

GAHC010104592022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3655/2022

E. RAGHUMANI SINGHA
SON OF LATE E. GOWRIDAS SINGHA, RESIDENT OF QUARTER NO.
VIII(MIN), 10/3, SUPERMARKET COMPLEX, DISPUR, GUWAHATI- 781006.

VERSUS

THE STATE OF ASSAM AND 12 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM, DISPUR, GUWAHATI- 781006.

2:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
GENERAL ADMINISTRATIVE DEPARTMENT
DISPUR
GUWAHATI-781006.

3:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
SECRETARIAT ADMINISTRATIVE DEPARTMENT
BLOCK-A (FIRST FLOOR)
DISPUR
GUWAHATI- 781006.

4:THE DEPUTY SECRETARY TO THE GOVERNMENT OF ASSAM
SECRETARIAT ADMINISTRATIVE DEPARTMENT
BLOCK-A (FIRST FLOOR)
DISPUR
GUWAHATI- 781006.

5:SARBESWAR SAIKIA
SON OF LATE HOLIRAM SAIKIA
RESIDENT OF JATIA
KAHILIPARA ROAD

BYE LANE NO. 4 (HILL SIDE)
LANGADOU MANDIR PATH
HOUSE NO. 19
DISPUR
GUWAHATI- 781006.

6:SUBRATA PURKAYASTHA
SON OF SUDHANGSHU PURKAYASTHA
RESIDENT OF HOUSE NO. 30
R.K. GOSWAMI PATH
LALGANESH
GUWAHATI- 781036.

7:JITU KUMAR SAIKIA
SON OF LATE NIRMAL CHANDRA SAIKIA
RESIDENT OF VILLAGE AMGAON
TARI BAGAN
NARENGI
P.O. BONDA
KAMRUP
GUWAHATI- 781026.

8:SMTI TILOTTAMA NATH
C/O- LATE SILO DAS
RESIDENT OF HOUSE NO. 19
KRISHNA NAGAR
BYE LANE NO. 1
CHANDMARI
GUWAHATI-781003.

9:UTTAM KUMAR DUTTA
SON OF LATE AMALENDU DUTTA
RESIDENT OF MATRI BHAWAN
HOUSE NO. 24
JOYMOTI NAGAR
P.O. PANDU
KAMRUP(METRO)
PIN- 781012

10:SMTI SUNANDA SEN
DAUGHTER OF LATE SUNIL KUMAR SEN
RESIDENT OF B/201
JAWAHARNAGAR
HOUSEFED APARTMENT
TRIPURA ROAD
JOYA NAGAR
DISTRICT- KAMRUP
PIN- 781028.

11:INDRAJIT DHAR
C/O MADHUMITA CHOUDHURY
HOUSE NO. 9
UDAYPUR
BIRUBARI
BYE LANE NO. 3
DISTRICT- KAMRUP(METRO)
PIN- 781016.

12:SANTANU KUMAR DAS
C/O SENIOR SPECIAL OFFICER
SAE DEPARTMENT
JANATA BHAWAN
DISPUR
GUWAHATI- 781006.

13:PRABAL SINHA
C/O- SENIOR SPECIAL OFFICER
SECRETARIAT ADMINISTRATIVE (E) DEPARTMENT
BLOCK-A (FIRST FLOOR)
DISPUR
GUWAHATI-781006

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : GA, ASSAM

Linked Case : WP(C)/4216/2022

UTPAL KONWAR AND 2 ORS
SON OF SRI KAMAL KONWAR
RESIDENT OF NRILAYA CASTLE
CHACHAL ROAD
NEAR NAGALAND HOUSE
SIX MILE
PIN- 781022
DISTRICT- KAMRUP(M)
ASSAM.

2: LOHIT CHANDRA DAS
SON OF SRI JINA RAM DAS
RESIDENT OF NAVAGIRI ROAD

BYE LANE NO. 4
CHANDMARI
PIN- 781003
DISTRICT- KAMRUP(M)
ASSAM.

3: PRADIP KUMAR DEB
SON OF SRI PRAMOD CHANDRA DEB
RESIDENT OF SANSKRITI ENCLAVE
SRINAGAR MAIN LANE
DISPUR
PIN- 781005
DISTRICT- KAMRUP(M)
ASSAM.
VERSUS

THE STATE OF ASSAM AND 11 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM
DISPUR
GUWAHATI- 781006.

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM
GENERAL ADMINISTRATION DEPARTMENT
(SAD- GAZETTED CELL)
BLOCK- A (1ST FLOOR)
DISPUR
GUWAHATI- 781006.

3:THE DEPUTY SECRETARY TO THE GOVERNMENT OF ASSAM
SECRETARIAT ADMINISTRATION DEPARTMENT
DISPUR
GUWAHATI- 781006.

4:JITU KUMAR SAIKIA
SON OF LATE NIRMAL CH. SAIKIA
RESIDENT OF VILLAGE AMGAON
TARIBAGAN
NARENGI
P.O- BONDA
DISTRICT- KAMRUP(M)
PIN- 781026
ASSAM.

5:SARBESWAR SAIKIA
SON OF LATE HOLIRAM SAIKIA
RESIDENT OF JATIA KAHILIPARA ROAD
BYE LANE-4 (HILL SIDE)
LANGADEO MANDIR PATH
HOUSE NO. 19
DISPUR

DISTRICT- KAMRUP(M)
PIN- 781006
ASSAM.
6:UTTAM KUMAR DUTTA
SON OF LATE AMALENDU DUTTA
RESIDENT OF MATRI BHAWAN
HOUSE NO. 24
JAYMATI NAGAR
P.O. PANDU
DISTRICT- KAMRUP(M)
PIN- 781012
ASSAM.
7:SMTI. SUNANDA SEN
DAUGHTER OF LATE SUNIL KR. SEN
RESIDENT OF B/201 JAWAHARNAGAR
HOUSEFED APARTMENT
TRIPURA ROAD
JAYANAGAR
BELTOLA
DISTRICT- KAMRUP(M)
PIN- 781028
ASSAM.
8:SUBRATA PURKAYASTHA
SON OF SUDHANGSHU PURKAYASTHA
RESIDENT OF HOUSE NO. 30
R.K. GOSWAMI PATH
LALGANESH
DISTRICT- KAMRUP(M)
PIN- 781036
ASSAM.
9:SANTANU KR. DAS
C/O- SR. SPL. OFFICER
SAE DEPARTMENT
JANATA BHAWAN
DISPUR
DISTRICT- KAMRUP(M)
PIN- 781006
ASSAM.
10:SMTI. TILOTTAMA NATH
C/O LATE SILO DAS
RESIDENT OF HOUSE NO. 19
KRISHNA NAGAR
BYE LANE-1
CHANDMARI
DISTRICT- KAMRUP(M)
PIN- 781003
ASSAM.
11:INDRAJIT DHAR

C/O- MADHUMITA CHOUDHURY
HOUSE NO. 9
UDAYPUR
BIRUBARI
BYE LANE- 3
DISTRICT- KAMRUP(M)
PIN- 781016
ASSAM.

12:PRABAL SINHA
C/O SR. SPECIAL OFFICER (STENOGRAPHER)
GENERAL ADMINISTRATION DEPARTMENT (SAD- GAZETTED CELL)
A- BLOCK
JANATA BHAWAN
DISPUR
GUWAHATI- 781006.

Advocate for : MR. M K CHOUDHURY
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 11 ORS

Linked Case : WP(C)/5162/2020

JITU KR. SAIKIA AND 9 ORS.
S/O. LT. NIRMAL CH. SAIKIA
VILL. AMGAON
TARIBAGAN
NARENGI
P.O. BONDA
GUWAHATI-26
DIST. KAMRUP (M)
ASSAM.

2: SARBESWAR SAIKIA
S/O. LT. HOLIRAM SAIKIA
R/O. JATIA KAHILIPARA ROAD
BYE LANE-4 (HILL SIDE)
LANGADEO MANDIR PATH
HOUSE NO.19
DISPUR
GUWAHATI-06
DIST. KAMRUP (M)
ASSAM.

3: ASHOK KALITA
S/O. LT. DHAIRJYA RAM KALITA
R/O. HOUSE NO.900 (A)

(BYE LANE) SAMANNAYA PATH
DR. ZAKIR HUSSAIN PATH
HENGRABARI
GUWAHATI-36
DIST. KAMRUP (M)
ASSAM.

4: UTTAM KR. DUTTA
S/O. LT. AMALENDU DUTTA
R/O. MATRI BHAWAN
HOUSE NO.24 JAYMATI NAGAR
P.O. PANDU
DIST. KAMRUP 9M)
ASSAM.

5: SMT. SUNANDA SEN
C/O. LT. SUNIL KR. SEN
R/O. B/201 JAWAHARNAHAR
HOUSEFED APARTMENT
TRIPURA ROAD
JAYANAGAR
BELTOLA
GUWAHATI-28
DIST. KAMRUP (M)
ASSAM.

6: SMT. DIPALI BAISHYA
W/O. PURNA CH. MEDHI
R/O. HOUSE NO.4
MAHANAGAR PATH NEAR HOLYMOUNT APARTMENT
BARSAJAI
P.O. AND P.S. BASISTHA
GUWAHATI-29
DIST. KAMRUP (M)
ASSAM.

7: SUBRATA PURKAYASTHA
S/O. SUDHANGSHU PURKAYASTHA
R/O. H. NO.30
R.K. GOSWAMI PATH
LALGANESH
P.O. ODALBAKRA
GUWAHATI-36
DIST. KAMRUP (M)
ASSAM.

8: SANTANU KR. DAS

C/O. SR. SPL. OFFICER
SAE DEPTT.
JANATA BHAWAN
DISPUR
GUWAHATI-06
DIST. KAMRUP (M)
ASSAM.

9: SMTI TILOTTAMA NATH
C/O. LT. SILO DAS
R/O. HOUSE NO.19
KRISHNA NAGAR BYE LANE-1
CHANDMARI
GUWAHATI-03
DIST. KAMRUP (M)
ASSAM.

10: INDRAJIT DHAR
C/O. MADHUMILA CHOUDHURY
HOUSE NO.9
UDAYPUR
BIRUBARI
BYE LANE-3
GUWAHATI-16
DIST. KAMRUP (M)
ASSAM.
VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-781006.

2:THE COMMISSIONER AND SECY.
TO THE GOVT. OF ASSAM
SECRETARIAT ADMINISTRATIVE DEPTT.
BLOCK-A (1ST FLOOR) DISPUR
GUWAHATI-781006.

3:THE DY. SECRETARY
TO THE GOVT. OF ASSAM
SECRETARIAT ADMINISTRATIVE DEPTT.
DISPUR
GUWAHATI-781006.

4:UTPAL KONWAR
S/O- SRI KAMAL KONWAR
R/O- NRILAYA CASTLE
CHACHAL ROAD
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SIX MILE
PIN- 781022
DIST- KAMRUP (M)
ASSAM.
5:LOHIT CHANDRA DAS
S/O- SRI JINA RAM DAS
R/O- NAVAGIRI ROAD
BYE LANE NO. 4
CHANDMARI
PIN- 781003
DISTRICT- KAMRUP (M)
ASSAM.
6:PRADIP KUMAR DEB
S/O- SRI PRAMOD CHANDRA DEB
R/O- SANSKRITI ENCLAVE
SRINAGAR MAIN LANE
DISPUR
PIN- 781005
DISTRICT- KAMRUP (M)
ASSAM.

Advocate for : MR. U K NAIR
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 5 ORS.

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 01.08.2023

Heard Mr. K.N. Choudhury, learned senior counsel, assisted by Mr. J. Patowary, learned counsel for the petitioner in WP(C) 3655/2022; Mr. A. Khanikar, learned counsel for the petitioners in WP(C) 5162/2020; and Mr. P. Bhardwaj, learned counsel for the petitioners in WP(C) 4216/2022.

2. Also heard Ms. S. Baruah, learned Govt. Advocate appearing for respondent no.1; Mr. A. Phukan, learned standing counsel for the Secretariat Administration Department representing respondent nos.2 to 4; and Mr. A. Khanikar, learned counsel for the private respondent nos.5 to 13 in WP(C)

3655/2022 and for private respondent nos.4 to 12 in WP(C) 4216/2022.

3. By filing WP(C) 3655/2022, the petitioner herein has assailed the Cabinet decision in respect of additional item no.4 in its meeting dated 18.05.2022, by which the educational qualification of the respondent nos.5 to 13 of having graduation as a condition for promotion was relaxed/condoned and the petitioner has also prayed for recalling or rescinding the said decision for relaxing the educational qualification of the respondent nos.5 to 13 with further direction to the respondents to hold a review DPC for promotion to Stenographer Grade-I (English) in respect of remaining 14 vacancies out of the 40% promotional quota in terms of Rule 5(3) of the Assam Stenographers' Service Rules, 1995 (as amended) ('1995 Rules' for short) by the Assam Stenographers' (Amended) Service Rules, 2020 ('2020 Rules' for short).

4. By filing WP(C) 5162/2020, the petitioners therein have prayed for directing the respondent authorities to condone the educational qualification required for the post of promotion to Stenographer Grade-I and for a direction to the respondent authorities to consider the case of the petitioners for promotion from the cadre of Stenographer Grade-II to the cadre of Stenographer Grade-I.

5. The petitioners in WP(C) 4216/2022 have made a prayer similar to the ones made in WP(C) 3655/2022.

6. The petitioners in WP(C) 3655/2022 and WP(C) 4216/2022 are all graduates in various disciplines and at different points of time, they were all appointed as Stenographer Grade-III (English) in the Assam Secretariat. In course of time, the petitioners got promoted to the next higher post of Stenographer Grade-II (English). It is not in dispute that the names of the

petitioners find place in the Provisional Gradation List as on 01.03.2019. As per the 1995 Rules, under Rule 5(5), it is envisaged that recruitment to the post of Stenographer Grade-III would be made by direct recruitment in accordance with the provisions of Rule-6 and Schedule-I Part-A and that the recruitment to the post of Stenographer Grade-I and Stenographer Grade-II is required to be made by recruitment in accordance with Rule-6 Schedule-I Part-B. The said Schedule-I Part-B envisages for qualification for recruitment is as under:-

“SCHEDULE-I

PART-B

(Rule-8)

Qualification for Recruitment

The minimum qualification and experience for recruitment to the cadres of the service shall be as prescribed below:-

- 1. Stenographer Grade-I (1) Passed the degree examination or an equivalent examination from a recognized university,*
(2) A candidate should complete six years of continuous service either in the grade of Stenographer Grade-II or Stenographer Grade-III or in both on the first January of the year of examination,
(3) Passed the speed test of 150 words per minute in English Stenography or 120 words per minute in an Indian Language Stenography (Assamese/ Bengali/ Hindi) conducted by the Commission.
- 2. Stenographer Grade-II (1)(a) Passed the degree examination or an equivalent examination from a recognized University,*
(2) Passed the speed test of 120 words per minute in English Stenography or 100 words per minute in an Indian Language Stenography (Assamese/ Bengali/ Hindi) conducted by the Board.

No candidate shall be eligible to sit for the following speed test in Stenography unless he has passed the speed test in Stenography as shown below:-

For sitting in the Stenography speed test of

- 1. 180 WPM in English Stenography*

One must pass the Stenography Speed test of

- 150 WPM in English Stenography*

2. 140 WPM in Assamese/ Bengali/
Hindi Stenography

3. 150 WPM in English Stenography

4. 120 WPM in Assamese/ Bengali/
Hindi Stenography

5. 120 WPM in English Stenography

6. 100 WPM in Assamese/ Bengali/
Hindi Stenography

120 WPM in Assamese/ Bengali/
Hindi Stenography

120 WPM in English Stenography

100 WPM in Assamese/ Bengali/
Hindi Stenography

80 WPM in English Stenography

80 WPM in Assamese/ Bengali/
Hindi Stenography

NOTE: "WPM" means words per minute."

7. Therefore, it appears from the conjoint reading of Rule 5 and Rule 6 of the said 1995 Rules that at the entry level of Stenographer Grade-III, the recruitment is to be made by direct recruitment. Originally under the un-amended rule, the post of Stenographer Grade-II was to be filled up by recruitment of candidates having passed the degree subject to qualifying in the speed test. However, it appears from the 2020 Rules that the post of Stenographer Grade-II is also made a promotional post for those candidates who have rendered 6 (six) years of continuous service as Stenographer Grade-III and have a degree. Insofar as promotion to the post of Stenographer Grade-I is concerned, under the 1995 Rules, the post is required to be filled up by promotion from Stenographer Grade-III or Stenographer Grade-II. However, it appears that under the 2020 Rules, the post of Stenographer Grade-I is required to be filled up from the select list of Stenographer Grade-II, who had completed 6 (six) years of continuous service in the post of Stenographer Grade-II and have passed degree examination from a recognized university. The respondent authorities were contemplating promotion to the post of Stenographer Grade-I and at that stage, the petitioners had moved WP(C) 5162/2020, and this Court by order dated 09.12.2020, while issuing notice, was pleased to direct that the

promotion made to the post of Stenographer Grade-I shall be subject to the outcome of the writ petition.

8. Thereafter, on 30.03.2021, the respondent authorities had given promotion to 16 incumbents to the post of Stenographer Grade-I, who were serving as Stenographer Grade-II. A DPC was scheduled for the purpose of promotion from Stenographer Grade-II to Stenographer Grade-I on 17.03.2022. However, as by that time, WP(C) 5162/2020 had been filed and was pending for disposal, the DPC had deferred their meeting for consideration of promotion to the post of Stenographer Grade-I. However, the Selection Board had advised the Department to move for one time relaxation of educational qualification in respect of the under-graduate incumbents in both cadres of Stenographer Grade-II and Stenographer Grade-III to make them eligible for promotion to the next higher cadre and till then, the selection board had decided to defer the recommendation of candidates to fill up the vacancy of Stenographer Grade-I and Stenographer Grade-II by way of promotion. Pursuant to minutes of the meeting of the Selection Board held on 17.03.2022, the State Cabinet was moved with the views of the Personnel Department and the Finance (Esst.-A) Department, proposing grant of approval for one time relaxation of educational qualification in respect of the said Stenographer Grade-III and Stenographer Grade-II for the post of Stenographer Grade-II and Stenographer Grade-I of Assam Secretariat. Thereafter, the State Cabinet took a decision to relax the educational qualification of 11 numbers of Stenographers (Grade-II) for promotion to Stenographer Grade-I by relaxing the Rules by invoking Rule 25 of the Assam Stenographers' Service Rules, 1995.

9. The learned senior counsel for the petitioners has submitted that initially Stenographers of Grade-III were promoted to Stenographer Grade-II by

relaxation of the Rules, which was a wrong action taken on part of the respondent authorities. In the said regard, it is submitted that the educational qualification required for promotion could not have been relaxed and therefore, one wrong cannot be a justification to perpetuate or to commit another wrong. It is further submitted that the DPC is required to give their recommendation and instead of recommending promotion, they gave advice to the Department to move the Cabinet for relaxing the rules. The DPC was headed by the then Chief Secretary of the State and the respondent authorities carried out the said advice of the DPC by moving the Cabinet to take a decision in favour of relaxation by invoking Rule 25 of the 1995 Rules to give promotion to 11 candidates, who are arrayed as private respondents in WP(C) 3655/2022 and WP(C) 4216/2022. In order to support the contention that the conditions of recruitment cannot be relaxed, reliance is placed on the case of *Syed Khalid Rizvi & Ors. v. Union of India & Ors.*, (1993) Supp (3) SCC 575, and in order to support the contention that relaxation of rules is not permissible in exercise of executive power of the Govt. under Article 162 of the Constitution of India to override the recruitment rules framed under Article 309 of the Constitution of India, reliance is placed in the case of *B.N. Nagarajan & Ors. v. State of Karnataka & Ors.*, (1979) 4 SCC 507.

10. Supporting the opposition to the prayers made in WP(C) 3655/2022 and WP(C) 4216/2022, the learned counsel for the private respondents therein, who are the writ petitioners in WP(C) 5162/2020 has submitted that the Govt. has the power under Rule 25 of the 1995 Rules to condone the requirement of having graduate as educational qualification for promotion to Stenographer Grade-II and Stenographer Grade-I and it is submitted that as the power was relaxed while the petitioners in WP(C) 5162/2020 were promoted from

Stenographer Grade-III to Stenographer Grade-II, the exercise of such power was permissible and justified.

11. Similar submission is made by the learned standing counsel for the Secretariat Administration Department to the effect that the Govt. had the power to relax rules by invoking Rule 25 of the 1995 Rules for promoting Stenographer Grade-III to Stenographer Grade-II. The learned Govt. Advocate also supports the contention of the learned standing counsel for the Secretariat Administration Department.

12. It would be appropriate to refer to Rule 25 of the Assam Stenographers' Service Rules, 1995, which provides power to relax:

“25. Where the Government is satisfied that the operation of any of these rules cause under hardship in any particular case, may, dispense with or relax the requirement of that rule to such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner;

Provided that the case of any person shall not be dealt with in any manner less favourable to him than that provided in these rules”

13. From the text of Rule 25 of the 1995 Rules, the first requirement is that the Govt. must be satisfied that the operation of any of the rules is causing any hardship in a particular case. In the present case in hand, no material has been brought on record to show how the operation of the rules relating to the prescription of educational qualification of being a graduate to be eligible for promotion from Stenographer Grade-III to Stenographer Grade-II and from Stenographer Grade-II to Stenographer Grade-I was causing any hardship in any particular case. It appears that the only justification for moving the Cabinet Memorandum was that the DPC held on 17.03.2022 under the Chairmanship of Chief Secretary to the Govt. of Assam had advised the General Administration Department to move for one time relaxation of educational qualification in

respect of the under-graduate Stenographer Grade-III and Stenographer Grade-II to make them eligible for promotion to the next higher cadre, and accordingly, a proposal was made before the Cabinet for relaxation of the required educational qualification.

14. The persons, who had joined service with a particular educational qualification are deemed to be aware of the requirement of having higher education qualification to become eligible for promotion to Stenographer Grade-II and Stenographer Grade-I. The candidates, who were not graduate, had entered service as Stenographer Grade-III with open eyes knowing that the requirement to be promoted to Stenographer Grade-II and Stenographer Grade-I was that they have to be a graduate. There is nothing on record to show that the candidates who were not graduates had applied for leave for acquiring the graduate degree, but they were not permitted to do so by the appropriate Govt. Therefore, lethargy on part of the candidates who were not graduate to obtain such a degree cannot be said to be a cause for hardship to any such Stenographer of Grade-III, who did not have the requisite qualification of graduate to be considered for promotion to Stenographer Grade-II or to Stenographer Grade-I.

15. The relevant paragraph 33 of the case of *Syed Khalid Rizvi (supra)* is quoted below:

“33. Rule 3 of the Residuary Rules provides the power to relax rules and regulations in certain cases - Where the Central Govt. is satisfied that the operation of - (i) any rule made or deemed to have been made under the Act, or (ii) any regulation made under any such rule, regulating the conditions of service of persons appointed to an All India Service "causes undue hardship in any particular case", it may, by order, dispense with or relax the requirements of that rule or regulation, as the case may be, to such an extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a "just and equitable manner". Rule 3

empowers the Central Govt. to relieve undue hardship occurred due to unforeseen or unmerited circumstances. The Central Govt. must be satisfied that the operation of the rule or regulation brought about undue hardship to an officer. The condition precedent, therefore, is that there should be an appointment to the service in accordance with rules and by operation of the rule, undue hardship has been caused, that too in an individual case, the Central Govt. on its satisfaction of those conditions, have been empowered to relieve such undue hardship by exercising the power to relax the condition. It is already held that conditions of recruitment and conditions of service are distinct and the latter is preceded by an appointment according to Rules. The former cannot be relaxed. The latter too must be in writing that too with the consultation of U.P.S.C. In Mahapatra and Khanna cases this Court held that approval by the Central Govt. and U.P.S.C. are mandatory. In A.K. Chaudhary's case it was held that requirement of Rule 3(3)(b) of Seniority Rules is mandatory. In Amrik Singh's case an express order in writing under Rule 3 of Residuary rule is mandatory. In this case neither any representation to relax the rules was made nor any order in writing in this behalf was expressly passed by the Central Govt. The fiction of deeming relaxation would emasculate the operation of the Rules and Regulations and be fraught with grave imbalances and chain reaction. It is, therefore, difficult to accept the contention that there would be deemed relaxation of the Rules and Regulations."

16. From the above, it is seen that in the said case of *Syed Khalid Rizvi (supra)*, it has been held that appointment to the post in accordance with the rules is a pre-condition and that the rules of recruitment cannot be relaxed.

17. Rule 25 of the 1995 Rules is somewhat like a residuary rule, which empowers the Govt. to relax the rules. Yet, from the provisions of Rule 25 quoted above, it does not appear that the Govt. had been empowered to relax the conditions of recruitment.

18. In the case of *Suraj Prakash Gupta V. State of Jammu & Kashmir, (2000) 7 SCC 561*, the Supreme Court of India has also reiterated the view that there can be no relaxation in basic fundamental rules of recruitment. Similarly in the case of *Keshav Chandra Joshi & Ors. v. Union of India & Ors., 1992 Supp (1) SCC 272*, it has been held that the *pari materia* Rule 27, which has been

considered in the said case did not permit relaxation of conditions of service and it was held by the Three Judge Bench that the rule did not permit relaxation of recruitment rules. Paragraph 33 of the said decision is quoted below:

“33. In those peculiar circumstances this Court though recognised that appointment according to rules is a condition precedent, adopted the rule of deemed relaxation and deemed promotion to the service in accordance with the rules. R. 27 of the Rules gives power to the Governor that if he is satisfied that the operation of any rule regarding conditions of service of the members caused undue hardship in a particular case; he may consult the Public Service Commission; notwithstanding anything contained in the Rules and dispense with or relax the requirement of the conditions of service and extend the necessary benefit as is expedient so as to relieve hardship and to cause just and equitable results. The word "may" consult the Commission has been used in the context of discharge of statutory duty. The Governor is obligated to consult the Public Service Commission. Therefore, the word "may" must be construed as to mean "shall" and it is mandatory on the part of the Governor to consult the Public Service Commission before exempting or relaxing the operation of rule regarding conditions of the service of a member to relieve him from undue hardship and to cause just and equitable results. There is a distinction between "rules of recruitment" and "conditions of service". To become a member of the service in a substantive capacity, appointment by the Governor shall be preceded by selection of a direct recruit by the Public Service Commission; undergoing training in Forestry for two years in the College and passing Diploma are conditions precedent. If the contention of the promotees that rules of recruitment are conditions of service is accepted, it would be open to the Governor to say that "I like the face of A and I am satisfied that he is fit to be appointed; I dispense with the rules of recruitment and probation and appoint A straightway to the service in a substantive capacity as Asstt. Conservator of Forest. Take another instance. Passing the prescribed tests during probation is a condition of service. Similarly efficiency bar stands as an impediment for the promotees confirmation. On consideration of the record and on objective satisfaction, in an appropriate case, the Governor may relax those or other similar conditions. So passing the tests prescribed is a condition of service. Therefore, the rule which effects the right to confirmation or similar provision is a condition of service. The rules relating to recruitment to the service either under R. 5(a) or 5(b) or the manner of recruitment to service as per Appendix A or B are basic rules of recruitment to service. Satisfaction of the Governor that the operation of the rules regarding the conditions of service would cause undue hardship in a particular case or cases and the need to relieve hardship and to cause just and equitable results is a precondition. Even otherwise the court cannot substitute its satisfaction to the

satisfaction of the Governor in exercise of the power of deemed relaxation. In Narendra Chadhas case the power to relax was wide enough to cover any rule and there was no precondition of objective satisfaction by the Governor. We hold that R. 5(a) and (b) and Appendices A and B are basic rules of recruitment and would not be subject to Rule 27."

19. The case of *B.N. Nagarajan (supra)* cited by the learned senior counsel for the petitioner is an authority on the point that when rules framed under Article 309 of the Constitution of India is in force, no relaxation is permissible in exercise of the executive power of the Govt. under Article 162 of the Constitution of India in contravention of the Rules.

"25. Apart from repelling the contention that regularisation connotes, permanence, these observations furnish the second reason for rejection of the argument advanced on behalf of the promotees and that reason is that when rules framed under Article 309 of the Constitution of India are in force, no regularisation is permissible in exercise of the executive powers of the Government under Article 162 thereof in contravention of the rules. The regularisation order was made long after the Probation Rules, the Seniority Rules and the Recruitment Rules were promulgated and could not therefore direct something which would do violence to any of the provisions thereof. Regularisation in the present case, if it meant permanence operative from the 1st of November, 1956, would have the effect of giving seniority to promotees over the direct recruits who, in the absence of such regularisation, would rank senior to the former because of the Seniority Rules read with the Probation Rules and may in consequence also confer on the promotees a right of priority in the matter of sharing the quota under the Recruitment Rules. In other, words, the regularisation order, in colouring the appointments of promotees as Assistant Engineers with permanence would run counter to the rules framed under Article 309 of the Constitution of India. What could not be done under the three sets of Rules as they stood, would thus be achieved by an executive fiat. And such a course is not permissible because an act done in the exercise of the executive power of the Government as already stated, cannot override rules framed under Article 309 of the Constitution."

20. In view of the discussions above, the Court is inclined to hold that the Cabinet decision taken pursuant to Cabinet Memorandum, circulated vide memo no. SAE.124/2016 by the Principal Secretary to the Govt. of Assam,

General Administration Department on the subject of relaxation of educational qualification in respect of Stenographer Grade-III and Stenographer Grade-II, who are otherwise ineligible for promotion to the post of Stenographer Grade-II and Stenographer Grade-I of Assam Secretariat by way of one time relaxation, which been notified by notification no.GA(SAE).124/2016/180 dated 01.06.2022, if allowed to stand, would be in contravention to the rules of recruitment provided under the Assam Stenographers' Service Rules, 1995 as amended vide Assam Stenographer's (Amended) Service Rules, 2020. Therefore, the said Cabinet decision, which is transformed into a notification dated 01.06.2022 referred above is not found to be sustainable and the same is ordered to be set aside and quashed by holding that the conditions of recruitment cannot be relaxed and that the Govt. does not have the executive power under Article 162 of the Constitution of India for relaxing the conditions of recruitment as provided under the 1995 Rules, which has been brought into force by exercise of power under Article 309 of the Constitution of India.

21. Accordingly, WP(C) 3655/2022 as well as WP(C) 4216/2022 stands allowed to the extent as indicated above.

22. The contention of the petitioners in WP(C) 5162/2020 stands repelled, they are the private respondents in the other two writ petitions and the said contention in defence of the private respondents are also repelled. Accordingly, it is held that the petitioners in WP(C) 5162/2020 have not been able to make out a case for issuance of direction upon the respondent authorities to relax the educational qualification required for the post of Stenographer Grade-I by promotion from the cadre of Stenographer Grade-II and accordingly, their prayer to direct the respondent authorities to consider their prayer for promotion to Stenographer Grade-I is also not sustainable and

the prayers made in the said writ petition stands refused.

23. Resultantly, the competent authorities of the State Govt. are directed to constitute the DPC for promotion from the post of Stenographer Grade-III and Stenographer Grade-II to Stenographer Grade-I in accordance with the existing rules, preferably within one month.

24. This Court by interim order dated 09.12.2020, passed in WP(C) 5162/2020, had provided that promotions made to the post of Stenographer Grade-I under the Secretariat Administration Department would be subject to the outcome of the writ petition. Accordingly, as this Court has held that the promotions of persons who are not graduate in the cadre of Stenographer Grade-II could not have been promoted to the post of Stenographer Grade-I, consequently, the promotion made to the incumbents whose name appears in the notification under memo no. SAE 11/2011/61 dated 30.03.2021 is liable to be and is hereby set aside and quashed, being subject to the outcome of WP(C) 5162/2020.

25. Resultantly, WP(C) 3655/2022 and WP(C) 4216/ 2022 stand allowed to the extent as indicated above and WP(C) 5162/2020 stands dismissed.

26. The parties are left to bear their own cost.

JUDGE

Comparing Assistant