

GAHC010128982017



IN THE GAUHATI HIGH COURT

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

WRIT PETITION (C) No. 2812/2017

Pankaj Kakoty,

Presently holding the post of Inspector of Drugs,
Health & Family Welfare Department, Assam

Son of Mr. Kamal Kakoty,

Resident of Rukmini Nagar, House No. 8,

Balibad, Dispur,

Police Station-Dispur,

District: Kamrup (Metro), Assam.

.....Petitioner

-Versus-

1. The State of Assam, Represented by the
Chief Secretary to the Government of Assam, Dispur,
Guwahati-06, Assam

2. The Additional Chief Secretary to the Government of Assam, Department of Personnel: Personnel (B), Dispur, Guwahati-06

3. The Commissioner and Secretary of Assam, Department of Personnel: Personnel (B), Dispur, Guwahati-06

4. The Commissioner and Secretary to the Government of Assam, Health & Family Welfare Department, Dispur, Guwahati-06.

5. The Commissioner of Food Safety and Drug Administration, Assam, Banphol Path, Guwahati-06.

6. The Joint Secretary to the Government of Assam, Personnel Department (B), Dispur, Guwahati-06.

7. The Director of Health Services, Assam, Hengrabari, Guwahati-36.

8. The Drugs Controller, Assam, Hengrabari, Guwahati-36

.....Respondents

WRITPETITION (C) No. 3383/2015

Pankaj Kakoty,

Presently holding the post of Inspector of Drugs,
Health & Family Welfare Department, Assam
Son of Mr. Kamal Kakoty,
Resident of Rukmini Nagar, House No. 8,
Balibad, Dispur,

Police Station-Dispur,
District: Kamrup (Metro), Assam.

.....Petitioner

-Versus-

1. The State of Assam, Represented by the
Additional Chief Secretary to the Government of
Assam, Department of Personnel; Personnel (B),
Dispur, Guwahati-06, Assam

2. The Commissioner and Secretary of Assam,
Department of Personnel: Personnel (B), Dispur,
Guwahati-06

**3. The Commissioner and Secretary to the
Government of Assam,** Health & Family Welfare
Department, Dispur, Guwahati-06.

**4. The Joint Secretary to the Government of
Assam,** Personnel Department (B), Dispur,
Guwahati-06.

5. The Director of Health Services, Assam,
Hengrabari, Guwahati-36.

.....Respondents

:: BEFORE::

HON'BLE MR. JUSTICE SOUMITRA SAIKIA

For the Petitioner

: Mr. K.N. Choudhury, Sr.
Counsel assisted by

Mr. M. Ahmed, Advocate

For the Respondents : Mr. B. Gogoi, SC, Health
Ms. M. Bhattacharjee, Addl.
Sr. Government Advocate

Date of Hearing : **31.08.2023**

Date of Judgment : **24.11.2023**

JUDGMENT & ORDER (CAV)

The petitioner before this Court is working as an Inspector of Drugs under the Health and Family Welfare Department. The petitioner was appointed as Inspector of Drugs by Notification dated 10th November, 2005 and he joined his services on 16.11.2005. The petitioner's appointment was made under Regulation 3(f) of the Assam Public Service Commission (Limitation of Functions) Regulations, 1951. The petitioner was, thereafter, given an extension by the competent authority in the Department by order dated 04th December, 2006. Subsequently, the petitioner was given inasmuch as 26 extensions to the ad-hoc appointment under Regulation 3(f). The recruitment to the cadre of Inspector of Drugs is governed by the Assam Drugs Control Organization Service Rules, 1994. Under Rule 5(2) of the said Rules, the recruitment to the cadre of Inspector of Drugs shall be made by direct recruitment only. Rule 6 prescribes the manner and method and procedure to be followed for recruitment to the post of Inspector of

Drugs. In spite of several communications issued by the Department to initiate the process of regular appointments, the same was not resorted to. It is stated that the appointment of the petitioner under Regulation 3(f) has the Cabinet approval of the State and the same is recorded in the file No. HLA.136/2003. While the petitioner was serving, an Office Memorandum bearing No. ABP 118/2003/464 dated Dispur 16th March, 2015 was issued by the Government of Assam for regularization of certain appointments made under Regulation 3(f) of the Assam Public Service Commission (Limitation of Functions) Regulations, 1951. The said process was adopted by the Government of Assam as onetime measure for regularization of those employees who are continuing in ad-hoc manner year after year without regularization. By the said Office Memorandum, it was stated that as an exceptional case persons who had rendered services to the Government varying from 9 years to 22 years will be regularized. The petitioner duly represented before the Competent Authority claiming to be regularized under the provisions of the said Office Memorandum dated 16.03.2016. It is stated that the said Office Memorandum included the list of the candidates who were regularized by the Government in terms of the said Office Memorandum. However, name of the petitioner was not found in the list which has enclosed as an annexure-A to the said Office

Memorandum. Being aggrieved, he approached this Court by filing W.P(C) No. 3383/2015.

2. This Court while issuing Notice by order dated 10.06.2015 was pleased to direct that one post of Drug Inspector shall be kept vacant until further order. This interim order is still subsisting.

3. It is submitted that in W.P(C) No. 3383/2015, an I.A. being I.A.(Civil) No. 962/2016 was filed by the petitioner praying for taking a necessary decision in terms of the O.M. dated 16.03.2015. In the said I.A., by order dated 30.03.2016, a Co-ordinate Bench of this Court directed the Health and Family Welfare Department to take necessary decision in respect of the petitioner on the Office Memorandum dated 16.03.2015 and also directed to communicate the outcome of such decision to the Court. It is stated that no objections were filed by the respondents in the I.A. (Civil) No. 962/2016. Pursuant to the directions contained in the I.A., the Department by order dated 25.04.2017 passed impugned order by which the petitioner's case alongwith others were rejected and held to be not suitable for consideration for regularization in terms of the Office Memorandum dated 16.03.2015. Being aggrieved by the order dated 24.04.2017 W.P(C) No. 2812/2017 has been filed.

4. The learned Senior counsel for the petitioner submits that the impugned order dated 25.04.2017 was issued by the Health and Family Welfare Department deliberately refusing to consider the case of the petitioner notwithstanding the decision of the State circulated by Office Memorandum No. ABP 118/2003/464 dated 16.03.2015. Referring to the Office Memorandum dated 16.03.2015, learned Sr. counsel for the petitioner submits that the said Office Memorandum clearly reveals that the Government has taken step as an onetime measure for regularization of the services of those employees who are continuing in ad-hoc manner year after year without regularization. Most all the candidates have crossed the upper age limit and therefore, cannot appear in an interview or test as may be held by APSC for the posts and therefore, they are left with no chance to get regularized in the said post and accordingly, the Government proceeded to take a decision by the OM dated 16.03.2015 seeking to regularize those candidates who had rendered services in ad-hoc manner for several years. Under the said OM, there are certain clauses which are required to be satisfied before a person, can be considered to be eligible for being regularized under the said Notification. The learned Sr. counsel for the petitioner submits that notwithstanding the petitioner having satisfied the said conditions, his name was not found to be included in the

list of candidates appended to the said OM dated 16.03.2015. To the best of the information of the petitioner, there are several candidates who did not fulfill one or all of the conditions in the OM dated 16.03.2015 yet their cases have been taken for consideration for regularization in the OM dated 16.03.2015. The learned Sr. counsel for the petitioner also refers to the order dated 30.03.2016 passed in I.A(Civil) No. 962/2016 whereby this Court accepted the submissions of the counsel for the applicant therein that the case of the applicant is identically placed like the petitioners in W.P(C) No. 3767/2015; W.P(C) No. 3862/2015 and W.P(C) No. 3864/2015. The Interlocutory Application was disposed of with a direction to the Health and Family Welfare Department to take a necessary decision on the OM dated 16.03.2015 and the outcome of the decision be informed to the Court and the Interlocutory Application was accordingly disposed of. It is further submitted by the learned Sr. counsel for the petitioner that notwithstanding this order passed by the Co-ordinate Bench of the Court as well as the decision taken by the Government vide OM dated 16.03.2015, the case of the petitioner was not considered and the department rejected his case by the impugned communication dated 25.04.2017. In the impugned order dated 25.04.2017, the case of the petitioner was rejected on the ground that the petitioner was not over aged and that inspite of

opportunities being available, the petitioner did not appear in APSC test or interview and consequently he was outside the purview of the OM dated 16.03.2015. On these grounds, the representation of the petitioner was rejected. The learned Sr. counsel for the petitioner submits that these grounds are *per se* arbitrary and contrary to the decision taken by the Government at the highest level as is reflected in the OM dated 16.03.2015. The learned Sr. counsel for the petitioner submits that the two grounds on which the case of the petitioner was rejected, namely, (i) that he was not over aged and (ii) that he did not appear or participate in the APSC interview or test, are not applicable at all to the petitioner inasmuch as in his years of service rendered to the Department. The Department did not proceed with any interview for filling up the posts in a regular manner. Consequently, there was no occasion for the petitioner to apply for and appear before the APSC. The failure of the Department to hold the necessary interview cannot be attributed to be a ground for rejection of the case of the petitioner to be considered under the OM dated 16.03.2015. That apart, it is clear from a bare perusal of the OM dated 16.03.2015 that it was an onetime measure and it was applicable to all Government employees who are rendering service under ad-hoc manner. The Department had misread the criteria under the OM dated 16.03.2015.

Under the said OM, the criteria's for being considered are two, namely that the incumbent concerned did not appeared before the APSC test or interview and those whose cases were sub-judiced were not covered by the said Office Memorandum . However, while rejecting the case of the petitioner by the impugned order dated 25.04.2017, the Department relied on criteria which is not even prescribed in the OM namely, the criteria of being over aged. Consequently, the impugned order dated 25.04.2017 being bad in law, the same should, therefore, be interfered with set aside and quashed. In support of his contentions, the learned Sr. Counsel for the petitioner relies upon the following Judgments:

- 1.** *Dr. Jagadish Saran & Ors. Vs. Union of India*, reported in (1980) 2 SCC 768 ;
- 2.** *Secretary, State of Karnataka & Ors Vs. Umadevi (3) and Ors*, reported in (2006) 4 SCC 1;
- 3.** *State of Karnataka & Ors. Vs. M.L. Kesari and Ors*, reported in (2010) 9 SCC 247;
- 4.** *Nihal Singh and Ors Vs. State of Punjab and Ors*, reported in (2013) 14 SCC 65;
- 5.** *State of Jharkhand and Ors Vs. Kamal Prasad and Ors*, reported in (2014) 7 SCC 223;

6. *Amarkant Rai Vs. State of Bihar and Ors*, reported in (2015) 8 SCC 265;

7. *State of Jammu and Kashmir and Ors. Vs. District Bar Association, Bandipora*, reported in (2017) 3 SCC 410;

8. *Narendra Kumar Tiwari & Ors Vs. State of Jharkhand and Ors.*, reported in (2018) 8 SCC 238.

5. The learned counsel for the Department strongly opposes the contentions raised by the learned Sr. counsel for the petitioner. Relying on the affidavit filed by the Department, the learned counsel for the respondents submits that it is an incorrect statement that the petitioner is over aged. As per record, the petitioner was not over aged on a date when the OM dated 16.03.2015 was issued. It is further submitted by the learned counsel for the respondent that the contention of the writ petitioner that there were no selection process or interviews conducted is totally incorrect. Referring to the Paragraphs made in the affidavit, the learned counsel for the respondents submits that the APSC by Advertisement dated 26.10.2016 advertised for recruitment of 12 Inspector of Drugs and subsequently by another Advertisement dated 20.01.2018 recruitment for another 12 Inspectors of Drugs were issued. On a date when the Advertisement dated 26.10.2016 was issued, petitioner was 38 years 7 months and 2 days and

as on the date of subsequent Advertisement which is 20.01.2018, the petitioner was 40 years 5 months 0 days. On these averments made in the affidavit, the learned Sr. counsel for the petitioner submits that the contentions of the writ petitioner that he was over aged or that there was no question for appearing in any interview in the APSC as no process for recruitment was initiated by the Health Department, is completely incorrect and belied by the records available with the Department. It is submitted that the petitioner deliberately did not apply for regular selection in the Advertisements dated 26.10.2016 and 20.01.2018 and therefore he could not have submitted that there was no opportunity for him to appear before the APSC for an interview. The petitioner deliberately avoided applying and appearing before the authorities concerned. The claims made by the writ petitioner are incorrect and the same, therefore, does not merit any consideration and the writ petition being devoid of merit should be dismissed.

6. In rejoinder, the learned Sr. counsel for the petitioner submits that an affidavit-in-reply has been filed opposing the contentions of the Department. It is submitted by the learned Sr. counsel for the petitioner that there are number of incumbents who never appeared before the APSC tests or interview and yet got the benefit of regularization under the OM

dated 16.03.2015. Reference in this case may be made to the person at Sl. No. 2 under the Health and Family Welfare Department who, according to the petitioner, never appeared in APSC test or interview. That apart, there are three other persons, who had never appeared before any interview or test and initially the names of these persons were included in the list appended to the OM dated 16.03.2015. Therefore, they had approached this Court by filing W.P(C) No. 3767/2015; W.P(C) No. 3862/2015 and W.P(C) No. 3864/2015. The learned Sr. counsel for the petitioner submits that pursuant to the orders passed by this Court by order dated 31.05.2016, the writ petitioners in those three writ petitions were regularized by the Social Welfare Department, namely the Department under which they were rendering services under 3(f). The petitioner's case being similarly placed, he is entitled to be considered for the benefit of regularization as conferred by the OM dated 16.03.2015.

7. The learned counsels for the parties have been heard. Pleadings on records have been carefully perused. Judgments cited at the bar have been carefully noted.

8. The short case projected by the writ petitioner is that once the decision is taken by the Government at the highest level and is reflected in the OM dated 16.03.2015, there was no occasion for the Department of

the Government to reject any benefit available to the petitioner under the said OM dated 16.03.2015. In order to decide the contentions, it is necessary to refer to the OM dated 16.03.2015. For convenience, the OM dated 16.03.2015 is extracted below:

"GOVERNMENT OF ASSAM

DEPARTMENT OF PERSONNEL:: PERSONNEL B

OFFICE MEMORANDUM

No. ABP 118/2003/464

Dated Dispur the 16th March 2015

Sub: Appointments under Regulation 3(f) of APSC Limitation of Functions regulations, 1951 and one time measure for regulation of certain such appointees.

Various Departments of Government of Assam from time to time exercising power under Regulation 3(f) of APSC Limitation of Function Regulation [henceforth referred to as Regulation 3(f)] gave appointments to various candidates to tackle emergency situations faced by those Departments.

Many such candidates initially appointed for four months under Regulation 3(f) are continuing in the services year after year in an ad-hoc manner without regularization. All these candidates have already crossed the upper age limit specified for appearing in the interview /test held by the APSC for the posts that they are holding and thereafter left with no chances to get regularized in the post.

Evidently, this situation has arisen mainly due to unwarranted exercise of power under Regulation 3(f) by the Departments, failure on the part of the APSC to hold interviews in timely manner and also the failure on the part of the Departments to move APSC for regular recruitment.

As communicated by the concerned Departments, all these Regulation 3(f) appointees now under consideration, are working in regular vacancies mainly under various orders of the High Court and drawing their regular salaries as admissible. However, those cases where the incumbent concerned have not appeared the APSC test/ interview and those whose cases are sub-judice are outside the purview of this OM.

Government after careful consideration of the matter after taking into account of the views of Finance and Judicial Departments in individual cases, the views offered by Advocate General Assam, on the matter, and also the observation of the Supreme Court in Jacob M. Puthuparambil Vs. Kerala Water Authority & Ors., AIR 1990 SC 2228 case, have decided to lay down the following policy guidelines in the matter of appointment under Regulation 3(f) appointees as aforementioned so as to prevent emergence of any similar situation in future that may compel government to resort to such measure as this.

- I. Henceforth no appointment shall be made under the Regulation 3(f) without prior concurrence of Personnel and Finance Department and with the approval of the Cabinet.*
- II. Any such proposal as cleared by the State Cabinet for appointment under Regulation 3(f) shall have to pass through all the steps as laid down in the guidelines in OM No ABP 89/99/19 dated 29th October 2001 read with ABP 59/99/129 dated 30th June 2001 (copies enclosed)*
- III. Any fresh appointment made under Regulation 3(f) after issue of this OM shall get only two extensions of the term and then their services shall stand automatically terminated. Personnel B Department shall Communicate the date of termination while allowing the extension of the Second term.*
- IV. All the Departments shall immediately work out the number of employees appointed under Regulation 3(f) working in the establishments under their control and take up with APSC for advertisement of the posts within three months from the date of issue of this OM with intimation to the Personnel-B Department.*
- V. Personnel B Department shall not allow any further extension of the term of any employee appointed under Regulation 3(f) which exceeds beyond 6 six months from the date of issue of this OM and will take up the matter with each of the Departments and APSC for advertisement of such posts within the stipulated time. There shall*

be no person appointed under Regulation 3(f) with effect from first day of the December 2015.

VI. The list of employees appointed under Regulation 3(f) who have been considered here as an exceptional case and one time measure for regularization, as appended at Annexure-A, and who have rendered services to Government varying from 9 years to 22 years, shall be regularised with immediate effect subject to the condition that :

- i. Each such employee shall be regularised against the regular vacant posts which they are holding currently and drawing salaries thereon.*
- ii. Each Department whose names have been figured in the Annexure-A against the names of the employees, shall examine and verify the cases of these employees individually with reference to their eligibility in terms of the educational and other qualifications as required at the time of their initial appointments in regard to the post that they are now holding.*
- iii. On such verification, the Department will issue order of regularisation with immediate effect on the strength of this OM.*
- iv. On such regularisation, such incumbents will be eligible for the regular service benefits/ conditions as laid down in the respective Service Rules.*
- v. The seniority of the employees in their respective cadres will be counted w.e.f the date of order of regularisation.*

vi. Their past services may be counted only for the purpose of calculation of pension benefits and for no other purposes.

Vii. This is sought to be done as an exceptional case and one time measure and shall not be taken to recourse in future.

Action taken report on the matter shall be submitted to the Personnel-B Department regularly on monthly basis till such time as there exist any 3(f) appointee in any establishments under the Department.

Sd/ (S.C. Das, IAS)

*Additional Chief Secretary to the Government of Assam
Department of Personnel:: Personnel B"*

9. The OM dated 16.03.2015 also encloses list of the candidates who were rendering three years services on ad-hoc basis under the various departments of the State including the Health and Family Welfare Department. There are two candidates whose names appeared in the said list under the Health and Family Welfare Department.

10. It is also seen that by order dated 30.03.2016 passed in I.A(Civil) No. 962/2016, on a submission made by the counsel for the petitioner or applicant therein that the case of the petitioners are similarly placed like the petitioners in W.P(C) No. 3767/2015; W.P(C) No. 3862/2015 and W.P(C) No. 3864/2015 and an order similar to the one dated 24.02.2016 is required to be passed in so far as the writ petitioner is concerned. The

Court on the basis of these submissions directed the Department to take necessary decision on the OM dated 16.03.2015 and the outcome of the decision was directed to be placed before the Court by the next date fixed. It is also seen that the Co-ordinate Bench recorded that the counsel for the Department did not object to the prayer made.

11. On a pointed query made by the Court to the counsels for the respective parties, it is submitted before the Court that the order dated 24.02.2016 had not been appealed against. The said order dated 24.02.2016 has attained finality. The said order is also extracted below for convenience:

"Mr B K Sharma, learned Standing Counsel, Social Welfare Department, submits that in so far regularization of the service of the petitioners are concerned, consequential steps were initiated by the Social Welfare Department and the relevant file was forwarded to the Personnel (B) Department. Personnel (B) Department has returned back the file to the Social Welfare Department to take a decision on the Office Memorandum dated 16.03.2015.

Therefore, now the decision has to be taken by the Social Welfare Department. Let the Department take a decision in this regard and outcome of such decision should be informed to the Court. It is expected that by the next date, decision taken by the Social Welfare Department shall be placed before the Court.

List on 02.05.2016.”

In terms of the said order dated 24.02.2016 passed in W.P.(C) No. 3767/2015 and other connected matters, the concerned Department namely the Social Welfare Department thereafter proceeded with the process for regularization of the petitioners in those writ petitions and ultimately the orders for regularization were issued in terms of the OM dated 16.03.2015 and the writ petitions were subsequently withdrawn as being infructuous in view of the relief being already granted.

12. While it is true that although these orders were passed by the Social Welfare Department nevertheless they are conjoint part of the Government like the Health and Family Welfare Department. The further contentions of the respondent counsel that pursuant to the amendment of the Medical and Health Recruitment Board Regulations 2018 by Notification dated 12.03.2018 wherein Clause 17B was inserted. As per the said clause, officials who are appointed to the posts in Scheduled-I to this Regulations under Regulation 3(f) of the APSC Limitation and Function Act prior to coming into force of the Medical and Health Recruitment Board (Amendment), 2018 shall be deemed to be appointed under Regulations 17A and their tenure of services can be extended under these regulations for such period required including the period prior to coming before of

these Regulations. The impugned order dated 25.04.2017 is also extracted below:

"GOVERNMENT OF ASSAM
HEALTH & FAMILY WELFARE (A) DEPARTMENT
DISPUR:: GUWAHATI-6
No. HLA. 467/2015/354 Dated Dispur the 25th April, 2017

ORDER

Whereas, Shri Purna Sindhu Mudoi and Shri Pankaj Kakati were appointed as Inspector of prugs vide HLA 136/2003/135 dated 10/11/2005 under Regulation 3(f) of Assam Public Service Commission (Limitations of Functions) Regulation, 1951 and tenures of their services were extended from time to time.

Whereas, Shri Purna Sindhu Mudoi and Shri Pankaj Kakati filed two separate writ petition No, WP(C) 3384/2015 and No. WP(C) 3383/2015 respectively in the Hon'ble Gauhati High Court Case seeking intervention of the Hon'ble Court in the matter of regularization of their services.

Whereas, the Hon'ble Gauhati High Court vide two separate orders dated 10/6/2015 directed the Government in Health & Family Welfare Department to keep one post vacant under further orders while referring to the Personnel Department O.M. No. ABP.118/2003/464 dated 16/3/2015. The Department took steps accordingly by not sending two numbers of posts to APSC for the regular appointment.

Whereas, the Hon'ble Court on 30/3/2016 passed two orders directing Health & Family Welfare Department to take decision on the basis of the Personnel Department O.M. No. ABP. 118/2003/464 dated 16/03/2015 regarding regularization of services of the aforesaid two inspectors of Drugs and to let the Court know about the decision.

Whereas, Personnel Department advised in the matter as follows:

1) Note dated 1st September, 2015

*.....The normal procedure is that the Department should examine the matter case to case basis and take up with the APSC for advertisement of the posts for 'A' regular appointments. **Regularization through Cabinet approval is not a normal procedure which should be adopted only as a last resort and that too when there remains no alternative.....***

2) Note dated 13/12/2016.

*"..... Subject to fulfillment of condition as stipulated vide this Department's endt.. dated 1st September, 2015 tendered in your file No. HLA. 467/2015 and following latest Judgment / Ruling of **Apex Court** as may be relevant, Personnel "B" Department conveys its no objection to the proposal **subject to the condition that the incumbents are qualified overaged and that there is no scope for appearing before any interview to be conducted by APSC.**"*

Whereas, there are no records available to indicate that Shri Purna Sindhu Mudoi and Shri Pankaj Kakati were appointed after the posts were advertised for open competition.

Whereas, the condition given by Personnel Department vide note dated 13/12/2016 are in line with the conditions laid down in Personnel Department O.M. No. ABP.118/2003/464 dated 16/3/2015. Hon'ble Gauhati High Court had directed Department to take a decision based on the said O.M.

Whereas, it was examined in the Department whether the following conditions laid down by Personnel Department for consideration of regularization, were met by Shri Purna Sindhu Mudoi and Shri Pankaj Kakati. The following are the findings:

- i **Whether Candidates are over-aged,** as over-aged incumbents are eligible for consideration regularization as per the O.M:*

The present age limit is 43 years for government employment for general category candidates as per Personnel Department O.M. No. ABP 06/2016/07 dated 26/09/2016 read with O.M. ABP 06/2016/04 dated 03/03/2016, which is relaxable by further five years in case of Scheduled Tribe/ Scheduled Caste, candidates. The age of Shri Purna Sindhu Mudoi and Shri Pankaj Kakati as on 01/01/2017 are 37 years 3 months and 39 years 5 months respectively. Further, Shri Purna Sindhu Mudoi belongs to Scheduled Caste category.

Thus, the incumbents are not over-aged.

ii ***Whether incumbents have appeared in the APSC test / interview,***
as incumbents who have not appeared in APSC test / interview are outside purview of O.M.:

Presently, the advertisement issued by APSC for posts of Inspector of Drugs issued by APSC was cancelled and it is proposed to issue fresh advertisements soon.

Thus, it is concluded that Shri Purna Sindhu Mudoi and Sri Pankaj Kakati have not appeared in the APSC test / interview.

Whereas, it emerges that Shri Purna Sindhu Mudoi and Shri Pankaj Kakati do not, inter-alia, fulfil two major eligibility conditions laid down in Personnel Department O.M. No. ABP-118/2003/464 dated 16/3/2015.

Under the circumstances, it is decided that the matter of regularization of Shri Purna Sindhu Mudoi and Shri Pankaj Kakati cannot be considered.

This is issued In compliance with Hon'ble Gauhati High Court orders in No. WP(C) 3384/2015 and No. WP(C) 3383/2015.

(Samir Kr. Sinha, IAS)
Commissioner & Secretary to the Govt. of Assam
Health & F.W. Department, Dispur"

13. Upon due consideration of the rival contentions as well as the pleadings available on record, the short question which is required to be decided by the Court is whether the petitioner fulfills the conditions

mentioned under OM dated 16.03.2015. Careful perusal of the OM dated 16.03.2015 reflects that there are two conditions which are prescribed if not fulfilled will exclude the consideration of the incumbents. These two conditions are as under:

1. That the incumbent did not appear in APSC test or interview;
2. That there are cases are sub-judice.

14. It is also seen that the Government after due consideration and taking views of the Advocate General of the State as well as the Finance and Judicial Department in individual cases, have decided to adopt this one time policy for regularization of those officials working under 3(f) barring those two exceptions all incumbents across various departments who are to be considered. The OM dated 16.03.2015 reveals that the process for regularization which was adopted by the OM dated 16.03.2015 was taking into consideration the services rendered under Regulation 3(f) year after year in ad-hoc manner without regularization as well as the upper age limit prescribed for appearing in interviews thereby leaving no opportunity to those candidates to get regularized to the said post. It was in view of this circumstances that the OM dated 16.03.2015 was brought in.

15. In terms of the order dated 30.03.2016 passed in I.A.(Civil) No. 962/2016, the Department considered the case of the petitioner but

however, rejecting the same by their order dated 25.04.2017. In the said order, there were two grounds on which the petitioner's case along with others were rejected namely that the petitioner was not over aged and that he did not appear before the APSC test or interview. In the said impugned order dated 25.04.2017 or in the pleadings, there is no reference to the Cabinet Memorandum under which the OM dated 16.03.2015 came to be issued. No material has been placed before the Court that the case of the petitioner was duly considered at the relevant point in time while issuing the OM dated 16.03.2015 along with other similarly situated candidates whose names are found to have been considered for regularization in the list appended to the OM dated 16.03.2015. Whether the petitioner's case was placed before the competent authority for due consideration in terms of the OM dated 16.03.2015 and under what circumstances, the case of the petitioner was not considered compelling him to approach this Court has not been placed before the Court by the respondent authorities. What is not in dispute is that the OM dated 16.03.2015 is pursuant to the decision taken by the Government at the appropriate level. The OM itself reflects that views and concurrences of various departments including Finance and Judicial Department as well as the opinion of the then Advocate General of the State were taken into consideration. The OM

reflects that the views of the Department were taken in individual cases. The respondents have not placed before the Court that atleast in so far as the employees of the Health Department who are regularized under the Health and Family Welfare Department satisfy the criteria as prescribed and that others who did not satisfy which may or may not include the petitioners were excluded from the list of three of candidates regularized under the OM dated 16.03.2015. The interim order dated 10.06.2015 passed by the Court also subsists. No application has been found to be filed by the respondents seeking vacation or alteration of the interim order or bringing to the notice of the Court that pursuant to the coming into force of the Medical and Health Recruitment (Amendment) Regulations, 2018, the services of the petitioner are included under the said regulation.

16. The Medical and Health Recruitment Board Regulations, 2018 and its amendments are not assailed in the present proceedings. Consequently, there is no occasion for the Court to refer to the validity of the correctness of this Regulation at this point in time. However, what is noticed is that the initial appointment of the petitioner was made under Regulations 3(f) of the APSC Regulations and which have been on several occasions extended by the Department without any demur. Consequently, the objection of the

respondents that the services of the petitioner are currently under the Medical and Health Recruitment Board Regulations 2018 as well as the amendments made thereunder and therefore the tenure of extension of the petitioner services will be dependent on the Regulations, cannot be accepted to be a ground to take away of the rights of the petitioners accrued to the petitioner under Regulation of 3(f). The petitioner admittedly has been given several extensions over the years. There is no explanation as to why the department considered giving continuous extensions without considering the fact that the petitioner did not appear for the regular selection process. Government being a model employer is not expected to extract the services out of employees on ad-hoc basis for several years without disclosing the reasons and thereafter refused to consider sympathetically, the case of the petitioner for regularization after having rendered services for several years. There is no dispute to the contentions raised by the petitioner that the petitioners in W.P(C) No. 3767/2015 and the other two connected writ petitions were considered for regularization as their names could not be considered earlier because of pending departmental proceedings. The impugned order dated 25.04.2017 does not disclose the reasons as to why the petitioner was allowed to continue on ad-hoc and no application for vacating or modification of the

interim order passed by this Court nor has any reasons been given before this Court as to the failure of the respondents to seek modification/vacation of the interim order passed by this Court in the present proceedings. The fact remains that the OM dated 16.03.2015 which is pursuant to the decision taken by the Government at the appropriate level was taken well prior to the coming into force of the Medical and Health Recruitment Board Regulation 2017 and its subsequent amendment.

17. Under such circumstances, this Court is of the considered view that the matter will require fresh consideration in the hands of the Government for considering the case of the petitioner for regularization in terms of the OM dated 16.03.2015. The Government will examine the case of the petitioner as also the contentions raised before this Court that several incumbents who are regularized, who are given the benefits of regularization, under the OM dated 16.03.2015, did not fulfill the criteria but nevertheless the benefit of regularization was conferred.

18. The Government will take into consideration the decision taken by the Government at the highest level that as a onetime measure, steps were taken for regularization of the services of Government Officials rendering service under 3(f) like the petitioner. Nowhere in the pleadings or in the

impugned order, is there any reference to suggest that at the time when the cases of other persons were considered by the Government at the appropriate level, the petitioner was not who are rendering service under 3(f).

19. In view all of this above, the matter stands relegated to the respondent department to reconsider and re-visit the case of the prayer for the writ petitioner by consideration of all the attending facts including the cases of the person regularized under 3(f) under the various departments including the Department of Health and Family Welfare.

20. The respondents will take note of the fact that the Government at the appropriate level has taken a conscious decision to take a onetime measure for regularization of the incumbents who have rendered ad-hoc services under 3(f).

21. The impugned order dated 25.04.2017 stands set aside. The matter is remanded back to the authorities to re-decide the question of conferring the benefit of regularization of the petitioner in terms of OM dated 16.03.2015.

22. The entire exercise will be completed within a period of 90 days from the date of receipt of certified copy of this order.

23. The benefit of interim order will continue for a further period of three months till after the respondent authority takes a decision in the matter as directed above.

24. In terms of the above, both the writ petitions stands allowed and disposed of. No order as to costs.

25. Pending Interlocutory Application, if any, are also disposed of.

JUDGE

Comparing Assistant