

GAHC010193782018



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

Case No. : WP(C)/6328/2018

SMTI SUMITRA DEWRY AND 60 ORS.
W/O SRI HARKANTA MOCHAHARY
R/O VILL- BARAMA, P.O. BARAMA
DIST. BAKSA, ASSAM,
PIN - 781333.

2: SRI SUKLA MOCHAHARY
S/O SRI MAHESWAR MOCHAHARY
R/O VILL- DALBARI
P.O. DALBARI
DIST. BASKA
ASSAM
PIN - 781333.

3: SMTI. DAMONTI BASUMATARY
D/O LATE GENTHAI BASUMATARY
R/O VILL- UDUGOAN
P.O. NIMUA
DIST. BAKSA
ASSAM
PIN - 781333.

4: SRI KALA RAM MOCHAHARY
S/O LT. PRATAP CH.MOCHAHARY
R/O VILL- BARKHUA
P.O. KHARUA
DIST. BAKSA
ASSAM
PIN - 781333.

5: SRI DILIP BARMAN
C/O SRI GOPESH DAS
R/O VILL- NIZ ZULUKI
P.O. BARAMA

DIST. BAKSA
ASSAM
PIN - 781333.

6: MISS MINU DAS
D/O LT. BALAK DAS
R/O VILL- ROUMARI
P.O. SAMUGUTI

DIST. BAKSA
ASSAM
PIN - 781333.

7: SRI SUMI BRAHMA
D/O DINESH BARHMA
R/O IVLL- BANGALIPARA
P.O. NIZ BANGALIPARA
DIST. BAKSA
ASSAM
PIN - 781333.

8: SRI RAHUL KALITA
S/O KAMALESWAR KALITA
R/O VILL- BILPAR
P.O.
SATHISAMUKHA
DIST. BAKSA
ASSAM
PIN - 781333.

9: SMTI. USHA DEWRY
D/O NANDESWAR DEWRY
R/O VILL- BANGOAN

P.O. BARAMCHARY
DIST. BAKSA
ASSAM
PIN - 781333.

10: MD. CHANDMAHAMAD ALI
S/O MAKIBAR RAHMAN
R/O VILL- GERUA
P.O. GARUA
DIST. BAKSA
ASSAM
PIN - 781333.

11: SMTI. SIKHA KALITA

W/O SRI DEBEN CH. KALITA
R/O VILL- GELPEJAR
P.O.MERKUCHI
DIST. BAKSA
ASSAM
PIN - 781333.

12: SRI DIGANTA CHAKRABARTY
S/O SRI BANI KT. CHAKRABARTY
R/O VILL- BARAMA
P.O. BARMA
DIST. BAKSA
ASSAM
PIN - 781333.

13: SMTI. KRISHNA KALITA
S/O SACHIN KALITA
R/O VILL- BRAHMA
P.O. BARMA
DIST. BAKSA
ASSAM
PIN - 781333.

14: SRI NALINI KT. BHATTACHARJYA
S/O LT. BANI KT. BHATTACHARJYA
R/O VILL- NIZ JULUKI
P.O. BARMA
DIST. BAKSA
ASSAM
PIN - 781333.

15: MISS. GAYATRI CHETRY
D/O LATE SURJYA BAHADUR CHETRY
R/O VILL- GOPINATHPUR
P.O. KUMARIKATA
DIST. BAKSA
ASSAM
PIN - 781333.

16: SMTI. NANDITA GOSWAMI
W/O SRI MONOJ KR. SARMAH
R/O VILL- DAKAUNIA
P.O. GOBARADAL
DIST. BAKSA
ASSAM
PIN - 781333.

17: MISS. RINGKUMANI TALUKDAR

D/O BINOY KR. TALUKDAR
R/O VILL- LABDUNGURI PATHAR
P.O. LABDUNGURI
DIST. BAKSA
ASSAM
PIN - 781333.

18: SMTI. JAYANTI MOCHAHARY
D/O SRI NARESWAR MOCHAHARY
R/O VILL- AND P.O. DALBARI
DIST. BAKSA
ASSAM
PIN - 781333.

19: SRI SANKAR MEDHI
S/O LT. TARANI MEDHI
R/O VILL AND P.O. KALZAR
DIST. BAKSA
ASSAM
PIN - 781333.

20: SRI MITHISAR GWRA NARZARY
S/O SRI THANESWAR NARZERA
R/O VILL AND P.O. CHECHAPANI
DIST. BAKSA
ASSAM
PIN - 781333.

21: SRI SAGAR RAMCHIARY
S/O CHANDRA KT. RAMCHIARY
R/O VILL- UTTARPARA
P.O. BAGANPARA
DIST. BAKSA
ASSAM
PIN - 781333.

22: SMTI. DIPALI KALITA
W/O PHANIDHAR KALITA
R/O VILL- BARZAR
P.O. BARAMA
DIST. BAKSA
ASSAM
PIN - 781333.

23: SMTI. SANGEETA DEKA
D/O ANIL DEKA
R/O VILL- BARJHAR
P.O. BARAMA

DIST. BAKSA
ASSAM
PIN - 781333.

24: MISS. JANUTA DEUWRY
D/O NANDESWAR DEUWRY
R/O VILL- BANGAON

P.O. BARAMCHARI
DIST. BAKSA
ASSAM
PIN- 781333.

25: SMTI. ALOKA DAS
W/O SRI SUKLA MOCHAHARY
R/O VILL AND P.O. BARAMA
DIST. BAKSA
ASSAM
PIN - 781333.

26: SRI BENUDHAR DAS
S/O RATNESWAR DAS
R/O VILL- NIZ JULUKI
P.O. BARAMA
DIST. BAKSA
ASSAM
PIN - 781333.

27: SRI KULAJIT DEWRY
R/O VILL- BONGOAN
P.O. BARAMCHARI
DIST. BAKSA
ASSAM
PIN - 781333.

28: SRI PARESH KALITA
R/O VILL- DAKUNIA
P.O. GABARADAL
DIST. BAKSA
ASSAM
PIN - 781333.

29: SMTI. RUBI BHATTA
W/O NALINI KANTA BHATTACHARYYA
R/O VILL- ZULUKI
P.O. BARAMA
DIST. BAKSA
ASSAM

PIN - 781333.

30: SRI TILAK CH. ROY
S/O JADU RAM ROY
R/O VILL- BUNMAJA
P.O. BUN MUN KHATA
DIST. BAKSA
ASSAM
PIN - 781333.

31: SRI RAJEN MOCHAHARY
S/O BAGUN MOCHARAY
R/O VILL AND P.O. DALBARI
DIST. BAKSA
ASSAM
PIN - 781333.

32: SRI SURANJITA KALITA
R/O VILL- BHOGPUR
P.O. BARAMA
DIST. BAKSA
ASSAM
PIN - 781333.

33: SRI BHUPEN SWARGIARY
S/O KHOGEN SWARGIARY
R/O VILL- KOKLABARI

P.O. DALBARI

DIST. BAKSA
ASSAM
PIN - 781333.

34: MISS. MAIJAN BEGUM
D/O MAZNUR ALI
R/O VILL- RATANPUR
P.O. DIGHELI
DIST. BAKSA
ASSAM
PIN - 781333.

35: SMTI. RITU BASUMATARY
W/O SRI CHAMPAK BORO
R/O VILL- ALGIHAR
P.O. BARAMA
DIST. BAKSA
ASSAM

PIN - 781333.

36: SMTI. KANCHAN GAYARI
D/O LT. JOY RAM GAYARI
R/O VILL AND P.O. BAGHMARA
BARBARI L.P. SCHOOL

DIST. BAKSA
ASSAM
PIN - 781333.

37: SRI MRINAL KUMAR DAS
S/O LT. PRAFFULA KR. DAS
R/O VILL- UZAN BARBARI
P.O. KADAIGURI

DIST. BAKSA
ASSAM
PIN - 781333.

38: MD. AIJUDDIN AHMED
S/OLT. AKBAR ALI
R/O VILL- RATANPUR
P.O. DHEGELI
DIST. BAKSA
ASSAM
PIN - 781333.

39: SMTI. JURI KALITA
D/O JIBAN CH. KALITA
R/O VILL- BHOGPUR
P.O. BARAMA
DIST. BAKSA
ASSAM
PIN - 781333.

40: MISS. BASANTI BORO
D/O SRI MEBAO BORO
R/O VILL- BAMUNDABA
P.O. MEDAGHAT
DIST. BAKSA
ASSAM
PIN - 781333.

41: SMTI. MINATI NARZARY
W/O SRI THANESWAR NARZARY
R/O VILL- HAZIRA
P.O. BENNABARI

DIST. BAKSA
ASSAM
PIN - 781333.

42: SMTI. MOHINI BASUMATARY
D/O LT.NARAYAN BASUMATARY
R/O VILL- CHOUDHURYPARA
P.O.KOKLABARI
DIST. BAKSA
ASSAM
PIN - 781333.

43: SRI HITESH TALUKDAR
S/O SRI MAHENDRA TALUKDAR
R/O VILL- KADAIGURI
P.O. KADOIGURI
DIST. BAKSA
ASSAM
PIN - 781333.

44: SMTI. RITA SWARGIARY
D/O KALARAM SWARGIARY
R/O VILL- HATIRTARI
P.O. ATHIABARI

DIST. BAKSA
ASSAM
PIN - 781333.

45: SMTI PRAMILA RAMCHIARY
D/O KARUNA RAMCHIARY
R/O VILL- KHAMRIGOAN
P.O. DHANBIL
DIST. BAKSA
ASSAM
PIN - 781333.

46: SMTI. BARNALI SARMA
W/O ARUP BARO
R/O VILL- AND P.O. MURMELA

DIST. BAKSA
ASSAM
PIN - 781333.

47: SRI APURBA BARMAN
S/O UDAY BARMAN
R/O VILL- PUB BARJHAR

P.O. BARMA

DIST. BAKSA
ASSAM
PIN - 781333.

48: SMTI. DEPANJALI MEDHI
D/O TARANI MEDHI
R/O VILL-KALJHAR
P.O. BARMA
DIST. BAKSA
ASSAM
PIN - 781333.

49: SRI CHANDAN KALITA
S/O JIBAN CH. KALITA
R/O VILL- BHOGPUR (NAKTIPRA)
P.O. BARMA

DIST. BAKSA
ASSAM
PIN - 781333.

50: SRI BIRESWAR BASUMATARY
S/O LT. MELORAM BORO
R/O VILL- BARAIGOAN
P.O. TAMULPUR
DIST. BAKSA
ASSAM
PIN - 781333.

51: MD. ABDUL MANNAF ALI
S/O ABDUL KADIR ALI
VILL- MAKHARIA
P.O. BARAMA
DIST. BAKSA
ASSAM
PIN - 781333.

52: SMTI. GITANJALI KALITA
W/O SRI TARUN BARMAN
R/O VILL- ALAGZAR
P.O. BARAMA
DIST. BAKSA
ASSAM
PIN - 781333.

53: SRI GOJEN DAS

S/O SRI RAMESH DAS
R/O VILL AND P.O. SAUDARVITHA
DIST. BAKSA
ASSAM
PIN - 781333.

54: SMTI. MANJU BARO
D/O DHARMESWAR BARO
R/O VILL AND P.O. MURMELA
DIST. BAKSA
ASSAM
PIN - 781333.

55: SRI BIBEK NATH
S/O SRI NAGEN NATH
R/O VILL- UTTAR BARTARY
P.O. ANADA BAZAAR

DIST. BAKSA
ASSAM
PIN - 781333.

56: SRI AKHIL BORO
S/O SRI NAGEN CH. BORO
R/O VILL- RANGAFALI
P.O. NAHERBARI

DIST. BAKSA
ASSAM
PIN - 781333.

57: SMTI. MANIMA DEWRY
D/O SRI RUPNATH DEWRY
R/O VILL- BANGOAN
P.O. BARAMCHARI

DIST. BAKSA
ASSAM
PIN - 781333.

58: SMTI. BEAUTY DAS
D/O SRI MAHENDRA DAS
R/O VILL AND P.O. SAUKUCHI
DIST. BAKSA
ASSAM
PIN - 781333.

59: SRI NALIN MOCHAHARY

S/O MONI MOCHAHARY
R/O VILL AND P.O. DABARI
DIST. BAKSA
ASSAM
PIN - 781333.

60: SMTI. LATIFA CHETRY
W/O LT. SURJA BAHADUR CHETRY
R/O VILL- GOPINATHPUR
P.O. KUMARIKATA

DIST. BAKSA
ASSAM
PIN - 781333.

61: MISS. ANJALI GOYARY
D/O SRI HARENDRA NATH GOYARY
R/O VILL- UDUGOAN

P.O. NIMUA
DIST. BAKSA
ASSAM
PIN - 781333

VERSUS

THE STATE OF ASSAM AND 10 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EDUCATION (ELEMENTARY) DEPARTMENT, DISPUR,
GUWAHATI - 6

2:THE COMMISSONER AND SECRETARY
TO THE WPT AND BC DEPARTMENT
GOVT. OF ASSAM
DISPUR
GUWAHATI -06.

3:THE SECRETARY TO THE GOVT. OF ASSAM

EDUCATION DEPARTMENT
DISPUR
GUWAHATI-06.

4:THE SECRETARY

FINANCE (SIU)

(DEPARTMENT)

DISPUR
GUWAHATI-06.

5:THE BODOLAND TERRITORIAL COUNCIL

REP. BY THE PRINCIPAL SECRETARY
BTC

KOKRAJHAR

ASSAM
PIN - 783370.

6:THE ADDITIONAL PRINCIPAL SECRETARY

BTC
KOKRAJHAR
ASSAM

PIN - 783370.

7:THE SECRETARY
EDUCATION DEPARTMENT

BTC
KOKRAJHAR
ASSAM
PIN- 783370.

8:THE DIRECTOR OF EDUCATION

BTC
KOKRAJHAR
ASSAM
PIN - 783370.

9:THE DISTRICT ELEMENTARY EDUCATION OFFICER

MUSHALPUR
DIST. BAKS
ASSAM
PIN - 781333.

10:THE DEPUTY INSPECTOR OF SCHOOLS

BAKSA
MUSHALPUR

DIST. BAKSA
ASSAM
PIN - 781333.

11:THE B.E.E.O. BAKSA MUSHALPUR/
TIHU-BARAMA/ JALAH- GOBARDHANA/ GORESWAR/ TAMULPUR

DIST. BAKSA
ASSAM
PIN - 781333

Advocate for the Petitioner : MRS A BUJARBARUAH

Advocate for the Respondent : SC, ELEM. EDU

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

For the petitioner	: Mr. U.K. Goswami, Advocate.
For State respondent Nos.1 and 3	: Mr. A. Phukan, Standing Counsel.
For respondent No.2	: Mr. R. Dhar, Standing Counsel.
For respondent No.4	: Mr. A. Chaliha, Standing Counsel.
For Respondent Nos.5 to 11	: Mr. S. Bora, Standing Counsel.
For Superintendent of Police	: Ms. D.D. Barman, Addl. Sr. Govt. Advocate.
Date of hearing	: 27.04.2023.
Date of judgment	: 03.05.2023.

JUDGMENT AND ORDER

(CAV)

Heard Mr. U.K. Goswami, learned counsel for the petitioners. Also heard Mr. A. Phukan, learned standing counsel for the Elementary Education Department (respondent nos. 1 and 3), Mr. R. Dhar, learned standing counsel for the WPT&BC Department (respondent no.2), Mr. A Chaliha, learned standing counsel for the Finance Department (respondent no. 4) and Mr. S. Bora, learned standing counsel for the Bodoland Territorial Council (respondent nos. 5 to 11. Also heard Ms. D.D. Barman, learned Addl. Senior Government Advocate, appearing on behalf of the Superintendent of Police, CID, Assam.

2. The petitioners have challenged a series of order dated 05.05.2017, issued by the Director of Education, Bodoland Territorial Council (respondent no. 8), thereby cancelling the appointment of the petitioners and the petitioners have also prayed for directing the respondent authorities for reinstatement of the petitioners in service.

3. In brief, the case of all the 61 (sixty one) petitioners is that after going through the selection process initiated vide notification for advertisement dated 29.07.2002, the petitioners were selected for appointment to the post of Assistant Teachers (AT for short) Lower Primary/ Middle English/ Middle Venture Schools (LP/ME/MV for short) under Baksa District under the administrative control of the Bodoland Territorial Council (BTC for short). However, as the respondent authorities did not appoint the petitioners, they had approached this Court by filing W.P.(C) 8734/2003. This Court by order dated 31.08.2004, disposed of the said W.P.(C) 8734/2003, by directing as follows:-

“ ... The subject matter of this writ petition is covered by the order dated 4.11.03, passed in WP(C) 7783/03.

In view of the above, this writ petition is also disposed of in terms of the directions contained the order dated 4-11-03, aforementioned making it clear that the respondent authorities shall not appoint any person outside the relevant select list and, as and when appointment is made from the select list, the appointment shall be made strictly in order of merit subject to reservation policy.

With the above observations and directions, this writ petition shall stand disposed of. No order as to cost.”

4. It is projected by the petitioners that the authorities of the BTC and Elementary Education Department were corresponding with each other and within their Department for grant of approval, financial approval and appointment of the petitioners as ATs. Thereafter, vide letter no.

BTC/Edn(EI)180/ 2005/241 dated 27.07.2016, issued by the Secretary, BTC informed the Director of Education, BTC (respondent no. 8), the receipt of approval from the Finance (SIU) Department bearing no. FSI.56/2016 dated 26.02.2016 towards filling up of 67 (sixty-seven) vacant sanctioned post of AT of LP/ME/MV Schools under BTC out of 74 (seventy-four) numbers of selected candidates in compliance of High Court's order dated 31.08.2004, passed in W.P. (C) 8734/2003 and the sanction and retention of post clarified by the Director of Education, BTC (respondent no. 8) vide letter no. DE/BTC/Apptt.-238/2013/2016/119 dated 28.06.2016, and the respondent no. 8 was directed to take steps for appointment to the petitioners. It is projected by the petitioners that consequently, 61 appointment orders dated 03.08.2016 (pg. 99 to 159 of writ petition) were issued by the Director of Education, BTC (respondent no. 8) and it is further projected that all the petitioners had joined their respective posts of AT in the concerned schools. However, some of the aggrieved persons had approached this Court by filing W.P.(C) 6093/2016 and this Court by order dated 05.10.2016, stayed the appointment orders of the petitioners. The respondent no.8 had issued notice to the petitioners to show-cause as to why their respective appointment orders should not be cancelled, which was responded to by the petitioners. Thereafter, the authorities of the Director of Education, BTC (respondent no. 8), vide separate orders dated 05.05.2017, cancelled the respective appointment orders of the petitioners. Consequently, the proceedings of W.P.(C) 6093/2016 was closed by order dated 25.05.2018.

5. The learned counsel for the petitioners had submitted that the authorities were corresponding with each other so that the Finance (SIU) clearance is received to enable their appointment orders to be issued and

accordingly, the petitioners had a legitimate expectation for being appointed as ATs pursuant to the selection process, which had fructified when appointment orders dated 03.08.2016. It has been submitted that this Court had stayed the operation of the said appointment orders dated 03.08.2016, by order dated 05.10.2016, passed in W.P.(C) 6093/2016 and in the said context, it has been submitted that the respondent authorities had failed to point out before this Court that none of the petitioners herein were arrayed as respondents.

6. It was further submitted that an inadvertent typing error had crept in the respective appointment orders dated 03.08.2016, wherein reference is made to order dated 23.01.2006, passed by this Court in W.P.(C) 8734/2003. It has been submitted that no such order dated 23.01.2006 exists and/or passed by this Court in W.P.(C) 8734/2003, which ought to have been mentioned as order dated 31.08.2004, passed in W.P.(C) 8734/2003. It has been submitted that the typing error was admitted by the BTC authorities by way of their affidavit filed in the proceeding of W.P.(C) 6093/2016.

7. It has been submitted that the stand of the respondent nos. 5 to 11 in their affidavit-in-opposition to the effect that the records of selection relating to advertisement, call letters, interview date, select list are not available in the office is not to be believed because Sri Rabi Sankar Borgayari, Director of Education, BTC (respondent no. 8), who had sworn and filed the affidavit-in-opposition on behalf of respondent nos. 5 to 11 was the person who had issued the series of 61 appointment orders dated 03.08.2016 (pg. 99 to 159 of writ petition). Accordingly, it is submitted that having issued appointment orders in favour of the petitioners, the respondent no. 8 could not change his stand, just to deprive the petitioners. It was submitted that although the petitioners had

submitted their show cause reply, but no hearing was conducted and the impugned cancellation order does not contain any finding with regard to any anomaly.

8. Per contra, the learned standing counsel for the BTC has submitted that the petitioners themselves have not been able to produce any document to show that any employment advertisement was issued and/or any call letters or select list was published by the respondent no. 8. It has been submitted that there is no official record of such process being undertaken and in this regard, reference is made to the documents annexed to this writ petition. The learned standing counsel for the BTC has produced the original attendance register containing signatures of 47 appointees out of 67 appointees who had attended the hearing before the Director of Education, BTC, which was held on 30.12.2016.

9. Similar submission has been made by the learned Addl. Senior Government Advocate, who has appeared on behalf of the Superintendent of Police CID, Assam, to whom the BTC was directed to hand over investigation by this Court vide order dated 09.06.2022. She has submitted that the preliminary enquiry has been conducted by the CID, Assam, and that report dated 13.09.2022 and 28.10.2022, by the I.O. has been brought on record by filing an affidavit on 01.11.2022.

10. Perused the materials available on record. Considered the submissions made by the learned counsel for the contesting parties.

11. It would be relevant to refer to the contents of a few documents annexed to the writ petition:-

a. Annexure-1 to this writ petition is a document captioned "Notification for advertisement". The said document bears an illegible signature purportedly by the "*Chairman, Nalbari Dist. Secondary Education Advisory Board & Chief, Bodoland Executive Council, Kokrajhar.*" As per the contents of the said document, (i) the date of receiving applications was 30.07.2002, (ii) the last date of receipt of applications was 08.08.2002, (iii) the date of interview or selection (in order of merit and locality) was at Guwahati Circuit House on 11.08.2002, (iv) date within which approval from the BAC (i.e. Bodoland Autonomous Council) authority should be obtained was 26.08.2002.

b. Annexure-2 is the copy of letter no. DE/SB/Approve/ 6/2001/8 dated 09.02.2002 by the Director of Education, BAC addressed to (i) the Inspector of Schools under BAC areas, and (ii) District Elementary Education Officer under BAC, requesting them to direct the Head of Institutions concerned to advertise locally for the vacancies for the posts of Subject Teachers/ Demonstrator/Classical Teachers in provincialised schools and Assistant Teachers in purely Government Schools, giving 10 days time from date of advertisement. The Head of Institutions were directed to prepare comparative statement of candidates on the basis of applications and submit it to their controlling officers i.e. Inspector of Schools/ DEEO who would submit them to the Director of Education, BTC.

c. Annexure-3 series is a copy of letter dated 20.04.2002 by which the Deputy Inspector of Schools, Nalbari had written to (i) the Head Master of Natun Saderi LP School, and (ii) the Head Master of

Barimakha ME School to advertise the post of 1 (one) AT vacant in the school with further direction to submit the applications along with the comparative statement on or before 30.04.2002, and to direct the candidates to appear before the interview which was to be held on 10.05.2002 at 11 am at Bodoland Guest House, Khanapara.

d. Annexure-4 series are the copy of 2 (two) lists, viz., (i) "Name of the selected candidate for the post of AT under BAC area for appointment against the permanent vacancies posts (ME/MV School)", which contains 23 names, (ii) "Name of the selected candidate for the post of AT under BAC area for appointment against the permanent vacancies posts (LP/Jr. Basic School)" containing 51 names.

e. Annexure-6 is a copy of letter no. ELC/WP(C) 8734/2003/832/101 dated 09.03.2005, issued by the Commissioner & Secretary to the Govt. of Assam, Education Department, addressed to the Director of Education, BTAD, wherein, amongst others, it has been mentioned that the petitioner, Sri Sukla Muchahary and others were selected by the District Selection Advisory Board/ Sub- Divisional Advisory Board, Nalbari under erstwhile BAC areas for appointment as ATs in MV/ME/LP Schools in 10.08.2002 and that the selection was approved by the Interim BAC on 05.05.2003. However, the said letter also contains reference to the "Select Lists dated 28.05.2003".

f. Annexure-10 is a letter dated 05.01.2015 by Deputy Secretary to the Govt. of Assam, Elementary Education Department to the Director of Education, BTC regarding proposal for obtaining approval for filling up of vacant LP/UP/MV posts, wherein it is mentioned that select list was prepared by erstwhile BAC authority in 2002.

g. In several letters by the respondent authorities, viz., Annexure-6 to 8, 10, 13, 15 (series), etc., it is projected as if vacancies are required to be filled up because of orders passed by this Court in W.P. (C)8734/2003 and W.P.(C) 7783/2003.

h. Annexure-19 (series) are the show-cause reply dated 28.10.2016 submitted by the petitioners before the Director of Education, BTC (respondent no.8). It is mentioned therein that advertisement was hanged in the respective schools on 09.02.2002 and that the interview for the said posts was held on 10.08.2002 in Circuit House, Guwahati.

12. From Annexure-1 referred to in the preceding paragraph, it appears that it was merely a notification for advertisement. The actual advertisement, if any, is withheld by the petitioners. As per the said notification for advertisement, the applications were to be submitted between 30.07.2002 and 08.08.2002. There was a requirement to prepare a list of applicants in order of merit. The date of interview or selection (in order of merit and locality) was at Guwahati Circuit House on 11.08.2002. Approval was required to be obtained from the BAC by 26.08.2002. Thus, it is apparent that no public advertisement was issued for the recruitment process. The timelines as provided in Annexure-1 were not adhered to. Rather, it is shocking to the conscious of the Court that as per the contents of Annexure-19 (series), which are the show cause reply dated 28.10.2016 submitted by the petitioners before the Director of Education, BTC (respondent no.8), that there is an admission by the petitioners to the effect that advertisement was hanged in the respective schools on 09.02.2002 and that the interview for the said posts was held on 10.08.2002 in Circuit House, Guwahati. This makes it apparent that the applications were hurriedly processed before the time prescribed by the notification for advertisement dated

29.07.2002. The name and designation of the authority who had processed the applications and the name and designations of the officials who had conducted the interview has been withheld. As per the contents of Annexure-10, the BAC authorities had prepared a select list in the year 2002, but it is again shocking to the conscious of the Court that as per the contents of Annexure-6, the selection was approved by the Interim BAC on 05.05.2003, meaning thereby that the approval had preceded the Select List dated 28.05.2003. Thus, apparently the entire recruitment process was conducted in a non-transparent manner and without following due process of law.

13. Therefore, from the conjoint reading of the contents of the above referred documents annexed to the writ petition, there appears to be no consistency of the dates when the sequence of events happened, viz., (i) date of advertisement; (ii) beginning and end date of receipt of applications, (iii) date and authority by whom applications were processed and/or scrutinized; (iv) number of applications received; (v) number of applications forwarded to the authorities for conducting interview; (vi) date, time and venue and the authorities who had conducted the interview; (vii) date when the select list was published and authority who had published the select list.

14. The notification for advertisement dated 29.07.2002 (Annexure-1) and the letter dated 20.04.2002 (Annexure-3) by the District Elementary Education Officer to the Head Master to advertise the post locally and to submit comparative statements by 30.04.2002 do not contain any reference to any Act, Rules or Notification which is required to be followed for the purpose of prescribing eligibility and manner/ procedure in which selection and appointment was to be made. Although the learned standing counsel for the

BTC (respondent nos. 5 to 11) had submitted that the provisions of the Assam Elementary Education (Provincialisation) Rules 1977 applies for selection and appointment of ATs in LP/ME/MV Schools in the State, but in absence of any pleadings either in the writ petition or in the affidavit-in-opposition filed by the respondent nos. 5 to 11, no comment is made thereon, as there is nothing on record to show that any of the provisions of the said 1977 Rules was followed for issuing purported appointment orders dated 03.08.2006.

15. The record produced by the BTC, being File No. BE/BTC/Apptt-238/WP(C)8734/2003/Pt. pertains to the year 2016 onwards. The said file does not have any note-sheet, the documents contained therein are mostly photocopies. None of the documents are paginated, leaving scope of manipulations in the file as the file is susceptible to inserting and/or removing documents at any stage. The manner in which the said file is maintained makes the entire selection process highly questionable and/or doubtful. In the absence of any official note in the file, it is not known how the internal inquiry by the Director of Education, BTC has proceeded.

16. As already mentioned herein before, Sri Rabi Sankar Borgayari, Director of Education, BTC (respondent no. 8) was the authority who had signed and issued the appointment orders to the petitioners. He was the authority who had conducted the hearing on 30.12.2016 in respect of the show cause notices issued by him and thereafter, he had issued the impugned order dated 05.05.2017, thereby cancelling the appointment orders. However, no document could be shown from the file produced by the learned standing counsel for the BTC that the records based on which (i) appointment orders were issued on 03.08.2016; (ii) approval granted by Govt. of Assam, Elementary Education

Department vide letter no. AEE-671/2005/317 dated 08.06.2016 [mentioned in appointment letters dated 03.08.2016 (Annexure-15)]; and (iii) BTC's approval letter No. BTC/Edn (EI)-180/2005/241 dated 27.07.2016, were consulted by the Director of Education, BTC (respondent no. 8) before passing the impugned order dated 05.05.2017. The documents could not be shown as the said file was improperly maintained for reasons best known to the respondent no. 8.

17. It would be relevant to quote the relevant contents of one the impugned order dated 05.05.2017 out of Annexure-20 series (pp.260), which is as follows:-

*“GOVT. OF ASSAM
OFFICE OF THE DIRECTOR OF EDUCATION: B.T.C., KOKRAJHAR
O R D E R*

Dated Kokrajhar the 5th May/2017

In pursuance of the Secretary, BTC vide letter No. BTC/Edn (EI)-180/2005/811 dated 13th April/2017, the appointment letter of this office vide Memo No. DE/BTC/Apptt-238/WP(C)8734/2016/158 dated 3rd Aug./2016 in respect of Sri Bireswar Basumatary, AT, Suwagpur MV School is hereby cancelled.

*sd/- R.S. Borgoyari
Director of Education
Bodoland Territorial Council
Kokrajhar”*

18. However, neither the petitioners nor the respondent nos. 5 to 11 have brought on record the letter issued by the Secretary, BTC vide letter No. BTC/Edn (EI)-180/2005/811 dated 13.04.2017. Thus, it appears that although the respondent no. 8 had projected as if he had heard the 47 applicants on 30.12.2016 on show cause notice dated 15.10.2016 and show-cause reply submitted thereon, but the hearing was a farce and an eye-wash, whereas, the Director of Education, BTC (respondent no.8) appears to have mortgaged his

conscious to the dictates of the Secretary, BTC, as conveyed by letter dated 13.04.2017 by the said authority.

19. In this case, the manner in which the appointment orders were cancelled by the respondent no. 8 vide order dated 05.05.2017 (Annexure-20 series) is not legally acceptable. Equally not legally acceptable is the manner in which the respondent no. 8 had made appointments vide order dated 03.08.2016 (Annexure-15 series).

20. Therefore, the Court has to choose between two illegalities, both committed by the Director of Education (respondent no. 8). In this regard, this Court while exercising writ jurisdiction under Article 226 this is also a Court of equity and therefore, while balancing equities, the Court is of the considered opinion that as the petitioners have miserably failed to show that they had been appointed in accordance with law relating to appointment by the Government, which is already discussed herein before, equity does not lie in favour of the petitioners. To reiterate the illegality committed in issuing appointment orders to the petitioners, it may be re-stated, *inter alia*, that:-

- a. There is no record of any employment advertisement, which could reach the public at large.
- b. The manner in which advertisement was published and the date of advertisement is not on record.
- c. The dates on and from which the authorities started to receive applications and the last date of receipt of applications has not been brought on record.
- d. The date when the applications were processed and scrutinized has not been brought on record.

- e. The authorities who were involved in the processing of applications is not brought on record, which is relevant because as per contents of Annexure-3, the advertisement was to be published locally by the Head Master and the processing of applications were also done by the Head Master of concerned schools.
- f. The number of applications received is not on record, which could have revealed how many persons actually applied for the post of AT.
- g. The number of applications forwarded to the authorities for conducting interview is not on record.
- h. The date, time and venue and the authorities who had conducted the interview has not been brought on record which is relevant because as per notification for advertisement dated 29.07.2002 (Annexure-1), the interview was scheduled on 11.08.2002 at Guwahati Circuit House, but as per Annexure-3, the interview was scheduled on 10.05.2002 at Bodoland Guest House, Khanapara, Guwahati. Moreover, in the show cause reply dated 28.10.2016, submitted by the petitioners before the Director of Education, BTC (respondent no.8), there is an admission by the petitioners to the effect that advertisement was hanged in the respective schools on 09.02.2002 and that the interview for the said posts was held on 10.08.2002 in Circuit House, Guwahati. Thus, there is discrepancy in the date of advertisement, and date and venue for the interview.
- i. The date when select list was published and authority who had published the select list is not on record, which is relevant because as per copy of letter dated 09.03.2005 (Annexure-6), issued by the Commissioner & Secretary to the Govt. of Assam, Education

Department, it has been mentioned that the petitioners were selected by the District Selection Advisory Board/ Sub- Divisional Advisory Board, Nalbari under erstwhile BAC areas for appointment as ATs in MV/ME/LP Schools on 10.08.2002. It was also mentioned that the selection was approved by the Interim BAC on 05.05.2003. However, the said letter also contains reference to the "Select Lists dated 28.05.2003". In stark contrast, in the letter dated 05.01.2015 by Deputy Secretary to the Govt. of Assam, Elementary Education Department (Annexure-10) it is mentioned that the select list was prepared by erstwhile BAC authority in 2002.

j. In the absence of any order from the competent authority to extend the validity of the select list that was prepared in 2002 and/or 2003, the Court is unable to hold that the said select list would be valid till 03.08.2016, when the appointment orders were issued. Generally, the validity of the select list is as per prescription of the relevant service rules, in absence of which it is generally accepted that the select list would be valid for 1 (one) year. Though it is nobody's case that the BTC authorities had extended the validity of select list, but it is equally too well settled that in the absence of any law in force, the Executive would not have the power to extend the validity of the select list once its validity had expired. Thus, post-facto validation of the select list was neither possible nor permissible in law.

k. Thus, as discussed herein before, there are plenty of loose ends, which could not be successfully tied up by the petitioners to sustain their respective claims even by applying the principles of preponderance of evidence.

21. In the case of *Bharat Singh v. State of Haryana (1988) 4 SCC 534: AIR 1988 SC 2181: 1988 STPL 4281 SC*, the Supreme Court of India had observed to the following effect:-

“13. ... In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit. (extracted from STPL; paragraphs in reporting by SCC and AIR may vary).”

22. Therefore, as the relevant documents and particulars, materials for this case were not brought on record, it is the writ petition by the petitioners which would fail.

23. Although it has been held that the hearing conducted by the respondent no. 8 on 30.12.2016 was farce, yet the impugned order dated 05.05.2017 (Annexure-20 series) passed by the Director of Education, BTC (respondent no.8) does not call for any interference, otherwise it would lead to stamp of approval of the Court on the gross illegality committed by the respondent no. 8 in issuing the appointment orders dated 03.08.2016, which cannot be sustained in any manner.

24. Accordingly, in view of the discussions above, this writ petition

fails and the same is dismissed. The parties are left to bear their own cost.

25. It would suffice to mention herein that by order dated 27.04.2023, the Court has issued a notice to the concerned authorities to show-cause and it has been directed that a separate interlocutory application be registered for the same, which would proceed notwithstanding the disposal of this writ petition. Notice issued by order dated 27.04.2023 is made returnable on 30.06.2023. Therefore, it is reiterated that the Registry shall register an appropriate *Suo Motu* interlocutory application and/or Misc. Case in connection with this disposed of writ petition.

JUDGE

Comparing Assistant