

GAHC010043962022



IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

REVIEW PETITION No. 49/2022

IN W.P(C) No. 4433/2012 & ORs(D/O)

1. Sri Prasanna Borah,

Aged about 44 years,
Son of Late Jonaram Borah,
Resident of Village- Kalabari,
Mornoiguri, P.O.- Kalabari,
Dist- Biswanath, Assam,
Pin-784178

2. Smti Chinmoyee Talukdar,

Aged about 46 years
C/o Suren Talukdar,
R/o- House No. 3, 2nd Bye-Lane, Hem Baruah
Path, Dwarka Nagar, Behind Down Town
Hospital, Assam, Dispur, Guwahati, Dist.-
Kamrup(M), Assam, PIN- 781006

3. Saju Kumar Jadav,

Aged about 50 years,
S/o- Dulal Ch. Ghosh
R/o- Village- Goaltoli,
P.O. & Dist:- Goalpara, Assam, PIN- 783101

4. Sri Jaypal Sing Brahma,

Aged about 46 years,
Son of Gouri Kanta Brahma,
Resident of Village- Balabari,
P.O- Baghdoba, Dist- Tamulpur, Assam
PIN- 781366

5. Mrs. Gayatri Naiding,

Aged about 48 years
Daughter of Late Gopal Ch. Naiding,
R/o- Dibavai, P.O & P.S.- Haflong,
Dist- Dima Hasao, Assam, PIN- 788819

.....Review Petitioners

-Versus-

1. Sri Gobinda Lal Chakroborty,

Son of Sri Gopal Chakraborty,
Roll No. 150, Subject Teacher, Baleswar Higher
Secondary School, Jallalpur, Permanent Address-
1st Link Road, Lane No. 1, House No. 12A, Cachar,
Present address- C/o- A.P. Chakraborty, P.O. & P.S.-
Panchgram, Dist.- Hailakandi, Assam, PIN-788152

2. Sri Nirupam Nath,

Son of Late Upendra Ch. Nath, Roll. 949, Asstt.
Teacher, Judhisthir Saha Higher Secondary School,
Permanent address- Village- Behara, Part-II, P.O.-
Behara Bazar, Dist- Cachar, Assam, Present
address- C/o- Bidhu Bushan Nath, Village-
Mohanpur Part-II, P.O.- Mohanpur, P.S. & Dist.-
Hailakandi, Assam, PIN- 788150

3. Abhijit Saha,

S/o- Sri Ajoy Kumar Saha Roll No. 149,
Subject Teacher, Raja G.C. Memorial Higher
Secondary School, Borkhola, Permanent Address-
Radha Binod Villa Flat No. 2C, Adharchand School
Road, Ambicapatty, Silchar, Cachar, Assam, Present
Address- C/O- Ajoy Kumar Saha, Central Road, P.O.
and P.S.- Lala 3/4 Dist.- Hailakandi, Assam, PIN-
788163.

4. Md. Nazmul Haque Laskar

S/o- Abdul Motahir Laskar Roll No. 419, Science Teacher, Bowarpur Me School Borband R/O VILL. and P.O- RONGPUR NORTH P.S. and DIST.- HAILAKANDI PIN- 788155.

5. Partha Pratim Chakraborty

S/o- Lt. Parimal Chakraborty Roll No. 303 Asstt. Teacher Joymongal High School Joykrishnapur Lala P.O. and P.S.- Lala Dist.- Hailakandi Assam PIN- 788163.

6. Bodrul Islam Choudhury

S/O- Kutub Uddin Choudhury Roll No. 136 Science Graduate Teacher Matijuri High School P.O.- Matijuri P.S. and DIST.- Hailakandi Assam PIN- 788155.

7. Dinesh Malakar

S/O- Sri Dhireswar Malakar Roll No. 913 Subject Teacher Pachgaon Higher Secondary School Presently Residing at Vill- Khudradadhi P.O.- Geruah P.S.- Hajo Dist.- Kamrup Permanent Resident Of P.O.- Matijuri P.S. and Dist.- Hailakandi Assam PIN- 788155

8.The State Of Assam

Rep. By the Commissioner and Secy. to the Govt. of Assam Deptt. of Education Secondary Assam Civil Secretariat Block- C Dispur Guwahati Assam PIN- 781006.

9.The Director Of Secondary Education Assam
Kahilipara Guwahati- 19.

10. The Assam Public Service Commission

Rep. by Its Chair Person Assam Public Service Commission Khanapara Dispur Guwahati PIN- 781022

.....Respondents

- B E F O R E -
HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SOUMITRA SAIKIA

For the Petitioner : Mr. D. Das, Senior Advocate assisted by Mr. N. Borah, Advocate

For the Respondents : Mr. B. Purkayastha, Advocate for R-1
Mr. P.P. Dutta, Standing Counsel, APSC

Date of Hearing & Judgment : **01.03.2023**

JUDGMENT & ORDER

(SOUMITRA SAIKIA, J)

This review petition is directed against the order dated 20.06.2013 passed in W.P(C) No. 4433/2012 and other connected writ petitions. Vide order dated 20.06.2013, these writ petitions were closed by recording the statement in the affidavit dated 06.06.2013 filed by the Commissioner & Secretary to the Government of Assam, Education (Secondary) Department that B.Ed/B.T. Degree is necessary for the posts of Inspector of Schools and that the appointment to the posts of Inspector of Schools may be made out of the candidates having such qualifications.

2. According to the review petitioners, the stand reflected in the affidavit filed by the Department was wrongly recorded in the order under review. Consequent thereto, although the Service Rules governing the recruitment of Inspectors of School does not prescribe, B.T./B. Ed as a prescribed qualification

for recruitment to the post of Inspector of Schools, but in view of the order dated 20.06.2013 passed in W.P(C) No. 4433/2012 and other connected W.P(C)s which is sought to be reviewed, a writ petition being W.P(C) No. 5752/2013 has been filed before this Court, whereby the appointments of the Review Petitioners to the posts of Inspectors have been put to challenge as being violative and contrary to the order dated 20.06.2013 passed by this Court in W.P.(C) No. 4433/2012 and other connected W.P(C)s. It is the case of the review petitioners that the order dated 20.06.2013 passed in W.P(C) No. 4433/2012 and other connected writ petitions, which is under review, having wrongly recorded the stand reflected in the affidavit dated 06.06.2013 filed by the Department and the W.P.(C)s having been disposed of with a direction that appointments to the post of Inspector of Schools may be made out of candidates having such qualifications, the appointments of the Review Petitioners as Inspector of Schools have been put to challenge by way of W.P(C) No. 5752/2013, which is presently pending disposal before this Court. Being aggrieved by the said order dated 20.06.2013 passed in W.P(C) No. 4433/2012 which according to the petitioners is an error apparent on the face of the record and thus the present review petition has been filed on the following grounds:

A. *For that patent errors apparent on the face of the records has crept in the impugned order dated 20.06.2013 and, as such,*

this Hon'ble Court may be pleased to invoke the power of review, in respect of conclusions reached in the impugned Order pertaining to W.P.(C) No. 4433/2013 and other connected petitions, which inhere in every court of plenary jurisdiction to correct such errors.

B. *For that the errors referred to above are so patent and apparent that it is self evident and it does not require any detail examination or argument to establish it. In other words, glaring omission/patent mistake having been crept in the impugned Order dated 20.06.2013 this Hon'ble Court may be pleased to review the same.*

C. *For that though the review petitioners/respondent Nos. 6, 8, 14, 18 & 19 were arrayed as party respondents in W.P.(C) No. 4433/2012 but they were not served with the copy of the Government's Affidavit dated 06.06.2013 and, as such, they were unaware about the glaring irregularity that had occurred in the impugned order dated 20.06.2013 was passed, the review petitioners could not place their stand in the matter and the conclusions were arrived at ex-parte by this Hon'ble Court which has caused serious and grave prejudice to the review petitioners. Therefore, the present is a fit case for reviewing the impugned Order dated 20.06.2013.*

D. *For that W.P.(C) No. 4433/2012, and other connected matters were taken up for consideration on 20.06.2013 by this Hon'ble Court. On the said date this Hon'ble Court by relying on the Affidavit of the Government dated 06.06.2013 (Annexure-10 herein) was pleased to dispose of the said writ petition by observing that in view of the stand taken in the Affidavit dated 06.06.2013 filed by the Commissioner & Secretary to the Government of Assam, Education (Secondary) Department that*

B.Ed./B.T. is necessary for the post of Inspector of Schools and accordingly directed that appointment to the post of Inspector of Schools may be made from candidates having such qualification. Apparently, a perusal of the Government's Affidavit dated 06.06.2013 would reveal that no such statement regarding requirement of B.Ed./B.T. Degree for Inspector of Schools has been made by the Government in the said Affidavit. Therefore, the aforesaid observations are fallacious in nature warranting interference at the hand of this Court.

E. *For that the restrained order dated 06.02.2013 (Passed in W.P(C) No. 4433/2012 and other connected writ petitions) having been vacated vide Order dated 26.04.2013 and appointments to the post of Inspector of Schools having been made pursuant thereto, such directions would become redundant if the impugned Order dated 20.06.2013 is allowed to be continued. On this Count alone, the impugned Order dated 20.06.2013 needs to be reviewed by this Hon'ble Court.*

F. *For that in the humble comprehension of the review petitioners the impugned Order dated 20.06.2013 has the potential of supplementing the Rules of 1982 in a manner which is no permissible in the eye of law. In other words, something which is legislature intentionally omitted is sought to be brought in indirectly. If such a course of action is allowed then the same would defeat the very purpose of legislature. Hence, his Hon'ble Court would be graciously pleased to review the impugned Order dated 20.06.2013 as prayed for.*

G. *For that the review petitioners respectfully beg to submit that they having been appointed by following due process of law and also in view of the directions contained in Order dated*

26.04.2013, any interference with their appointments on the basis of the impugned order 20.06.2013 would result in serious injustice being meted out to the review petitioners. Therefore, this Hon'ble Court would be pleased to review the Order dated 20.06.2013 passed in W.P.(C) No. 4433/2012.

H. *For that the review petitioner respectfully begs to state that it is no longer res integra that a person approaching the Hon'ble Court under writ jurisdiction should come with clean hands. Candid disclosure of facts in a petition under Article 226 is sine qua non and whoever violates this principle deserves no consideration at the hands of the Hon'ble Court. Apparently, the writ petitioners tactfully withhold from this Hon'ble Court the fact that they were never aspirants for the post of Assistant Inspector of Schools. On the contrary, they were aspirants for the post of Inspector of Schools and emerged unsuccessful in the selection process. Hence, to thwart the selection of the review petitioner the writ petition was filed alleging anomaly in the requisite qualification prescribed for the said two posts. As such, this Hon'ble Court would be pleased to review the Order dated 20.06.2013 passed in W.P(C) No. 4433/2012.*

I. *For that in any view of the matter the impugned Order dated 20.06.2013 passed in W.P(C) No. 4433/2012 suffers from patent illegality and, as such, the same cannot be legally given effect to."*

3. The learned counsels for the parties have been heard. Pleadings on record have been carefully perused. We have also perused the order dated

20.06.2013 under review and the affidavit dated 06.06.2013 filed by the Department.

4. The essential facts necessary for the purposes of this Review Petition, are that pursuant to an advertisement No. 10/2011 dated 17.11.2011 issued by the APSC inviting applications to fill up posts of Deputy Director/ Inspector of Schools/ District Elementary Education, the review petitioners applied for the post of Inspector of Schools. In the selection process conducted, the review petitioners participated and were selected for appointment to the post of Inspector of Schools. One of the unsuccessful candidates filed the writ petition being W.P.(C) No. 3924/2011 assailing the constitutional validity of Rule 8 of the Service Rules prescribing educational qualification for the posts of Assistant Inspector of Schools vis-a-vis Inspector of Schools. The challenge to the vires of the said Rules was on the ground that higher education i.e., B.T/B.Ed was prescribed for the feeder post of Assistant Inspector of Schools whereas the same are not prescribed for the higher posts of Inspector of Schools. This Court, by order dated 31.08.2012 passed in W.P(C) No. 3924/2011 remitted the matter back to the Departmental authorities to consider the matter and take a final view. This Court directed the State to look into the matter in the light of information of the experts in the field and take an appropriate decision within two months. Pending such decision, it was directed that the recruitment pursuant to the impugned advertisement may not be proceeded with and the

writ petition was disposed of. In terms of the order dated 31.08.2012 of this Court passed in W.P(C) No. 3924/2011, the Department constituted an expert committee to look into the requisite educational qualification for the posts of Inspector and Assistant Inspector of Schools comprising of the following members:

(1) Sri N.M. Hussain, IAS

Secretary to the Government of Assam, Education (Secondary) Department as the Chairman.

(2) Dr. Harendra Ch. Das, AES

Director of Secondary Education, Assam (Retired) as Member and,

(3) Md. Mohsin Ali, AES

Director of Secondary Education, Assam (Retired) as Member.

5. The committee deliberated upon the issue and by its meeting held on 21.09.2012 eventually two former Directors of the Secondary Education who were members of the said committee were entrusted to examine the matter in the light of the grievances raised. The two former Directors vide communication dated 07.11.2012 submitted their opinion before the Secretary to the Government of Assam, Secondary Education. It was communicated to the Government that in view of the difference in the nature of duties rendered by Inspector of Schools as compared to Assistant Inspector of Schools, the educational qualification as prescribed under Rule 8 of the Assam Service Rules, 1982 were found to be in order. Some affected parties challenged this

communication dated 07.11.2012 by filing a writ petition before this Court as well as assailing the vires of Rule 8 of the Assam Education Rules, 1982, as liberty was granted by this Court vide its earlier order dated 31.08.2012. Subsequent thereto, two other writ petitions were also filed with similar grievances being W.P(C) No. 5406/2012 (Kushal Kumari Bhuyan & Ors Vs. State of Assam and Ors.) and W.P(C) No. 505/2013 (Rajesh Chakraborty Vs. State of Assam and Ors.), this Court vide order dated 06.02.2013 directed the State Government to re-consider the matter afresh at the appropriate level within a period of two months and till such time it was directed not to finalise any fresh appointments. In view of the interim order passed by this Court, an application for vacation/modification of the interim order dated 06.02.2013 was preferred by the review petitioner. This Court by order dated 26.04.2013 allowed the application by modifying the interim orders passed earlier and clarified that the order dated 06.02.2013 does not in any manner interfere with the appointment of the Inspectors. Subsequently, an affidavit dated 06.06.2013 was filed by the Department of Secondary Education, Government of Assam in W.P.(C) No. 4433/2012 reiterating the view expressed by the committee of Experts in the matter. It was specifically averred in the said affidavit that the duties and functions of the Assistant Inspector of Schools is similar to that of Deputy Inspector of Schools, Block Elementary Education Officer etc and that

there is difference in duties allotted to Assistant Inspector of Schools and Inspector of Schools.

6. The review petitioners in the meantime were appointed vide order dated 07.06.2013 and were posted as Inspectors of Schools in different districts. In course of time, W.P(C) No. 4433/2012 came to be taken up by this Court. Vide the order dated 20.06.2013 which is presently under review, this Court by placing reliance on the affidavit dated 06.06.2013 filed by the State Department disposed of the writ petitions. The order dated 20.06.2013 by which the writ petition was disposed of and of which review is sought for, reads as under:

"Challenge in the writ petitions is to proposed appointments to the posts of Inspector of Schools out of candidates who do not possess B.T/B.Ed. degree which qualification was required for lower posts in the department.

Matter was considered earlier and time was given to the respondents to consider the matter.

Accordingly, affidavit dated 6.6.2013 has been filed which in substance accepts the stand of the petitioners.

In view of stand taken in the affidavit dated 6.6.2013 filed by the Commissioner and Secretary to the Govt. of Assam, Education (Secondary) Department t hat B.Ed./B.T. degree is necessary for the posts of Inspector of Schools, the writ petitions are disposed of with a direction that the appointment to the posts of Inspector of Schools may be made out of candidate having such qualification."

7. The petitioners have filed this review petition presently as a writ petition being W.P.(C) No. 5752/2013 was preferred before this Court assailing the appointments of the review petitioners as Inspector of Schools on the ground of not having B.Ed/B.T. degree. The further submission is that the affidavit dated 06.06.2013 filed by the Department was never served on the review petitioners and they were unaware about the contents thereof. According to the review petitioners, in view of the writ petitions challenging their appointments pending before this Court, if error apparent in the order dated 20.06.2013 is not corrected, it will have adverse effect on the review petitioners as the order dated 20.06.2013 is the basis on which the writ petitions challenging the appointment of the review petitioners have been filed. It is submitted that the order dated 20.06.2013 has been sought to be interpreted to mean that the qualifications for inspecting duties require a B.T./B.Ed degree and consequently B.T./B.Ed degree is a necessary qualification for the post of Inspector of School, which however is not prescribed under the Rules.

8. The affidavit dated 06.06.2013 filed by the Commissioner & Secretary to the Government of Assam, Education (Secondary) Department indicates the stand of the Government that requirement of B.T./B.Ed degree in the cadre of Assistant Inspector of Schools as prescribed in the AES Rules. 1982 does not appear to be unjustified. A perusal of the said paragraph reveals that the

manner in which the affidavit was worded, it indeed creates some confusion. In Para-7 of the said affidavit, while justifying the necessity of B.T./B.Ed degree in the cadre of Assistant Inspector of Schools as prescribed under the AES Rules, 1982, the Department justified the requirement of the same as it is considered essentially for any officer having inspecting duties. The relevant paragraph No. 7 is extracted below:

*"7. That the deponent begs to state that the duties and function of the Assistant Inspector of Schools are similar to that of Deputy Inspector of Schools/Block Elementary Education Officer etc. The Asstt. Inspector of Schools are the Inspecting Officers in respect of the schools under Secondary Education while the Deputy Inspector of Schools, Block Elementary Education Officer are the Inspecting Officer in respect of the schools under Elementary Education.
In view of the above facts and circumstances, the government is of the view that since the B.Ed./B.T degree is essential for any officer having inspecting duties, the essentiality of BT/B.Ed degree in the cadre of Assistant Inspect of Schools as prescribed in AES Rules, 1982, does not appear to be unjustified."*

9. Before this Court at the time of hearing of the review petition, the learned counsel appearing for the respondent does not dispute that the AES Rules, 1982 do not prescribe B.T./B.Ed as essential qualifications for the post of Inspector of Schools but the same are prescribed for Assistant Inspector of Schools. The learned counsel for the respondent submits that it is this prescription of the Rules which was sought to be conveyed by the affidavit dated 06.06.2013 filed by the Commissioner & Secretary to the Government of Assam.

10. The AES Rules, 1982 have also been carefully perused and Rules 3 & 8 prescribes qualifications for the post of Inspector of Schools and Assistant Inspector of Schools as under:

"3 Inspector/Inspectress of Schools and Deputy D.P.I.- Second Class Master Degree having uniformly brilliant career and possessing teaching experience in schools and colleges for ten years or administrative experience for at least 10 years of which 5 years must be in teaching.

8. Assistant Inspector of Schools:- M.A., B.T. or M.Sc. B.T. with at least 7 years experience as teacher in Secondary schools or at least 5 years experience as Teacher in Government Aided or Government College or M.A., B.T., or M.Sc., B.T., with at least 5 years experience as teachers in Secondary Schools and two years experience as Sub-Inspector of Schools, or M.A., B.T., or M.Sc., B.T. and serving as Deputy Inspector of Schools or Additional Deputy Inspector of Schools."

11. Having carefully perused the prescription under the Rules 3 and 8 of the AES Rules, 1982 as well as the statement made in the affidavit dated 06.06.2013 at Para-7 and also taking the earlier orders passed in the writ petition directing the Government to take a fresh decision in the matter, we find that averments made in Para-7 of the affidavit dated 06.06.2013 filed by the Commissioner & Secretary to the Government of Assam, merely reflect the position of the Rules which prescribe requirement of B.T./B.Ed for the post of Assistant Inspector of Schools but which however is not required for the post of Inspector of Schools as per the AES Rules, 1982. It is also seen that by order dated 26.04.2013 passed in MC No. 511/2013, MC No. 680/2013 and MC No. 551/2013, upon due consideration of the matter, this Court had earlier directed that while keeping the issues of irrationality in question for the post of Assistant

Inspector open, it was clarified that the order dated 06.02.2013 does not in any manner prohibit appointments to the post of Inspector and the said Misc. Cases were accordingly allowed and disposed of.

12. Having carefully perused the orders dated 06.02.2013 and 26.04.2013 as well as the affidavit dated 06.06.2013, it cannot be said that the statement in the affidavit filed by the Government can be read to mean that B.Ed/B.T. degree is essential for the post of Inspector of Schools. The affidavit of the Department, though not happily worded, at Para-7 of the said affidavit, states that B.T./B.Ed degree is essential for any officer having inspecting duties and therefore, the B.T/B.Ed degree in the cadre of Assistant Inspector of Schools as prescribed in AES Rules, 1982 does not appear to be unjustified.

13. According to this Court such averment cannot be read to arrive at a conclusion that for both the posts of Assistant Inspector of Schools as well as Inspector of Schools, the essential qualification is degree of B.T./B.Ed. In any event, the AES Rules, 1982 categorically lay down the qualifications prescribed for each post including the post of Inspector of Schools as well as Assistant Inspector of Schools. There is no dispute at the bar that no such amendment has been brought in by the State to the Rules as on date incorporating requirement of B.T./B.Ed to the post of Inspector of Schools as an essential qualification. No notification or office memorandum has been brought to the notice of this Court to suggest that till the amendment in the Rules are

incorporated, qualifications of B.T./B.Ed are prescribed for the post of Inspector as well, in addition to the already existing provisions for the post of Assistant Inspector of Schools.

14. It is also seen that from the order dated 26.04.2013 passed in MC No. 511/2013, MC No. 680/2013 and MC No. 551/2013 that this Court had clarified that the earlier order dated 06.02.2013 shall not interfere with the appointment of the Inspectors. Accordingly, it appears to the Court that the averments made in the affidavit dated 06.06.2013 by the State Department, cannot be read to mean that the Department had taken a stand that the qualification of B.T./B.Ed degree is also required for the post of Inspector of Schools.

15. In view of discussion made herein above, this Court is of the view that in the order dated 20.06.2013, which is sought to be reviewed, an error appears to have crept inasmuch as the statement made in the affidavit perhaps was not correctly reflected in the order.

16. We, therefore, modify and/or clarify the order dated 20.06.2013 to the extent that the prescription under the Rules as on date is requirement of B.T./B.Ed for the lower post of Assistant Inspector of Schools but the same is not a necessary qualification for the higher post of Inspector of Schools.

17. The review petition is allowed to the extent of the clarification rendered above and disposed of. The question of irrationality in qualification for the post of Assistant Inspector of School which was left open by this Court by order

dated 26.04.2013 passed in MC No. 511/2013, MC No. 680/2013 and MC No. 551/2013, is kept open to be decided in any appropriate proceeding if so advised.

JUDGE

CHIEF JUSTICE

Comparing Assistant