachers appointed by the State Government under Operation Blackboard the tenure of the appointment is only upto 31.3.2002. Accordingly, I am further directed to inform that terms and conditions of appointment of these teachers in Middle Schools are not in accordance with the guidelines of the Scheme of OB.

2. Under the Scheme of OB, new posts are created against the sanctioned posts. Salaries are covered for all the new created posts for salary payment for the plan period in which appointments are made. Thereafter, the liability of salary component is transferred to State.

3. It is, therefore, requested to confirm that these posts will be continued after the termination of Ninth Plan and the State Government would take over the liability of these teachers as per the guidelines of the scheme.

Yours faithfully, Sd/- (V.D. Gaur) Education Officer.

36. In above quoted communication dated 22.11.2000, it is apparently seen that since those appointments were under OB Scheme, the State Government itself assured the Central Government, as regards appointment of 2378 teachers, that

the earlier appointed 2378 teachers under OB Scheme would not be retrenched after Ninth Plan but those would be adjusted against the State Plan-Non-Plan Vacant posts. It shows that the State Government was well aware of the policy of the Central Government to continue the teachers under the OB Scheme.

37. Thereafter, by communication dated 13.2.2002 the Government of India took a serious view of making such appointments in question only upto 31.3.2002 and informed the State Government that terms and conditions of appointment of those teachers were not in accordance with the guidelines of the Scheme of OB. It was also made known to the State Government that under the Scheme of OB new posts were created against the sanctioned posts and accordingly, the State Government was requested to continue those posts and to take over the liability of those teachers as per guidelines of the scheme.

38. The Memorandum which was signed between the State Government and the Ministry of Finance, Government of India on 13.1.2000 has been placed on record as "Fiscal Reforms Programme of Government of Assam". It is understood from the said Memorandum that since Government of Assam is facing financial constraints, there shall be a ban of all new recruitments. However, it has been undertaken by both the parties that such ban has excluded the Health, Education and the Police Department. Since OB Scheme is a separate scheme under the Education Department with a specific goal to improve and (enhance the elementary education system in consonance with Constitutional mandate, as already quoted above at the very outset, the State Government is duty bound to act accordingly for its full-fledged implementation.

39. We have carefully gone through the impugned common Judgment and Order "dated 8.4.2002 and it appears that in paragraphs- 18, 19, 20, 22, 23 and 24 in dealing with the relevant contentions and averments made in the affidavit-in-opposition filed on behalf of the State respondents, the writ court extensively discussed the facts and circumstances of the case and explicitly held that the signing of Memorandum by the State Government and Central Government did not stand on the way of the State Government to regularize the services of the petitioners against regularly sanctioned posts in a phased manner and allowing them to continue in services from 31.3.2002 pending such regularization. It is further held that financial difficulties faced by the Government could not be a ground for such discrimination meted out to the petitioner refusing to regularize their services against the sanctioned posts under OB Scheme. Besides, the two judicial authorities, namely, Umarani's case (supra) and Umadevi's case (supra), relied upon by the learned Senior Counsel representing the appellant as noted above, in our considered view, do not support the case of the appellant in its peculiar facts and circumstances of the instant case as discussed in details hereinabove. Accordingly, we have no hesitation to hold that the impugned judgment is a well reasoned one and the same is accordingly approved.

40. It is pertinent to mention herein that Appeal was filed on 1.7.2002 challenging the impugned Judgment which was rendered on 8.4.02 and no

interim relief whatsoever at the time of admission of this Appeal, was granted in favour of the State appellant staying the operation of the impugned judgment. That being so, it is placed on record that nothing has been done by the State respondents to comply with the directions given by the writ court for last 6 years save and except the payment of salaries only upto 28.2.2006. While confirming the impugned common judgment and keeping in view the severe hardship faced by the respondents, as submitted on behalf of the respondents, we do order that the directions given in para-graphs-25 and 26 in the impugned Judgment and Order dated 8.4.2002, as quoted hereinabove, with all consequential reliefs be implemented as expeditiously as possible preferably within a period of 6(six) months from today.

41. Having heard the learned Counsel for the parties, we find enough and sufficient force in the submissions of the learned Senior Counsel representing the respondents. We do hereby accept the findings and views recorded by the learned Single Judge in toto and we do not find any cogent and plausible grounds to dislodge the impugned common judgment. Consequently, this State Appeal is bereft of any merit and the same stands dismissed.

42. Considering the facts and circumstances of the case, there shall be no order as to costs.