
(2006) 04 GAU CK 0064
In the Gauhati High Court

Sudhendu Mohan Talukdar

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 06-04-2006

Acts Referred:

Citation : (2007) 1 GLR 608 : (2006) 2 GLT 216

Hon'ble Judges : B.P. Katakey, J

Bench : Single Bench

Judgement

B.P. Katakey, J.—By this batch of writ petitions the petitioners are in basically claiming salaries, to which according to them they are entitled to, for the period, they have rendered their service pursuant to the orders of appointment issued by the authority.

2. For better appreciation gist of facts and reliefs claimed by the petitioners in each writ petition are given bellow:

I. W.P.(C) No. 2147 of 1999

The petitioner was appointed as stipendiary teacher with monthly stipend of Rs. 900 with condition sending for training and payment of regular time scale of pay after successful completion thereof vide order dated 11.11.1998 issued by the Deputy Inspector of Schools, and by the present writ petition has claimed payment of such stipend, which, according to him has not been paid since joining and also for sending them for training. The petitioner also claims that such appointment order was issued pursuant to the selection.

II. W.P.(C) No. 2880 of 2000

Petitioner has claimed, the payment of salary pursuant to the order of appointment dated 30.1.1996 issued by the Deputy Inspector of Schools, North Lakhimpur appointing him as stipendiary teacher with monthly stipend of Rs. 900 and also with the condition for sending for training and payment of regular scale pay after successfully completion of such training. According to the petitioner

such appointment was made after selection but he has not been paid the stipend and also not sent for training.

III. W.P.(C) No. 3458 of 2000

The petitioners are claiming stipend pursuant to their appointment as stipendiary teachers issued by the D.I. of Schools Nalbari vide order dated 4.12.1999 with monthly stipend of Rs. 900 with the condition of sending them for training and thereafter payment of the regular scale pay. The petitioners claim that such appointments were made after selection and though they are serving pursuant to such selection and appointment, they have not been paid their stipend since then. It has further been stated in the writ petition that they were not allowed to sign the attendance register of the school as the D.I. of Schools on 29.1.2000 submitted a list consisting the names of the petitioners whose appointment orders were vague and also the communication dated 6.5.2002 issued by the Deputy Commissioner, Nalbari about making unauthorized appointment by the D.I. Office, Nalbari. The petitioner claim to be appointed after selection.

IV. W.P.(C) No. 4219 of 2000

The petitioner has prayed for direction to the respondents to release the salary with effect from June 1996 contending that he was appointed by the Inspector of Schools Barpeta, vide order dated 6.1.1994 as Asstt. Teacher in the scale pay for a period of three months tenure of which subsequently extended for the further period of three months or till the post is filled up by, regular process, whichever is earlier, vide order dated 18.5.1996 passed, by the said authority but he has not been paid the salary from June 1996.

V. W.P.(C) No. 4231 of 2000

The petitioner claims the arrear salary with effect from 30.12.1993 and also for the months of May and June 2000 including a prayer for regularization of her services contending that she was appointed as Hindi teacher initially on ad hoc basis vide order dated 15.11.1993, which was extended until further order or till the post is filled up by regular process, whichever is earlier, vide order dated 6.6.1995 issued, by the said authority. According to the petitioner she was allowed to draw the graduate scale of pay with effect from 30.12.1993 by order dated 22.2.2000 passed, by the Director but she has not been paid her salary since May 2000 in view of her ad hoc appointment.

VI. W.P.(C) No. 2327 of 2001

The petitioner claims that he was appointed by the Inspector of Schools, Karimganj on ad hoc basis for a period of three months vide order dated 24.3.1994 as Hindi teacher in C.V.P. Higher Secondary School, Karimganj and was thereafter adjusted against the post created by the Government on 27.3.1997 vide order dated 24.12.1999 with effect from 1.4.1997. The petitioner contends that he has not been paid salary since 1996.

VII W.P.(C) No. 2642(A) of 2001

The writ petitioner is praying for a direction to release the salary with effect from 1.10.1995 contending, inter alia, that he was initially appointed by the District Elementary Education Officer, Hailakandi as Asstt. Teacher in Samaj Kalyan M.E. School, Hailakandi vide order dated 20.1.1993 for a period of three months which was extended for further period of three months on two occasions vide orders dated 14.1.1994 and 18.4.1994 and thereafter such period was extended until further order and has been continuously serving but has not been paid salary since October 1995. The petitioner does not claim, that he was selected for appointment by the duly constituted selection board and thereafter appointed on ad hoc basis.

VIII. W.P.(C) No. 4662 of 2001.

Petitioner who claims to be serving as Asstt. Teacher in Arimara Sekai Abiram Kuli L.P. School has prayed for releasing the stipend pursuant to his appointment as stipendiary teacher dated 3.12.1999 issued by the Deputy Inspector of Schools Jonai at a monthly stipend of Rs. 900 with the condition of sending for training and on successful completion payment of regular scale pay salary. The petitioner claims that though he was appointed on the basis of the selection made by the selection committee, the stipend, payable to him has not been paid since the date of joining the service.

IX. W.P.(C) No. 4703 of 2001

The petitioners claim salary with effect from the month of August 1996 as Hindi teachers posted in Latu High School and Pallimangal H.S. School, Karimganj appointed vide orders of appointment dated 11.1.1994 and 26.11.1993 issued by the Director of Secondary Education, Assam initially for a period of three months or till the post is regularly filled up after selection, whichever is earlier and thereafter extending the same until, further orders. The petitioners claimed that they were paid their salaries up to the month of July 1996 and thereafter no payment has been made.

X. W.P.(C) No. 4944 of 2001

The petitioners pray for directing the respondents to release the monthly stipend, of Rs. 900 claiming that they were appointed as stipendiary teacher in primary school by order dated 9.6.1995 issued by the Deputy Inspector of Schools, Dhemaji and though they joined their services in terms of such orders of appointment they have not been paid their stipend. The petitioner claims that they were appointed as stipendiary teacher after selection.

XI. W.P.(C) No. 4945 of 2001

The petitioner prays for directing the respondents to release the stipend since the date of her appointment as stipendiary teacher dated. 9.6.1995 issued by the D.I. of the Schools, Dhemaji with the monthly stipend of Rs. 900 with the

condition sending her for training and thereafter for payment of regular scale of pay, claiming that she was appointed, after due selection.

XII. W.P.(C) No. 4947 of 2001

Petitioner claims to be appointed as stipendiary teacher with monthly stipend of Rs. 900 with the condition of sending her for training and thereafter for payment of salary in the regular scale of pay, issued by the Deputy Inspector of Schools, Dhemaaji on 9.6.1995 after selection. The petitioner claims that since the date of joining pursuant to such appointment no stipend has been paid.

XIII. W.P.(C) No. 5537 of 2001

The petitioner is claiming arrear salary on the basis of the order of appointment dated 31.3.1992 issued by the Inspector of Schools, Nalbari appointing him as Asstt. Teacher (Addl. Science Teacher) Balitara High School in the regular scale of pay which appointment was purely temporary and terminable without notice. The petitioner claims that he was appointed pursuant to his selection made in terms of the advertisement issued for the purpose of selection of additional science teacher. The petitioner further prays for his adjustment against a regular sanctioned post

XIV. W.P.(C) No. 8091 of 2001

The petitioner is claiming to be appointed on the basis of the selection made by the selection board vide order dated 29.3.2001 issued by the Inspector of Schools as Asstt. Teacher at a consolidated pay of Rs. 25,00. According to the petitioner though she joined her service pursuant to such appointment, said consolidated pay has not been released.

XV. W.P.(C) No. 8660 of 2001

Petitioner pursuant to her order of ad hoc appointment dated 5.11.1995 appointing her as stipendiary teacher with monthly stipend of Rs. 900 for three months which was extended until further order vide order dated 2.5.1996 has prayed for releasing the stipend since 1996, i.e., since her joining in pursuant to such order of appointment.

XVI. W.P.(C) No. 215 of 2002

The petitioner prays for directing the respondents to release the salary pursuant to the order of appointment dated 3.12.1999 issued, by the District Elementary Education Officer, Barpeta appointing him as Asstt. Teacher in Paschim Moinbari Girls' M.E. School claiming that such appointment was issued after selection.

XVII. W.P.(C) No. 359 of 2002

The petitioner prays for a direction to the respondents for payment of the salary from February 2001 claiming that she was appointed as a craft teacher in Tukrapara Anchalic Girls' High School by the Managing Committee prior to provincialisation and there after on the basis of the application submitted by her

a direction was issued by the Deputy Secretary Education department on 14.10.1998 directing the Director of Secondary Education to adjust the petitioner against the vacant post of Arabic teacher in the school, which was forwarded by the Deputy Director to the Inspector of Schools. Her services were thereafter, adjusted by the Inspector of Schools, Guwahati vide order dated 16.2.2001 against the vacant post as Arabic Teacher, who was dropped at the time of provincialisation of the school. The petitioner claims that she has not been paid her salary from June 2001 though the same was paid for the months of March, April and May 2001.

XVIII. W.P.(C) No. 777 of 2002

Petitioner is praying for direction to the respondents to pay the salary pursuant to the order dated 6.2.2001 passed by the Inspector of Schools, Goalpara regularizing his service as Hindi teacher by way of adjustment in the time scale of pay, who was earlier serving as honorary Hindi teacher in Thorko High School. The petitioner's case is that he was initially appointed by the Managing Committee on honorary teacher vide order dated 4.2.1999 thereafter his services were regularized by way of adjustment vide order dated 6.2.2001 and in spite of such regularization by adjustment the salary has not been paid and in stead of vide communication dated 3.9.2001 as well as 19.10.2001 issued by the Deputy Secretary, Government of Assam, Education Department and Inspector of Schools, Goalpara, respectively, the salary bills were not prepared on the ground that they were regularized by adjustment during 2000-01 without approval from the State Level Empowered Committee.

XIX. W.P.(C) No. 881 of 2002

The petitioner claims payment of salary from September 2001 pursuant to the order dated 20.2.2001 issued by the Inspector of Schools, Barpata regularizing his service by way of adjustment against the vacant post and has also challenged the communication dated 3.9.2001 issued by the Deputy Secretary directing the Inspector of Schools not to prepare the salary bill of the teaching and non-teaching staff, who were regularized by way of adjustment during period 2000-01 without obtaining approval from State level empowered committee and also the consequential order issued by the Inspector of Schools to the Principal/ Headmaster of the school in his jurisdiction. Petitioner claims that he was appointed by the Managing Committee on 30.6.1989 prior to provincialisation and after provincialisation as he was dropped, his service was subsequently regularized by adjustment.

XX. W.P.(C) No. 1078 of 2002

The petitioners are claiming that pursuant to the advertisement issued in the year 1996 a selection was held in the year 1997 for the purpose of selection for selection for appointment to the post of Asstt. Teacher in lower primary schools wherein the petitioners were selected and thereafter they were appointed by the in-charge Deputy Inspector of Schools, Mangaldoi vide order dated 28.3.2001 as

stipendiary teacher with a stipend of Rs. 1,800 per month, with the condition for sending them for training and payment of salary in the regular scale of pay after successful completion of such training. According to the petitioners though they have joined their services pursuant to such appointment they have not been paid their stipend.

XXI. W.P.(C) No. 2073 of 2002

Petitioners are claiming salary from their dates of joining as Asstt. Teacher in High/Higher Secondary School on the basis of the orders of appointment dated 31.3.2002 issued by the Inspector of Schools, Kokrajhar District Circle, Kokrajhar, claiming that they were selected, for appointment as Asstt. Teacher in the High/Higher Secondary School, in the district of Kokrajhar pursuant to the selection made by the District level selection board, in terms of an advertisement issued and thereafter they were appointed by the Inspector of Schools vide order dated 31.3.2001 on the basis of their selection but initially without approval of Boro Autonomous Council, Kokrajhar, which approval was, however, subsequently accorded by the BAC and in pursuant to which their services were regularized by the Inspector of Schools vide order dated 13.7.2001.

XXII. W.P.(C) No. 2715 of 2002

The petitioner claims to have been appointed as Asstt. Teacher in Dhing G.B. H.S. School by order dated 28.3.2001 issued by the Inspector of Schools, Nagaon at a consolidated pay of Rs. 2,500 and on the recommendation of the district level selection board, Nagaon. The grievance of the petitioner is that though he has joined the service pursuant to such appointment, the salary has not been paid to him since the date of joining.

XXIII. W.P.(C) No. 3481 of 2002

The petitioners have claimed that they were appointed as Hindi teachers by orders dated 26.11.1993 and 13.12.1993 issued by the Director of Secondary Education, Assam, against the posts allotted to Guwahati Refinery High School, Noonmati at a fixed pay of Rs. 1,185 and 1,375 respectively for a period of three months or till the post is regularly filled up, whichever is earlier and thereafter their services were regularized by way of adjustment vide orders dated 21.2.2005 issued by the said authority, but in spite of that they have not been paid the said fixed pay.

XXIV. W.P.(C) No. 4027 of 2002

The petitioners are praying for releasing the arrear and current salary and have also challenged the communication dated 3.9.2001 issued by the Deputy Secretary Education department directing the Inspector of Schools not to prepare the salary bills of teaching and non-teaching staff, whose services have been regularised by way of adjustment against vacant post during 2000-01 without approval of State Level, empowered committee. The petitioners claim that they were appointed as subject teachers on the basis of the resolution of the

Managing Committee and thereafter their services were regularized by way of adjustment but the authority has stopped payment of salary even after regularization on the ground of not taking approval from the State level Empowered Committee.

XXV. W.P.(C) No. 4452 of 2002

The petitioner claims that pursuant to the advertisement issued by the Principal/ Secretary of Chakalaghat Higher Secondary School for the post of subject teacher in history, he submitted the application and thereafter he was appointed as honorary subject teacher in history in the said school on 18.4.1996 and thereafter vide order dated 9.11.2000, the Director of Secondary Education Assam adjusted his appointment as subject teacher against the vacant post. Though he was allowed to draw the advance increment on acquiring B.Ed. degree, the Deputy Secretary vide order dated 3.9.2001 directed the Inspector of Schools not to prepare and draw the salary bill of the teaching, and non-teaching staff who were regularized by way of adjustment against vacant post during the period 2000-001, i.e., after constitution of the State level empowered committee, without its approval. The petitioner claims that she was regularized in service after adjustment, therefore, is entitled to salary pursuant to such order of adjustment.

XXVI. W.P.(C) No. 4505 of 2002

The petitioners are claiming release of the arrear salary as well as the current salaries pursuant to the appointment made by the Inspector of Schools, Golaghat District Circle vide orders dated 31.3.2001 appointing them as Asstt. Teacher at a fixed pay of Rs. 2,500. The petitioners claim that they were appointed on the basis of the recommendation of District level selection board constituted by the Government for the purpose of selection.

XXVII. W.P.(C) No. 5269 of 2002

Petitioners claims that they were appointed as Assistant Teacher in Gandhi Bidyapith High School and Dhing K.B.H.S. School, Nagaon, vide order dated 30.1.1996 initially on ad hoc basis for a period of three months and thereafter their services were regularized by the Inspector of Schools, vide orders dated 16.8.2000 and 19.8.2000 respectively. The petitioner No. 1 claims that he has not been paid his salary from the month of November 1996 to May 2000 and the petitioner No. 2 was not paid from the 1.12.1996 to 31.3.2001.

XXVIII. W.P.(C) No. 5538/2002

Petitioner claims to be appointed vide order dated 27.3.2001 issued by the Inspector of Schools, Dhemaji on ad hoc basis for a period of three months as Asstt. Teacher in ASS. II Jr. School at the fixed pay of Rs. 2,500 in Mingmong Nalbari H.S.S/H.S. School, which was extended for a period of another three months or till the post is regularly filled up, whichever is earlier and thereafter extended until further orders by the Inspector of Schools vide order dated

6.7.2001. The petitioner claims that fixed salary from May 2001 has not been paid to him.

XXIX. W.P.(C) No. 5933 of 2002

The claim of the petitioner is that they were appointed in different posts in the vocational stream in different higher secondary schools, after selection. Though they were appointed after due selection they were not paid their salaries from October 2004. The petitioners have also challenged the communication dated 3.9.2001 issued by the Deputy Secretary Education department where by the Inspector of Schools were directed not to prepare the salary bills of teaching and non-teaching staff and draw the salary in respect of such staff, who were adjusted against the vacant post during the years 2000-01, without approval from the State level empowered committee.

XXX. W.P.(C) No. 6053 of 2002

The grievance of the petitioner is non-payment of salary since January 1996 after her joining pursuant to the order of appointment dated 30.1.1996 issued by the Deputy Inspector of Schools, North Lakhimpur appointing her as stipendiary teacher with monthly stipend of Rs. 900 with the condition of sending her for training. According to the petitioner though she was appointed on the basis of the selection made, the stipend has not been paid to her.

XXXI. W.P.(C) No. 6075 of 2002

Petitioners are praying for directing respondents to pay stipend with effect from their date of initial appointment, claiming that they were appointed by the Inspector of Schools, vide orders dated 30.1.1996 as stipendiary teacher with monthly stipend of Rs. 900 with a condition that they will be sent for basic training for one year and thereafter will be paid the regular scale of pay. The petitioner also claim that they were appointed as stipendiary teacher after selection.

XXXII. W.P.(C) No. 6376 of 2002

The petitioner has prayed for a direction to the respondents to release arrear salary as Asstt. Teacher of Hatir Har Naga Punji L.P. School, District of Cachar, stating, inter alia, that she was initially appointed as stipendiary teacher vide order dated. 19.6.1995 and thereafter was sent for basic training vide order dated 18.1.2000 passed by the Deputy Inspector of Schools, Silchar and after completion of her training the Deputy Inspector of Schools vide order dated 29.3.2001 allowed the petitioner to draw regular scale of pay with effect from 1.4.1999 but the salary in the time scale of pay since that date, i.e., on 1.4.1999 has not been paid.

XXXIII. W.P.(C) No. 7058 of 2002

Petitioner claims the salary with effect from June 2002 by contending that she was appointed temporarily as subject teacher in Bengali in Mahadev Higher

Secondary School, Krishnanagar, Karimganj vide order dated 18.2.1995 issued by the Director of Secondary Education, Assam and thereafter her services were regularized vide order dated 22.9.1999 issued by the said authority and though she was paid regular salary up to May 2002, she has not been paid her salary from June 2002.

XXXIV. W.P.(C) No. 7777 of 2002

The petitioner claims the monthly stipend, pursuant to the order of appointment dated 20.11.1999 issued, by the Deputy Inspector of Schools, Karimganj appointing him as stipendiary teacher with monthly stipend of Rs. 900 with the condition sending him for training and payment of regular pay after successful completion of such training. The petitioner has contended that he was appointed as stipendiary teacher after selection but has not been paid the stipend nor sent for training.

XXXV. W.P.(C) No. 7941 of 2002

Petitioner claims payment of fixed salary with effect from 27.3.2001 contending that she was appointed as Asstt. Teacher in Dihjari L.P. School at the fixed pay of Rs. 900 vide order dated 29.11.1999 issued by the Deputy Inspector of Schools, Nalbari as per approval of the Chairman or Sub-Divisional Elementary Education Advisory Board, Nalbari. Though, her appointment was cancelled by the Deputy Inspector of Schools vide order dated 21.12.1999 in terms of the direction issued by the Elementary Education Advisory Board, by subsequent order dated 27.3.2001 issued by the said authority the order of cancellation dated 21.12.1999 was withdrawn. The petitioner contends that she has been paid the fixed pay of Rs. 900 up to the date of termination from service but after the order dated 27.3.2001 cancelling the order of termination passed on 21.12.1999 she has not been paid her fixed pay.

XXXVI. W.P.(C) No. 7974 of 2002

Petitioners claim that pursuant to the employment notice dated 28.12.1996 for filling up of the post of teachers in ME/MV/ME Madrasa/Senior Basic/Junior Basic/Jr. L.P. School, etc., they applied and appeared for selection and were selected by the selection board and thereafter appointed, vide order dated 8.1.1999 issued by the Deputy Inspector of Schools, Hailakandi as stipendiary teacher with monthly stipend of Rs. 1,800 with the condition that they will be sent for basic training for one year and on completion of which they will be paid their salary in the time scale of pay. According to the petitioners though they are serving they have not been paid their monthly stipend from the date of the initial appointment and also not been sent for training.

XXXVII. W.P.(C) No. 8313 of 2002

According to the petitioners, they were appointed by the Deputy Inspector of Schools, Karimganj vide orders dated 20.11.1999, appointing them as stipendiary teacher at the monthly stipend of Rs. 900 with the condition of

sending them for training and payment of salary in the regular scale of pay after successful completion of such training but stipend has not been paid to them since their joining.

XXXVIII. W.P.(C) No. 8361 of 2002

Petitioners in the present writ petition are claiming that they applied for appointment as teacher in respect of L.P School and on the basis of such application their names are recommended by the concerned Managing Committee for appointment which was duly approved, by the Sub-Divisional Elementary Education Board on 23.10.1997 and, pursuant to which the Deputy Inspector of Schools, Rangia appointed the petitioners vide order dated 30.4.1998 provisionally in the fixed pay of Rs. 900 and terminable without any notice. According to the petitioner though they are still serving they have not been paid their salaries.

XXXIX. W.P.(C) No. 216 of 2003

Petitioner claims that he was appointed by the Deputy Inspector of Schools, Dhemaji vide order dated 9.6.1995 as stipendiary teacher at the monthly stipend of Rs. 900 with the condition of sending for training on the basis of the selection made for that purpose but though he has joined, the service the stipend payable to him has not been paid and also has not been sent for training. The petitioner also claims for regularization as he has not been sent for training.

XL. W.P.(C) No. 217 of 2003

The petitioner claims payment of monthly stipend of Rs. 900 since the date of his joining, i.e., 26.6.1995 pursuant to his appointment as stipendiary teacher dated 9.6.1995 issued by the Deputy Inspector of Schools, Dhemaji with condition that he will be sent for training and upon successful completion thereof the regular salary will be paid to him. The petitioner claims that he was appointed as stipendiary teacher on the basis of the selection but in spite of all that stipend, has not been released. The petitioner also claims for regularization in service without completion of the training as he has not been sent for training.

XLI. W.P.(C) No. 926 of 2003

The petitioner claims salary with effect from 25.5.1996, which, according to her has not been paid though she was appointed as Music Teacher in Chincoorie Bagan High School, Silchar by the Director of Secondary Education, Assam, initially for a period of three months or till the post is filled up by selected candidate, whichever is earlier, which period was extended for a further period of six months or till regular appointment is made through selection and though her services were regularized by the Inspector of Schools vide order dated 27.7.2001 with effect from the date of her joining she has not been paid her salary. The petitioner claims that she was paid her salary up to 24.5.1996.

XLII. W.P.(C) No. 970 of 2003

The petitioner claims that he was appointed by the Deputy Inspector of Schools, Nalbari, vide order dated 4.12.1999, as primary teacher in the monthly fixed pay of Rs. 1,800 as per the approval of the Sub-divisional Elementary Education Advisory Board (BAC) Nalbari and though he joined his services in Pub-Athiabari School, the stipend has. not been paid to him.

XLIII. W.P.(C) No. 1048 of 2003

The petitioner-association claims that 1233 numbers of teachers when L.P. Schools were provincialised by the Boro Autonomous Council on 1.11.1995 where another 1408 numbers of teacher are working and accorded stipendiary grant-in-aid to the teachers at the fixed pay of Rs. 900 with effect from 1.11.1995 till the provincialisation in due course. The petitioner association claims that in terms of the said decision the members of the petitioner's association were paid stipend upto April 1997 and thereafter BAC stopped payment of stipend from May 1997 and, therefore, prays for directing the respondent to release the said stipend and also to provincialised the said school.

XLIV. W.P.(C) No. 1073 of 2003

Petitioner is claiming salary since October 1994 pursuant to the order of appointment dated 3.6.1994 issued by the D.I. of Schools, North Lakhimpur, appointing her as Asstt. Teacher with effect from 1.6.1994 at the stipend of Rs. 900 per month. The petitioner has contended that she was allowed by the Managing Committee of the school to render honorary service and after passing HSSLC examination she was appointed by the D.I. of Schools and though the salary for the months of June to September 1994 was paid the salary from October 1994 have not been paid. The petitioner has not stated that she was appointed after selection by a duly constituted selection board.

XLV. W.P.(C) No. 1089 of 2003

The petitioners claim their monthly stipend of Rs. 1,800 which have not been paid to them since their date of joining contending that they, were appointed by the in-charge Deputy Inspector of Schools, Mangaldoi, vide orders dated 4.12.1999 as stipendiary teachers in L.P. School with the monthly stipend of Rs. 1,800 with the condition of sending them for training and thereafter for payment of salary after successful completion of such training. The petitioners claim that they were appointed as stipendiary teacher on the basis of the selection, made by the Sub-divisional Advisory Board of Mongaldoi Sub-Division.

XLVI. W.P.(C) No. 1091 of 2003

The petitioners are claiming that they were appointed as stipendiary teacher with monthly stipend, of Rs. 900 by order dated 30.1.1996 issued, by the Deputy Inspector of Schools, North Lakhimpur with the condition of sending them for training and payment of salary in the regular time scale after completion of such training, after selection. Thereafter vide order dated 2.4.2001 the service of petitioner No. 2 was regularized against a vacant post by increasing monthly

stipend to Rs. 1,800. The petitioners case is that they have been informed that the posts against which they were appointed, not sanctioned post, therefore, the salary cannot be paid. The petitioner, therefore, prays for payment of salary.

XLVII. W.P.(C) No. 2174 of 2003

Petitioners claim that they were appointed as stipendiary teacher at the monthly stipend of Rs. 900 temporarily for a fixed period of time against the vacancy caused for sending a regular teacher to Jr. Basic training and thereafter such period of appointment was extended from time to time but they have not been paid their stipend.

XLVIII. W.P.(C) No. 2352 of 2003

Petitioners are claiming release of monthly stipend since the date of appointment as stipendiary teachers vide orders issued by Deputy Inspector of Schools, North Lakhimpur on 27.1.1996 and 30.1.1996 which stipend was subsequently enhanced of Rs, 1,800 PM. The petitioners claim, that they were subsequently regularized against the vacant post. The petitioners have not mentioned that they were appointed after due selection.

XLIX. W.P.(C) No. 2552 of 2003

Petitioner claims stipend, from October 2002 on the basis of his appointment pursuant to the order dated 26.5.1995 issued by the Deputy Inspector of Schools, Dhemaji appointing him as stipendiary teacher with monthly stipend of Rs. 900 with the condition sending for training. According to the petitioner such appointment order was issued pursuant to the selection made by the Sub-Divisional Advisory Board, Dhemaji.

L.W.P. (C) No. 3661 of 2003

Petitioner claims to be appointed after selection as Assistant Teacher in M.E. School vide order dated 4.12.1999 issued by the District Elementary Education Officer, Tinsukia in the regular scale of pay but though the salary was paid to the petitioner up to the month of September 2002, the same has not been paid from the month of October 2002.

LI. W.P. (C) No. 4058 of 2003

Petitioner claims that she was appointed as stipendiary teacher by the in-charge Deputy Inspector of School, Mangaldoi with the monthly stipend of Rs. 1,800 with the condition of sending her for training and payment of salary in regular pay scale after due selection but neither she has been sent for training nor paid the salary in the regular scale of pay.

LII. W.P. (C) No. 4256 of 2003

The petitioners claim that they were appointed as stipendiary teacher with the monthly stipend of Rs. 900 with a condition of sending them for training and payment of regular salary thereafter vide order dated 30.1.1996 issued by the

Deputy Inspector of Schools, North Lakhimpur after selection and thereafter regularized by way of adjustment against the regular post but at fixed stipend of Rs. 1,800 per month. The petitioners claimed that they were not paid their salary since their date of joining in the year 1996.

LIII. W.P.(C) No. 7768 of 2003

The petitioner claims arrear salary with effect from December 2001 contending that she was appointed as subject teacher of Assamese in Mahamara Deepling Higher Secondary School by the Director of School Education, Assam vide order dated 28.3.2001 on the basis of the application submitted by her and also resolution of the Managing Committee of the school. The petitioner contends that the Managing Committee initially appointed her as subject teacher of the school vide order dated 3.11.1997 on honorary basis.

LIV. W.P.(C) No. 7769 of 2003

The petitioner has prayed for directing the respondents to release the salary from the month of September 2001 claiming that she was appointed as subject teacher in Assamees in Bhogeswar Hazarika Higher Secondary School, Nagaon by the Managing Committee after provincialisation of the school and thereafter adjusted the petitioner's service as subject teacher in Asamees in the said school vide order dated 12.3.2001 issued by the Director of Secondary Education Assam subject to the condition that he must be selected by the State Selection Board in due course. The petitioner claims that she has not been paid her salary from September 2001 though the post was retained by the Government.

LV. W.P.(C) No. 8048 of 2003

The petitioner claims that he was initially appointed as honorary classical teacher in Latu Mia High School on 1.8.2000 and pursuant to his application for appointment against the sanctioned post the direction was issued by the Deputy Secretary Education Department to the Inspector of School to take necessary action adjust his services along with others on being satisfied with the testimonials of the petitioner and accordingly order dated 10.7.2001 was passed by the Inspector of Schools, Karimganj adjusting the service of the petitioner against the vacant post. The grievance of the petitioner is that though he has been serving after such adjustment he has not been paid his salary.

LVI. W.P.(C) No. 5219 of 2004

The petitioners claim to be appointed by order dated 21.2.2001 as Asstt. Teachers, issued by the Deputy Inspector of Schools, Cachar, pursuant to the selection made for that purpose, by way of adjustment against the vacant post. The petitioners contended that though, they are still working they have not been paid their salary since their date of adjustment. Annexures 1 and 2 orders of adjustment dated 21.2.2001 reveals that the petitioners services were adjusted/regularized against the vacant post pursuant to the communication dated 13.2.2001 issued, by the secretary to the Government of Assam, Elementary

Education Department. The petitioners have not annexed their initial order of appointment issued prior to such order of adjustment. The order of adjustment does not disclose that the same were issued after the petitioners were selected by the duly constituted selection committee.

LVII. W.P.(C) No. 9621 of 2004

The petitioner claims to be in service as Hindi teacher in Janata H.S. Schools, Kharubanda, pursuant to the order dated 27.6.1994 issued by the Inspector of Schools, Dhubri appointing him as Hindi teacher at a fixed pay of Rs. 1,375 on ad hoc basis for a period of three months and thereafter pursuant to his appointment dated 5.7.1994 issued by the said authority against the scale of pay for a period of three months and then by virtue of another order of ad hoc appointment for three months issued by the Inspector of Schools, Dhubri on 16.8.1994 at the fixed pay of Rs. 1,375 for a period of three months on ad hoc basis. The petitioner claims that he was again appointed by the Inspector of Schools on 16.12.1997 and thereafter by the Director of Secondary Education on 12.7.2000 as Hindi teacher Borail Alga Madrasa at the fixed pay of Rs. 3,580. The petitioner claims that the salary was paid to him up to 31.1.2003 but the same has not been paid with effect from 1.1.2004.

LVIII. W.P.(C) No. 3907 of 2005

Petitioner claims to be appointed after selection vide order dated 30.3.2001 by the Inspector of Schools, Nagaon as Asstt. Teacher at a consolidated pay of Rs. 2,500 and claims that her salary from the date of joining pursuant to said appointment has not been paid. The petitioner also seeks a direction to regularize her service by way of adjustment against the vacant post.

LIX. W.P.(C) No. 7991 of 2005

Petitioner claims that she was initially appointed as Asstt. Teacher against maternity leave vacancy on 15.11.1990 thereafter allowed to work until further order vide order dated 2.4.1991 issued by the District Elementary Education, Officer. The petitioner claims that in spite of the recommendation made by the authority for payment of salary, her salary has not been paid with effect from the month of March 2003.

LX. W.P.(C) No. 8280 of 2005

The petitioner claims payment of the monthly stipend of Rs. 1,800 since 3.3.2001, i.e., from the date of his appointment as stipendiary teacher issued vide order dated 31.3.2001 passed by the Deputy Inspector of Schools, North Lakhimpur. The petitioner has stated in the writ petition that on being approached by him he was appointed as stipendiary teacher of Nahar Ali L.P. School by the Deputy Inspector of Schools. The petitioner does not claim that he was appointed after selection.

LXI. W.P.(C) No. 8282 of 2005

Petitioner prays for payment of the stipend of Rs. 1,800 with effect from 16.3.2001 and also for sending her for basic training pursuant to the order of appointment dated 12.3.2001 issued by the Deputy Inspector of Schools, North Lakhimpur with the conditions sending her for training and payment of the salary in the regular time scale after successful training. The petitioner claims that she was initially appointed by the Managing Committee as honorary teacher and thereafter appointed as stipendiary teacher by the authority. The petitioner in the writ petition has not claimed that she was appointment after selection.

LXII. W.P.(C) No. 8555 of 2005

The petitioners are claiming salary which according them was not paid to them since the month of December 2000, contending that on the basis of the selection made by the Sub-Divisional Advisory Board, Lakhimpur for appointment of teacher in ME/MV school conducted in the year 1999 though were appointed as Asstt. Teacher in various ME/MV Schools in Lakhimpur District by the Director of Elementary Education vide orders dated 25.2.1999 and in pursuant to which they joined their duties and though this court in WP(C) No. 915 of 2003 filed by the petitioners directed, to consider the claim of the petitioners and to release the same if entitled under the law, salary bills have not been honoured, by the concerned treasury in spite of the direction of the authority to release the same. The petitioners are claiming salary since November 2000 to till date.

LXIII. W.P.(C) No. 8594 of 2005

Petitioners are claiming payment of stipend with effect from March 2001 pursuant to their orders of appointment dated 12.3.2001 issued by the Deputy Inspector of Schools, North Lakhimpur appointing them as stipendiary teacher with their monthly stipend of Rs. 1,800. The petitioners claim is that pursuant to the advertisement dated 28.12.1996 they applied and were selected in the year 1998 and thereafter were appointed as stipendiary teacher on 12.3.2001.

LXIV. W.P.(C) No. 8859 of 2005

The petitioners are claiming that they were selected for appointment as Assistant Teacher in L.P. Schools in Lakhimpur Sub-Division and, pursuant to such selection they were appointed as Asstt. Teacher on 30.1.1996 by the Deputy Inspector of Schools, North Lakhimpur as stipendiary teacher with a monthly stipend of Rs. 900 with the condition of sending them for training and thereafter our payment of regular salary on successful completion of such training, but they have not been paid their stipend since their date of joining except the petitioner Nos. 4 to 7, 9 and 13 who have received their salaries up to 28.8.2001.

LXV. W.P.(C) No. 8860 of 2005

The petitioners are claiming that they were selected for appointment as Assistant Teacher in L.P. Schools in Lakhimpur Sub-Division and pursuant to such selection they were appointed as Asstt. Teacher on 30.1.1996 by the Deputy Inspector of Schools, North Lakhimpur as stipendiary teacher with a monthly stipend of Rs.

900 with the condition of sending them for training and thereafter for payment of regular salary on successful completion of such training, but they have not been paid their stipend since their date of joining except the petitioner Nos. 1 and 3 who were paid their stipend up to 28.2.2001.

LXVI. W.P.(C) No. 8936 of 2005

The petitioner claim salary since her appointment claiming that she being a physically handicapped person was appointment vide order dated 31.3.2001 issued by the Deputy Inspector of Schools, Dhakuakhana, as Asstt. Teacher in Gohain Handique L.P. School at the fixed pay of Rs. 18,00 per month with the conditions of sending her for training and payment of salary in the regular scale of pay. after successful completion of such training. According to the petitioner she on coming to know about a vacancy filed an application before the Director, Elementary Education for her appointment against the quota reserved for disabled person, the Director vide communication dated 5.2.2001 send the application with recommendation of the Minister, Education to the Deputy Inspector of Schools, Dhakuakhana, requesting him to take necessary action for appointment as L.P. School teacher. Accordingly the order of appointment was issued. The petitioner claims that a selection was conducted by the Sub-Divisional Level Advisory Board, pursuant which a select list dated 9.3.2001 was published, wherein her name was shown at Sl. No. 10. The further case of the petitioner is that the Director of Elementary Education thereafter issued a communication dated 30.5.2001 to all District Elementary Education Officers as well as Deputy Inspector of Schools of Assam to issue necessary instructions to cancel all the illegal appointment made by the said authority without following due process of law and the Government's guidelines issued from time to time and without the approval of the Government, made during the 2nd half of March 2000 just before the issuance of notification for General Assembly Election in the State of Assam and also directing them to issue instructions to all the concerned heads of the institutions to release such appointees from service immediately and in pursuant to which the Deputy Inspector of Schools, Dhakuakhana terminated the service of the petitioner on 21.6.2001 and again vide order dated 29.12.2001 temporarily suspended the said order of termination of the petitioner from service. According to the petitioner she has been serving but she has not been paid her salary in spite of the direction issued by the Under Secretary to the Government of Assam, Education (Elementary) department to the Director Elementary Education to release the salary of the petitioner.

LXVII. W.P.(C) No. 49 of 2006

The petitioner in this writ petition has prayed for directing the respondents to release the salary including the arrear from 1.11.2003 and to pay the regular salary in future without disturbing his service as Asstt. Teacher of Lakhimpur Higher Secondary School stating, inter alia, that in the year 1999 he applied for the post of Asstt. Teacher and pursuant to the selection made by the Interview board the Inspector of Schools, Goalpara District Circle appointed him as Sr.

Hindi teacher vide order dated 30.11.1999 in the scale pay or Rs. 3,580-8,750 against the lien vacancy of Md. Abu Taleb. The petitioner accordingly joined his services on 1.12.1999. It has further been contended that while he was serving at such a post of Asstt. Teacher (Craft-in-Tailor) fell vacant due to retirement of the regular incumbent from the service with effect from 31.8.2002 and the petitioner submitted his application for appointment against said post. But the Inspector of Schools vide order dated 17.6.2003 converted his appointment from Hindi post to General post lying vacant in the same school due to retirement of a regular incumbent. According to the petitioner he joined said post immediately but in spite of the repeated requests and in spite of his valid appointment no salary was paid to him with effect from December 2003 though the salary up to the month of November 2003 was paid to him.

LXVIII. W.P.(C)No. 112 of 2006

The petitioners claim that they were appointed as Asstt. Teacher by the District Elementary Education Officer, Kamrup, in various ME/MV Schools during the years 1993-94 initially for a period of four months and thereafter extended their services by issuing orders of extension. The petitioners further claim that their services were adjusted by the District Elementary Education Officer by issuing various orders pursuant to the Government's letters/circular dated 10.8.2000 and 25.11.2002 as well as the communication issued by the Director Elementary Education dated 30.11.2002, with effect from 1.8.2000 but though after such adjustment salary was paid for 4 to 5 months, thereafter such salary has not been paid to them.

LXIX. W.P.(C) No. 310 of 2006

The petitioners are claiming salary with effect from their date of regularization, i.e., 1.8.2000, contending that they were initially appointed as Asstt. teacher by the District Elementary Education Officer, Kamrup, in various ME/MV schools during the years 1993-94 initially for a period of four months and thereafter extended their services by issuing orders of extension. The petitioners further claim that their services were adjusted by the District Elementary Education Officer by issuing various orders pursuant to the Government's letters/circular dated 10.8.2000 and 25.11.2002 as well as the communication issued by the Director Elementary Education dated 30.11.2002, with effect from 1.8.2000 but though after such adjustment salary was paid for 4 to 5 months, thereafter such salary has not been paid to them.

LXX. W.P.(C) No. 689 of 2006

The petitioners claim the arrear salary and allowances for the period, from 1992 to 2002 on the basis of the averments made in the writ petition that they were appointed as Assistant Teacher in LP school in Dhemaji district vide order dated 19.12.1989 issued by the competent authority after due selection but though the salary till the year 1992 was paid, subsequently after 1992 to 2002 salary has not been paid to them though they are presently receiving their salary in terms

of the order passed by this court in another writ petition filed by them.

LXXI. W.P.(C) No. 848 of 2006

Petitioner claims that she was appointed by the Deputy Inspector of Schools vide order dated 12.3.2001 as stipendiary teacher in Pitamari L.P. School at the monthly stipend of Rs. 1,800 with the condition that she will be sent for training and after successful completion will be paid salary in regular scale of pay. The petitioner further claims that such appointment was issued pursuant to the selection made in terms of the advertisement issued in the year 1995 but she has not been paid her stipend since the date of joining and also has not been sent for training.

LXXII. W.P.(C) No. 1135 of 2006

The petitioners are praying for directing the respondents to release their monthly stipend which according to them were initially Rs. 900 and subsequently enhanced to Rs. 1,800, claiming that pursuant to the selection made in terms of the advertisement, issued for filling up the post of Asstt. Teachers in L.P. Schools they were appointed as such in different L.P. Schools in Lakhimpur in the year 1994-96 but though pursuant to the report submitted by one man committee headed by Sri Monoharan appointed by the Government for making inquiry in to the appointment of teachers appointed during the period from 1992-96, wherein the petitioners were found to be irregularly appointed and though Government has taken a decision to adjust the service of such teachers against the available vacancies and in fact some of the petitioners' service have already been adjusted against the regular vacancies, they have not been paid their stipend from various dates.

3. From the facts of the cases narrated above it appears that the writ petitioners in some writ petitions claim to have been appointed as stipendiary teacher and thereafter on completion of training they were given regular pay scale but their salaries have not been paid, in some cases though they claim to be selected and appointed as stipendiary teachers the stipend has not been paid, in some cases claim that appointment were made on ad hoc basis for a fixed term without any selection and thereafter their services were regularized by way of adjustment against the sanctioned post, in some cases ad hoc appointments were claim to be made for a fixed term were extended until further order, in some cases claim, that appointments were made in fixed pay without any selection and thereafter though they were terminated at one point of time such order of termination was again cancelled, in some cases they claim to be appointed as stipendiary teacher after selection but not sent for training and also the stipend has not been paid, in some cases though the appointments were made without selection thereafter they claim to be regularised, some cases at the time of provincialisation their services were not provincialised and there after they were adjusted in terms of the direction issued by the Deputy Secretary of the Education Department, in some cases they claim to be regularly selected against sanctioned post but salary

not paid, in some cases appointments were made by the Managing Committee before provincialisation but subsequently they were adjusted against the sanctioned post by the Director without selection, in some cases stipendiary teachers claim to be appointed, after selection but not allowed to sign attendance register and Deputy Inspector of Schools subsequently informed the authority that the appointments were not valid, in some cases subject teachers were appointed by the Managing Committee of a Government Higher Secondary School on honorary basis thereafter they were appointed by the Director without any selection, in some cases teachers were appointed by the Managing Committee on honorary basis and thereafter appointed as stipendiary teacher by the authority without any selection, in some cases the petitioners claim that they were regularized by way of adjustment pursuant to the decision of the Government taken on the report of the Monoharan Committee, in some cases they claim to be appointed as Hindi teacher on fixed pay against the allotment made in the non-provincialisation school by the Government, in some cases the appointments are initially made against the leave vacancy or deputation vacancy thereafter allowed to continue until further orders without any selection, in some cases teachers were appointed in primary school at fixed pay on the basis of the recommendation of the Managing Committee of the school without any selection, in some cases initial appointments were made on consolidated pay thereafter they were adjusted against the vacant sanctioned post without approval of the State level empowered committee during the year 2000-01 and in some cases petitioners claim to be appointed in the regular scale of pay after due selection but have prayed for adjustment against regularly sanctioned post.

4. I have heard the learned Counsel present and appearing for the petitioners in this batch of writ petitions and also heard. Mr. M.K. Chowdhury, learned senior standing counsel assisted by Mr. M.R. Pathak, learned standing counsel, Education Department, Government of Assam. A common affidavit-in-opposition has been filed by the Commissioner and Secretary, Government of Assam, Education Department, in W.P.(C) No. 49 of 2006, copy of which were furnished to all the appearing counsel for the petitioners.

5. The gist of argument of the learned Counsel for the petitioners is that the petitioners were either appointed on the basis of selection made by the competent authority after due advertisement or they were appointed, may be without any selection, but by the competent authority or they were initially appointed on ad hoc basis for a fixed period of term or against the leave vacancy but said appointments were adjusted, subsequently against the regularly sanctioned post by the authority or they were appointed on ad hoc basis for a fixed period of time and thereafter their term of appointments were extended until further order and by virtue of such appointment they are serving and, therefore, they cannot be deprived of their salaries, more so, when the respondent authorities have extracted their services as teachers in various primary, middle high or higher secondary schools. The further submission of some of the learned Counsel, is that some petitioners though were appointed as

stipendiary teachers by the competent authority, after due selection, they have not been sent for training and also not paid the stipend. Therefore, it is contended, that the respondents may be directed, to send them for training so that they can enjoy the salary in the regular scale of pay after their successful completion of training.

6. The learned senior standing counsel for Education Department relying on the stand taken in the common affidavit-in-opposition filed by the Commissioner and Secretary, Education Department has contended that there were large scale illegal appointments made by the authorities in the State of Assam without there being any selection as required under the statutory rules framed for the purpose of recruitment of teachers and in some cases in fact take appointment orders were issued. The learned Counsel has further submitted, that it is apparent from the statements made in the writ petitions that some appointments were made on ad hoc basis for a fixed period of time and against the leave vacancy including the maternity leave vacancies and the petitioners are claiming their salaries without there being any extension of the tenure of such appointment by claiming that they are still serving as teacher pursuant to their initial ad hoc appointment order against the leave vacancy for the fixed period of time. It has further been contended by the learned Counsel that some of the petitioners are also claiming that they are though initially appointed on ad hoc basis or for a fixed term their tenure of appointment were subsequently extended until further orders and they claim to be still serving by virtue of such order. Mr. Choudhury learned senior standing counsel has submitted that a person can claim salary only if his appointment is legally valid, having been made strictly in terms of the statutory rules framed for that purpose. It has further been contended that a person can seek a writ of mandamus only if he can demonstrate that his legal right has been violated, or the respondent having a legal duty to perform has either negiecced or revised to perform such legal duty. According to the learned Counsel, petitioners can claim their legal right to get the salary only if they were appointed legally in accordance with the statutory rules, i.e., by issuing advertisement and after due selection against the regularly sanctioned post, as there are instances where the appointments were made, though after selection, against the non-existent post and in some cases in excess of the sanctioned post. Mr. Choudhury, submits in those cases the petitioners shall not be entitled to received any salary and, therefore, they cannot file a writ petition for issuance of a writ of mandamus directing the respondents to make payment of salary.

7. Relying on the statements made in the affidavit-in-opposition filed by the Commissioner and Secretary, Government of Assam, Education Department, Mr. Choudhury, has further submitted that the persons who have been appointed by the competent authority under the rules and against the valid sanctioned post but without any selection may be entitled to receive salary for the period for which they rendered their services, with the approval of the finance department but their services would be liable to be terminated. It has further been submitted that the persons who were appointed in excess of the validly sanctioned post or

who were appointed on ad hoc basis without any selection and whose services even if extended until further orders without the approval of the Government, shall not be entitled to any salary, their entry into the service being illegal. Regarding the payment of stipend, to the stipendiary teachers, the learned senior counsel line submitted that the persons who were appointed as stipendiary teacher without any advertisement and without selection and also who were not appointed against validly sanctioned posts, shall also not be entitled to any salary. The person appointed by the Managing Committee prior to provincialisation and whose services were adjusted subsequently without the approval of the finance department shall not be entitled to salary.

8. It has further been submitted, that some Hindi teachers were appointed by the Government pursuant to the Government of India's scheme for creation of the post of Hindi teacher in different non-Hindi speaking State, including Assam in the year 1991 but subsequently from the year 1995 as the Central Government stopped providing fund for such posts, the State Government has decided to adjust the appointees against the said one thousand posts and some of the posts were allotted in the non-provincialisation school in fixed basic pay and they are entitled to such basic pay only. It has been submitted that in some of the writ petitions some writ petitioners have claimed that they were working as Hindi teachers in non-provincialisation schools in the fixed pay but they have not been getting their fixed pay in spite of rendering the service. The learned Counsel submits that for the purpose of ascertaining whether such writ petitioners are working against the posts allotted in such non-provincialised schools, an enquiry is required to be made by the competent authority and only thereafter salary can be paid to such teachers.

9. The learned senior counsel has submitted that as a large numbers of teachers are involved in the present batch of writ petitions who claim that they were appointed by the competent authority after due selection and are still in service, therefore, entitled to salary, a high level inquiry is required to be made in the Government level to ascertain whether appointments were made after due selection, against the regularly sanctioned posts and upon inquiry, if any person is found to have been appointed against the regularly sanctioned post after due selection they will be entitled to receive salary from the Government as the Government cannot be burdened with the payment of salary to the persons who were illegally appointed either without selection or without following the due process of law or claims to be in service by virtue of fake appointment orders.

10. For the purpose of adjudicating the controversy raised, in the present batch of writ petitions, wherein the petitioners are claiming salaries contending that they are entitled to salary as they are serving as teacher in different primary, middle, English, high or higher secondary schools, pursuant to their appointments, the relevant admitted facts are that the appointments to the post of teacher in any school in Assam is required to be made by following the statutory rules like Assam Elementary Education Provincialisation Act, 1974, the

Assam Secondary Education Provincialisation Act, 1977 and the rules framed thereunder as well as by issuing the advertisement if and by making due selection by competent selection committee constituted by the authority for that purpose. To be a valid appointment, adherence to the procedure laid down in the statutory rules is sine qua non. The statutory rule provides for recruitment of teachers in different grades and also provides for payment of salary in the pay scale mentioned in such rules. To claim the salary by a person he is, therefore, to be appointed strictly in terms of the provisions contained in such statutory rules and unless he is appointed by following due process of law as stipulated in such statutory rules he cannot claim that the salary is to be paid to him.

11. Recruitment to any post under the Government has to be made in accordance with the rules governing such recruitment and in case there is no statutory rule framed for the purpose of recruitment to any post, the government must follow basic principle for recruitment to such post, i.e., there has to be advertisement and selection thereafter. No appointment can be made to a post on regular basis without there being an advertisement and selection thereby giving opportunity to all deserving candidates to offer their candidature and to participate in such selection. Any appointment made dehors the rules or without, following the due process of law cannot be termed as valid, appointment and any person appointed to a post without following such due process cannot be termed as validly appointed.

12. It is true that once a person is, appointed to a post validly he has to be paid the salary in terms of the conditions of his appointment, which may be of fixed pay or for the regular scale of pay. But is it the requirement of law or will the authority/Government be bound to pay the salary to a person whose appointment is not in accordance with law or not in accordance with the requirement of public employment, to make payment of salary to such appointee ? Can a Government be compelled to pay salary to the persons whose entry in to the service is through backdoor, who was appointed without following the due process of law or appointed in excess of sanctioned post ? The answer obviously is no, the Government being the custodian of public money, which is people's money, cannot be allowed to misuse such public fund by making payment of salary to the persons who were not validly appointed and who accepted such appointment knowing fully well that their appointments were not valid. It is not the requirement of law that even if such persons continued in service by virtue of such appointment they have to be paid their salaries.

13. In case of a teacher, as in the present case, who is supposed to teach the students, the future hope of our country, it cannot be presumed that he does not know the law required to be followed for a valid appointment. A person who seeks appointment as a teacher is presumed to know the law governing such recruitment. When a person joins the service of a teacher knowing fully well that he was not appointed, in accordance with the statutory rules or the requirement of public employment, is not legally entitled to claim salary and he also cannot

claim that the salary is to be paid to him as he is discharging his duty pursuant to such illegal appointment.

14. A writ of mandamus can be issued at the instances of a person who has a legal right, which has been violated or the authority who has a legal duty to perform, has refused or neglected to perform the same. The existence of a legal right/legal duty is, therefore, sine qua non for a person to seek a writ of mandamus. A person who has not been appointed by following due process of law, as teacher cannot claim that he was legally appointed to the post of teacher and, therefore, he cannot claim that his any legal right has been violated for not making payment of salary or the authorities have a legal duty to pay such salary to him even though his appointment is illegal. If such course is directed to be adopted by the respondents to make payment of salary to such person who are not legally and validly appointed that would amount to encouraging backdoor entry into the service and which would be another source of recruitment. Similarly to claim salary a person must be appointed against regularly sanctioned post. The appointment made in excess of the sanctioned post cannot be termed as legal and valid and the appointees against such posts which have not been sanctioned or against the non-existent posts or in excess of the posts sanctioned cannot, therefore, claim that they have a legal right to claim salary and hence, they cannot maintain a writ petition seeking writ of mandamus directing, the respondents to pay salary.

15. The contention of the learned Counsel for the petitioners that as they are serving as teachers pursuant to the appointments made, even if such appointment were not legally valid, they are entitled to salary as the respondents have extracted their services, cannot also be accepted as there is no room for equity or sympathy to a person who is not validly appointed, specially when the recruitment in service is governed by the statutory rules. Such contention also cannot be accepted as it would amount giving legitimacy to the illegal action taken by some authorities and acceptance of such contention would be field day for manipulation with impunity and one would get away on the plea of equity or misplaced sympathy. It appears from the statements made in various writ petitions that there was hardly any appointment of teacher in any school as per the relevant statutory rules, during the relevant point of time and appointments were made either by giving a go by to the statutory rule or made initially on ad hoc basis and subsequently adjusted against the regular vacancies. There are instances, in this batch of writ petitions, where appointments were made on ad hoc basis though there was no sanctioned post and thereafter transferred to another school where there were sanctioned vacancies.

16. A person appointed in an unauthorised manner against the nonexistent vacancies cannot claim that they are entitled to get salary on the basis of such appointment, whether recruitment made by an authority in a arbitrary manner or in violation of the statutory rules and norms and procedure for recruitment. Such recruitment are null and void and will not give rise to any right to such recruits

to claim salary on the basis of such recruitment. To be a valid recruitment it must be made against the sanctioned vacancy which is basically backed, up by financial budget support of the State Government. Unless there is a vacancy, there is no question of filling up. An employee without a vacancy or post available, on which he can work cannot be paid salary. No State Government can be burdened with such employees and the state exchequer cannot also be burdened for payment of salary to such employees, who were recruited illegally. Those persons are in the real sense not the employees under the State Government. Any recruitment made illegally cannot bind the State Government.

17. In this batch of writ petitions there are claims of some writ petitioners who claim that they were regularly selected after advertisement and appointed against the duly sanctioned post either in regular scale of pay or as stipendiary teacher but they were not paid their salary/stipend by the respondents. This court, in view of non-furnishing of all the material facts and records, either by the petitioners or by the respondents, required for the purpose of scrutinizing whether such appointments were made in accordance with the statutory rules and against the regularly sanctioned post, is not in a position to record, a specific finding in that regard, therefore, to ascertain the correct factual position, the Government is required to make an inquiry by constituting a high level committee to scrutinize, whether the appointments were made validly, in terms of the statutory rules and against the sanctioned posts.

18. In the present batch of writ petitions there are also instances of making ad hoc appointment for a fixed term but which appointment were extended until further order thereby trying to burden the State exchequer for payment of salary. There are certain writ petitions where even some appointees who were appointed for a fixed period or against leave vacancies, claim to be in service after expiry of their tenure of appointment and claim salary on the ground that they are still serving. Those appointees in any case cannot claim salary beyond the period for which they were engaged. Moreover where the ad hoc appointments were made for a fixed term but their appointments were extended until further orders without approval of the competent authority, also cannot claim salary for the extended period as their appointments were not valid. Similarly the persons who are beneficiaries of the fake appointments cannot also claim that they are entitled to salary by virtue of rendering service on the basis of such fake appointment. Any appointment made without following, the due process of law and by a person not competent to make such appointment or the fake appointment strikes at the root of such appointment.

19. In *Ashwani Kumar and Others Vs. State of Bihar and Others*, a similar point arose for consideration before the Apex Court, that is, as to whether person recruited in Class-III and Class-IV service in the State of Bihar illegally and in excess of the sanctioned vacancies can be termed as validly appointed and they are entitled to salary. In the said case an inquiry committee was constituted by the Government to find out whether the appointments made by the appointing,

authority were valid and whether the salaries could be paid to such employees. The committee submitted the report with the finding that the appointments were made without following the due procedure and the appointments were made in violation of Government instructions and those were found to be illegal appointments, committee also found that some appointments were made at a particular place and thereafter transferred to other palaces wherefrom the salary was paid and also some persons were appointed by producing fabricated orders of appointment. The Government after accepting the committee recommendation for cancellation of appointments cancelled such appointments. The petitioners in the said case filed the writ petition before the High Court, which ultimately came before the Apex Court by way of appeal by the writ petitioners. Since there were differences of opinion between two hon'ble Judges of the Apex Court, the same was referred to a larger Bench. The Apex Court upon consideration of the first point for determination, as to whether such appointments were legal and valid, has held that those were not legal and valid, as the recruitments were made by flouting all the procedure and in excess of vacancies by holding that they were all persona non grata and were not employees in the real sense of the term and the appointments made contrary to the recognized recruitment procedure being highly arbitrary were not binding on the State Government and the State authorities were justified in refusing to release the salary for paying those unauthorized army of staff which represented a host of unwelcome guests.

20. In this batch of writ petitions as observed above, bears of lack of materials before this court it is not possible on the part of the court to record any finding as to whether the petitioners were appointed by following the requirement of the statutory provision and against regularly sanctioned posts. For the purpose of ascertaining the same a detailed inquiry is required to be made by the committee to be constituted by the State Government, in which the representatives from the finance department not below the rank of Joint Secretary is also required to be a member, as finance of the State is involved. Mr. Chowdhury, learned standing counsel Education Department, has submitted that in fact a committee has already been constituted with the Commissioner and Secretary, Education Department, Director of Secondary Education as well as Elementary Education, Sr. Financial Advisor, Education Department with Under Secretary Education Department as Member-Secretary, for the purpose of going into the appointments of the stipendiary teachers and also the reasons for non-payment of salaries/stipend to such persons, by issuing notification dated 9.3.2006, in terms of the order passed in another batch of writ petitions. Since a Committee has already been constituted, there is no need to constitute another Committee to scrutinize the claim of the present writ petitioners. However, as the said committee has no representative from finance department, whose presence is required, as the finance of the State is concerned, the Chief Secretary, Government of Assam is directed to issue necessary order making inclusion of an officer from finance department, not below the rank of Joint Secretary, in the said Committee, within, three months from the date of receipt of the order.

21. The said Committee is directed to scrutinize the claim of the petitioners involved in the present batch of writ petitions, in terms of the observations made above and, thereafter, shall, submits its findings to the State Government, who shall in turn consider such findings as well as the recommendation if any and pass necessary order for implementation of such findings and the recommendation of the said Committee. As the Committee is required to scrutinize the claims of each of the writ petitioners and also the claims that may be referred to it by this court subsequently, involving a large number of persons and also in view of the composition of the Committee, this court considered it inappropriate to fix any time limit for completion of such scrutiny and submission of its findings and recommendation if any. However, this court hope and trust that the Committee will undoubtedly holds it deliberation and submits its findings and recommendations as expeditiously as possible for taking appropriate action by the Government towards implementation of such findings and recommendations.

22. It has further been directed that as the Commissioner and Secretary to the Government of Assam, Education Department in his affidavit filed before this court has taken the stand that the persons who were appointed as teachers against the sanctioned post and by the competent authority but without any selection they will be paid their salaries till their services are terminated, the respondents shall release the salary to those teachers found to be appointed by the said committee against the regularly sanctioned post and by the competent authority but without any selection, till their services are terminated in accordance with law.

23. In case it is not possible to segregate the persons appointed by the competent authority after selection, but in excess of sanctioned vacancies, the respondents shall, on the basis of the findings and recommendations of the committee in that regard, also release the salary to those teachers till their services are terminated to accordance with law.

24. The Committee shall also scrutinize the claims of the writ petitioners involved in the present batch of writ petitions, who claim to be appointed as stipendiary teacher after due selection and against the sanctioned post but were not sent for training and upon scrutiny of the records if it is found that they were appointed as such after due selection and against sanctioned posts, the Government shall take necessary steps for sending them for training in terms of the direction issued vide Judgment and order dated 14.8.2003 passed in W.P.(C) No. 6034 of 2001 Deepa Deka and Ors. v. State of Assam and Ors. and other analogous matters.

25. The Committee is also directed to submit its findings as to whether any officer/staff of the Education Department is involved in any illegal appointment or in issuing any fake appointment orders and also to recommend whether any criminal action as well as disciplinary action can be initiated against such erring officers/staff.

26. With above observations and directions, the writ petitions are disposed of.

27. Keeping in view the facts and circumstances of instant cases there shall be no order as to cost.