

GAHC010124102020



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

Case No. : WP(C)/3733/2020

NIRUPAMA BARO AND 3 ORS.
W/O- UMESH CH BARO, VILL- PUB NALBARI, P.O. CHAMUAPARA, P.S.
TANGLA, PIN- 784521, DIST.- UDALGURI, ASSAM

2: SONA RAM BORO
C/O- BEDERA BORO
R/O- KHATUWALPARA
P.O. RATNPUR
P.S. TANGLA
PIN- 784523
DIST.- UDALGURI
ASSAM

3: SONA RAM BORO
C/O- RANTENG BORO
VILL- BATAKUCHI
P.O. BATAKUCHI
PIN- 784510
P.S. TANGLA
DIST.- UDALGURI

4: PROTUL BAGLARY
C/O- KHUDI RAM BORO
VILL- CHILABANDHA
P.S. KALAIGAON
PIN- 784190
DIST.- UDALGURI
ASSA

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY ITS COMM. AND SECY., EDUCATION DEPTT. (SECONDARY), TO
THE GOVT. OF ASSAM, DISPUR-06

2:THE DY. SECRETARY TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPTT.
TO THE GOVT. OF ASSAM
DISPUR-06

3:THE DIRECTOR SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

4:THE JOINT DIRECTOR SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

5:THE INSPECTOR OF SCHOOLS
UDALGURI DISTRICT CIRCLE
DIST.- UDALGURI
ASSA

Advocate for the Petitioner : MR. P K GOSWAMI

Advocate for the Respondent : SC, SEC. EDU.

Linked Case : WP(C)/9332/2019

KRIPAMOY NATH AND 7 ORS.
S/O KAMINI MOHON NATH
VILL. RANPUR
P.O. KALAMAGURA
P.S. RATABARI
PIN-788737
DIST. KARIMGANJ

2: PARESH CHANDRA NATH
S/O LT. PRAFULLA KUMAR NATH
VILL. PECHALA
PO. RATABARI
PIN-788735
DIST. KARIMGANJ

3: SATYAJIT DAS

S/O SITESH DAS
VILL. OLIVACHERRA
P.O. OLIVACHERRA
PIN-788737
DIST. KARIMGANJ

4: DILIP KUMAR PRAJAPATI
S/O LT. PARSHU RAM PRAJAPATI
VILL. WANGIRBOND
P.O. OLIVACHERRA
PIN-788737
DIST. KARIMGANJ

5: POLTU CHANDRA DAS
S/O LOKESH CHANDRA DAS
VILL. CHERAGI
P.O. CHERAGI
PIN-788735
DIST. KARIMGANJ

6: ABDUL BASIT
S/O LT. ABDUL HAMID
VILL. GULCHERA
P.O. GULCHERA BAZAR
PIN-788719
DIST. KARIMGANJ

7: NIKHIL CHANDRA NATH
S/O LT. NARAYAN NATH
VILL. BARBALIA
P.O. KALAMAGURU
PIN-788737
DIST. KARIMGANJ

8: NARSING NATH
S/O LT. NARAYAN NATH
VILL. BARBALIA
P.O. KALAMAGURU
PIN-788737
DIST. KARIMGANJ
VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY ITS COMMISSIONER AND SECRETARY EDUCATION DEPTT.
(SECONDARY)
TO THE GOVT. OF ASSAM
DISPUR-6

2:THE DEPUTY SECRETARY
TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPTT. TO THE GOVT. OF ASSAM
DISPUR-6

3:THE DIRECTOR SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

4:THE JOINT DIRECTOR SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

5:THE INSPECTOR OF SCHOOLS
KARIMGANJ
DIST. KARIMGANJ
ASSAM

Advocate for : MR. B P BORAH
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND 4 ORS.

Linked Case : WP(C)/3817/2020

ANIMA DEKA AND 7 ORS
W/O RAM CHANDRA OJHA
VILL- CHINTAGAON
P.O. KALAIGAON
DIST- UDALGURI
PIN- 784525

2: MAHINDRA CH. DEKA
S/O DINA RAM DEKA
VILL. BARAMPUR
P.O. BARAMPUR
DIST- DARRANG
PIN-784525

3: NRIPEN DAS
S/O JAGABANDHU DAS
VILL. JABERIKUCHI
P.O. BARKOLA CHOWKA
DIST- DARRANG
PIN-784525

4: PABAN CHANDRA BORA
S/O TARINI KANTA BORA

VILL BARAMPUR
P.O. BRAMPUR
DIST- DARRANG
PIN-784525

5: BABUL CH. BORDALAI
S/O MUKTA NANDA BORDALAI
VILL- PAKABANGIPARA
P.O. BORDOULGURI
DIST- DARRANG
PIN-784145

6: MAUCHUMI BARMAN
W/O PHANINDRA DEKA
VILL- GADHIYA PARA
P.O. CHAPAI CHOWKA
DIST- DARRANG
PIN-784529

7: RABENDRA DAS
S/O NIKENDRA DAS
VILL- JABERIKUCHI
P.O. BARKOLA CHOWKA
DIST- DARRANG
PIN-784525

8: LOHIT CH. BORO
S/O MAHENDRA KACHARI
VILL. KALITAPARA
P.O. BARKOLA CHOWKA
DIST- UDALGURI
PIN-784525
VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY ITS COMMISSIONER AND SECRETARY EDUCATION DEPARTMENT
(SECONDARY)
TO THE GOVT. OF ASSAM
DISPUR-6

2:THE DY. SECY. TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPARTMENT
TO THE GOVT. OF ASSAM
DISPUR-06

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

4:THE JT. DIRECTOR SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

5:THE INSPECTOR OF SCHOOLS
UDALGURI
DIST- UDALGURI
ASSAM

Advocate for : MR. S S GOSWAMI
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND 4 ORS

Linked Case : WP(C)/3847/2020

SASWATI DAS AND 8 ORS.
W/O- SUBRATA DEB
R/O- BROJENDRA ROAD
P.O. KARIMGANJ
PIN- 788710
DIST.- KARIMGANJ
ASSAM

2: SUJATA DAS
W/O- NIDHILAL DHAR
R/O- NETAJI PATTY
SETTLEMENT ROAD
P.O. AND DIST.- KARIMGANJ
ASSAM
PIN- 788712

3: ABU TAYEB MD. ABDULLAH
S/O- ABDUR NOOR
VILL- SAYED PUR
P.O. JAGANNATHI
PIN- 788709
DIST.- KARIMGANJ
ASSAM

4: AHMED MISBAH UDDUZA
S/O- LT. NOOR UDDIN AHMED
VILL- GANGPAR
P.O. JAGANNATHI
PIN- 788709
DIST.- KARIMGANJ
ASSAM

5: ABDUL QUADIR
S/O- LT. RAHMOT ALI
VILL- VITHARGOOL
P.O. JAGANATHI
PIN- 788709
DIST.- KARIMGANJ
ASSAM

6: MD SUHED AHMED
S/O- LT. AKTHAR HMED
VILL- SANDALPUR
P.O. JAGANATHI
PIN- 788709
DIST.- KARIMGANJ
ASSAM

7: FAIYAZ AHMED
S/O- LT. NIMAR ALI
VILL- SAYED PUR
P.O. JAGANATHI
PIN- 788709
DIST.- KARIMGANJ
ASSAM

8: SUBHAS CHANDRA NATH
S/O- LT. JOGENDRA MOHAN NATH
VILL- LATASHAIL
P.O. LAKSHMI BAZAR
PIN- 788709
DIST.- KARIMGANJ

9: VARNENDU DAS
S/O- LT. KARUNA KANTI DAS
VILL- GORDARASHI
P.O. SADARASTI
PIN- 788709
VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY ITS COMM. AND SECY. EDUCATION DEPTT. (SECONDARY)
TO THE GOVT. OF ASSAM
DISPUR-06

2:THE DY. SECRETARY TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPTT.
TO THE GOVT. OF ASSAM
DISPUR-06

3:THE DIRECTOR
SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

4:THE JOINT DIRECTOR
SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

5:THE INSPECTOR OF SCHOOLS
KARIMGANJ DISTRICT CIRCLE
DIST.- KARIMGANJ
ASSAM

Advocate for : MR. P K GOSWAMI
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND 4 ORS.

Linked Case : WP(C)/3968/2020

SAMINUR ISLAM AND 15 ORS
S/O- KOSIM UDDIN
VILL.- KOKRADANGA
P.O.- AOLATOLI
DIST.- GOALPARA
PIN- 783129.

2: SORHAB ALI MOLLAH
S/O- ASHAN ALI MOLLAH
VILL.- HOLDIBARI
P.O.- BAGUAN
DIST.- GOALPARA
PIN- 783129.

3: MOKBUL HUSSAIN
S/O- FAZAL HOQUE
VILL.- CHATAMARI
P.O.- BAGUN
DIST.- GOALPARA
PIN- 783129.

4: ROUSHONARA KHATUN
D/O- DELOWAR HUSSAIN
VILL.- SABAJI BAGUAN
P.O.- BAGUAN

DIST.- GOALPARA
PIN- 783129.

5: NABA KUMAR NATH
S/O- MOHESWAR NATH
VILL.- PESHARPARA
P.O.- BAGUAN
DIST.- GOALPARA
PIN- 783129.

6: ROFIQUL ISLAM
S/O- ABDUL MONNAF
VILL.- SABAJI BAGUAN
P.O.- BAGUN
DIST.- GOALPARA
PIN- 783129.

7: RUHUL AMIN
S/O- ABDUL MANNAF
VILL.- SABAJI BAGUAN
P.O.- BAGUAN
DIST.- GOALPARA
PIN- 783129.

8: GUNENDRA CHANDRA NATH
S/O- DINESH CHANDRA NATH
VILL.- NARANGABARI
P.O.- BAGUAN
DIST.- GOALPARA
PIN- 783129.

9: RUHUL AMIN
S/O- ABDUL KASHEM MONDOL
VILL.- KOKRADANGA (SAKTOLA)
P.O.- AOLATOLI
DIST.- GOALPARA
PIN- 783129.

10: ABUL HUSSAIN
S/O- JOMSER ALI
VILL.- KOKRADANGA (SAKTOLA)
P.O.- AOLATOLI
DIST.- GOALPARA
PIN- 783129.

11: TASLIMA KHATUN
D/O- TOIBAR RAHMAN
VILL

P.O.- AOLATOLI
DIST.- GOALPARA
PIN- 783129.

12: ABDUL WAHID
S/O- IMAN ALI
VILL.- BATABARI
P.O.- MARKULA
DIST.- GOALPARA
PIN- 783120.

13: CHANDRA SHEKHAR TRIPATHY
S/O- MADHAB CHANDRA TRIPATHY
VILL.- PUTHIMARI
P.O.- CHUNARI
DIST.- GOALPARA
PIN- 783129.

14: RIAZUL ISLAM
S/O- SOYED ALI
VILL.- KOKRADANGA (SAKTOLA)
P.O.- AOLATOLI
DIST.- GOALPARA
PIN- 783129.

15: AHMED ALI
S/O- SOFIUR RAHMAN
VILL.- KOKRADANGA (SAKTOLA)
P.O.- AOLATOLI
DIST.- GOALPARA
PIN- 783129.

16: SHAJAHAN ALI
S/O- KOSIM UDDIN
VILL.- KOKRADANGA (SAKTOLA)
P.O.- AOLATOLI
DIST.- GOALPARA
PIN- 783129.
VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY ITS COMMISSIONER AND SECY.
EDUCATION DEPTT. (SECONDARY) TO THE GOVT. OF ASSAM
DISPUR- 6.

2: THE DY. SECY. TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPTT. TO THE GOVT. OF ASSAM
DISPUR- 06.

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY- 19.

4:THE JOINT DIRECTOR
SECONDARY EDUCATION
KAHILIPARA
ASSAM
GHY- 19.

5:THE INSPECTOR OF SCHOOLS
GOALPARA
DIST.- GOALPARA
ASSAM.

Advocate for : MR S GOSWAMI
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND 4 ORS

Linked Case : WP(C)/8715/2019

JHUMAR BAHADUR CHETRY AND 14 ORS.
S/O- BAL BAHADUR CHETRY
VILL- ATTAREEKHAT JANGAL BASTI
P.O. SUKLAI
P.S. DIMAKUCHI
PIN- 784527
DIST- UDALGURI

2: SURYA BAHADUR CHETRY
S/O- PADAM BAHADUR CHETRY
VILL- UTTAR NAOBANDHA
P.O.- ATTAREEKHAT
P.S. DIMAKUCHI
PIN- 784527
DIST- UDALGURI

3: JIBAN CHANDRA POUDEL
S/O- BALAK DAS PAUDEL
VILL- BORENGAJULI KHUTI
P.O. SUKLAI
P.S. DIMAKUCHI
PIN- 784527
DIST- UDALGURI

4: MUKUL BARDALOI
S/O- LT PADMA NATH SARMA

VILL- BARUAJANI
P.S. KAMALPUR
PIN- 781380
DIST- KAMRUP (UR)

5: JYOTI PRASAD BARUAH
S/O- CHENI RAM BARUAH
VILL- 1NO. DIMAKUCHI
P.O. DIMAKUCHI
P.S. DIMAKUCHI
PIN- 784527
DIST- UDALGURI

6: CHANDANA SAHARIAH
W/O- RUHIT RABHA
VILL- DIMAKUCHI
P.O. DIMAKUCHI
P.S. DIMAKUCHI
PIN- 784527
DIST- UDALGURI

7: BISHNU BHUSAL
S/O- KHADANANDA BHUSAL
VILL- DAHAALAHABI
P.O. KHAGRABARI
P.S. DIMAKUCHI
PIN- 784527
DIST- UDALGURI

8: BINAY KUMAR BASUMATARY
S/O- GOBINDA BASUMATRY
VILL- DAHALACHUBA
P.O. KHAGRABARI
P.S. DIMAKUCHI
PIN- 784527
DIST- UDALGURI

9: AMAR BORO
S/O- RATI RAM BORO
VILL- NO 2 SINGRIMARI
P.O. KHAGRABARI
P.S. DIMAKUCHI
PIN- 784527
DIST- UDALGURI

10: LOHIT BORO
S/O- GABRA RAM BORO
VILL- CHUBARI (DHUPGURI)

P.O. PANISHELI
P.S. TANGLA
PIN- 784522
DIST- UDALGURI

11: HABEL DAIMARY
S/O- DIKHAR DAIMARY
VILL- NO 2 SINGRIBARI
P.O. KHAGRABARI
P.S. DIMAKUCHI
PIN- 784527
DIST- UDALGURI

12: HEMANTA BARO
S/O- ANIL BARO
VILL- PANISHELI (NALBARI)
P.O. PANISHELI
P.S. TONGLA
PIN- 7845522
DIST- UDALGURI

13: UDANGSRI BRAHMA
W/O- HEMANTA BARO
VILL- PANISHELI (NALBARI)
P.O. PANISHELI
P.S. TONGLA
PIN- 784522
DIST- UDALGURI

14: NALESWAR BASUMATARY
S/O- KHAGEN BASUMATARY
VILL- PATALA
P.O. MALMURA
P.S. TONGLA
PIN- 784522
DIST- UDALGURI

15: SANI RAM HASDA
S/O- BHOGRA HASDA
VILL- BATABARI
P.O. PANISHELI
P.S. TONGLA
PIN- 784522
DIST- UDALGURI
VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY ITS COMM. AND SECY. EDUCATION DEPTT. (SECONDARY)

TO THE GOVT. OF ASSAM
DISPUR-06

2:THE DY. SECRETARY TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPTT.

TO THE GOVT. OF ASSAM
DISPUR-06

3:THE DIRECTOR
SECONDARY EDUCATION
ASSAM

KAHILIPARA
GHY-19

4:THE JOINT DIRECTOR
SECONDARY EDUCATION
ASSAM

KAHILIPARA
GHY-19

5:THE INSPECTOR OF SCHOOLS
UDALGURI
DIST- UDALGURI
ASSAM

Advocate for : MR. B P BORAH

Advocate for : SC

SEC. EDU. appearing for THE STATE OF ASSAM AND 4 ORS.

Linked Case : WP(C)/7634/2019

HARAMOHAN NATH AND 13 ORS.

S/O- LATE SADJU RAM NATH

R/O- VILL.- TIPLAI

P.O. TIPLAI

PIN- 783130

DIST.- GOALPARA.

2: HEMLATA DEVI

S/O- LATE KHAGENDRA NATH PATHOK

R/O- VILL.- MANDALGRAM

P.O. LELA

PIN- 783124

DIST.- GOALPARA.

3: SIVAPRASAD DAS

S/O- LATE RAMESH CHANDRA DAS

R/O- KATHALMURI

P.O. PATPARA

DIST.- GOALPARA
PIN- 783130

4: BHAIRAB PATGIRI
S/O- LATE JAGAT PATGIRI
R/O- BHKHARAPARA
P.O. RANGJULI
PIN- 783130
DIST.- GOALPARA.

5: RABINDRA DAIMARY
S/O- LATE MAHESWAR DAIMARY
R/O- SARAPARA
P.O. RANGJULI
PIN- 783130
DIST.- GOALPARA

6: HARAPRASHANNA BASUMOTARY
S/O- LATE HARKUMAR BASUMOTARY
R/O- PATPARA
NOWAPARA
P.O. PATPARA
PIN- 783130
DIST.- GOALPARA.

7: HARI CHARAN DAS
S/O- MAHIDHAR DAS
R/O- SANPARA
P.O. JHAROBARI
PIN- 781122
DIST.- KAMRUP

8: DHANANJOY KAIBARTA
S/O- LATE BIDYA RAM KAIBATRA

R/O GOHAIN BARI
P.O. DHANUBHAGA
PIN- 783130
DIST.- GOALPARA.

9: LANKESWAR KHAKHALARI
S/O- MAHIM CH.. KHAKHALARI
R/O- BAGUAN
P.O. CHECHAPANI
PIN- 783134
DIST.- GOALPARA

10: HIM KISHORE BODO

S/O- LATE BHARAT CH. BORO
R/O- GATHIAPARA
P.O. DHANUBHNAGA
PIN- 783130
DIST.- GOALPARA
ASSAM.

11: MONAJ KUMAR SWARGIARY
S/O- SAMARENDRA SWARGIARY
R/O- SALPARA
P.O. PATPARA
PIN- 783130
DIST.- GOALPARA
ASSAM.

12: SAYED ALI MOLLAH
S/O- SOMED ALI MULLAH
R/O- KODALKATI
P.O. BAGUAN
PIN- 783129
DIST.- GOALPARA

13: RABINDRA CHANDRA NATH
S/O- LATE KHAGENDRA NATH
R/O- PATPARA
P.O. PATPARA
PIN- 783130
DIST.- GOALPARA

14: NILESWAR BASUMATRY
S/O- POHESWAR BASUMATARY
R/O- DAPHIMARA
P.O. PATPARA
PIN- 783130
DIST.- GOLAPARA.
VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY EDUCATION DEPTT.
(SECONDARY) TO THE GOVT. OF ASSAM
DISPUR
GHY-06

2:THE DEPUTY SECRETARY TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPTT.
TO THE GOVT. OF ASSAM
DISPUR
GHY-06.

3:THE DIRECTOR SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19.

4:THE JOINT DIRECTOR SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

5:THE INSPECTOR OF SCHOOLS
GOALPARA
DIST.- GOALPARA
ASSAM.

Advocate for : MR. P K GOSWAMI
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND 4 ORS.

Linked Case : WP(C)/3821/2020

SONGEET DAIMARI AND 12 ORS.
S/O EARSNEST DAIMARY
R/O BALISTA
P.O.-AMBAGAON
P.S.-HARISINGHA
DIST-UDALGURI
ASSAM
PIN-784510

2: BHABEN SWARGIARI
S/O LT. BANGSHIDHR SWARGIARI
R/O NLIZ AMBAGAON
P.S.-HARISINGA
P.O.-AMBAGAON
DIST-UDALGURI
ASSAM
PIN-784510

3: NORENDRA BORO
S/O DHARENDRA BORO
R/O LANDACHUBURI
P.S.-HARISINGA
DIST-UDALGURI
ASSAM
PIN-784510

4: SUMI BASUMATARI

D/O BENJAMIN BASUMATARI
R/O DEULGURI
P.O.-HARISINGA
DIST-UDALGURI
ASSAM
PIN-784510

5: SUCHITRA SWARGIARI
D/O BIRESWAR SWARGIARI
R/O BABUPARA
P.O.-TANGLA
DIST-UDALGURI
ASSAM
PIN-784521

6: REKHA BASUMATARI
D/O BISHRAM BASUMATARI
R/O MERIPARA
P.O.-SASTRAPARA
P.S.-HARISINGA
DIST-UDALGURI
ASSAM
PIN-784510

7: LANIMA TALUKDAR
D/O LT. MOHADEV TALUKDAR
R/O HARISINGA 2 NO. POTTY
P.O.-HARISINGA
DIST-UDALGURI
ASSAM
PIN-784510

8: ARUP SAIKIA
S/O NARENDRA SAIKIA
R/O MANTIKIRI
P.O.-HARISINGA
DIST-UDALGURI
ASSAM
PIN-784510

9: DIPEN MAHANTA
S/O LT. MANIK MAHANTA
R/O JHILIKAPARA
P.O.-BARKALA
DIST-UDALGURI
ASSAM
PIN-784525

10: RAMANI DEKA
S/O LT. NABIN DEKA
R/O SASTRAPARA
P.O.-SASTRAPARA
DIST-UDALGURI
ASSAM
PIN-784510

11: RANJUSMITA DEKA
D/O LAMBURAM DEKA
R/O BAGISHA CHUBA
P.O.-MAZARCHUBA
DIST-UDALGURI
ASSAM
PIN-784525

12: SURAJ SENGRA BASUMATARI
S/O BIDYARAM BASUMATARI
R/O BELGURI
P.O.-SASTRAPARA
DIST-UDALGURI
ASSAM
PIN-784510

13: SWMDWM BAGLARI
S/O LT. NIHINA BAGLARI
R/O BELGURI
P.O.-SASTRAPARA
DIST-UDALGURI
ASSAM
PIN-784510
VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY ITS COMMISSIONER AND SECRETARY
EDUCATION DEPARTMENT (SECONDARY) TO THE GOVERNMENT OF
ASSAM
DISPUR-06

2:THE DEPUTY SECRETARY TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPARTMENT
TO THE GOVERNMENT OF ASSAM
DISPUR-06

3:THE DIRECTOR SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

4:THE JOINT DIRECTOR SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-19
5:THE INSPECTOR OF SCHOOLS
UDALGURI
DIST-UDALGURI
ASSAM

Advocate for : MR. B P BORAH
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND 4 ORS.

Linked Case : WP(C)/3809/2020

GOPAL BHOWMIK AND 12 ORS.
S/O LATE SUDHIR BHOWMIK
R/O SHREE NAGAR COLONY
WARD NO-26
P.O.
DIST-KARIMGANJ
ASSAM
PIN-788710

2: RUMA BHOWMIK
D/O DHARANI KANTA DEY
R/O SHREE NAGAR COLONY
WARD NO. 26
P.O.
DIST-KARIMGANJ
ASSAM
PIN-788710

3: LUCKY DAS
D/O BIPUL RANJAN DAS
R/O LAKSHMI CHARAN ROAD
WARD NO-06
P.O.
DIST-KARIMGANJ
ASSAM
PIN-788710

4: SWAPAN PAUL
S/O LATE HARENDRA CHANDRA PAUL
R/O INDIRA MEMORIAL GIRLS HIGH SCHOOL
MOBARAKPUR
P.O.-KANISHAIL

DIST-KARIMGANJ
ASSAM
PIN-788711

5: NIZAM UDDIN
S/O MAHMAD ALI
R/O INDIRA MEMORIAL GIRLS HIGH SCHOOL
P.O.-MIRZAPUR
P.S.-BADARPUR
DIST-KARIMGANJ
ASSAM
PIN-788701

6: ABDUL KARIM TAPADAR
S/O LATE ASHAID ALI TAPADAR
R/O INDIRA MEMORIAL GIRLS HIGH SCHOOL
P.O.-NAIRGRAM
DIST-KARIMGANJ
ASSAM
PIN-788713

7: ABDUL JALIL
S/O AYAT ALI
R/O INDIARA MEMORIAL GIRLS HIGH SCHOOL
MEDAL-1
P.O.-KANISHAIL
DIST-KARIMGANJ
ASSAM
PIN-788711

8: HIFZUR RAHMAN
S/O ABDUL MATLIB
R/O INDIRA MEMORIAL GIRLS HIGH SCHOOL
DAYABASHANA
P.O.-KALIGANJ BAZAR
DIST-KARIMGANJ
ASSAM
PIN-788720

9: ABDUS SALAM
S/O ISHAQUE ALI
R/O INDIRA MEMORIAL GIRLS HIGH SCHOOL
MOBARAKPUR
P.O.-SILCHAR ROAD
DIST-KARIMGANJ
ASSAM
PIN-788713

10: AMENA BEGUM
D/O ABDUL MANNAN
R/O INDIRA MEMORIAL GIRLS HIGH SCHOOL
BHATGRAM
P.O.-SILCHAR ROAD
DIST-KARIMGANJ
ASSAM
PIN-788713

11: BAHARUL HOQUE
S/O RAFIQUE ALI
R/O MOBARAKPUR
P.O.-SILCHAR ROAD
DIST-KARIMGANJ
ASSAM
PIN-788713

12: KHUDEJA BEGUM
D/O LATE HUNAF ALI
R/O INDIRA MEMORIAL GIRLS HIGH SCHOOL
BHATGRAM
P.O.-SILCHAR ROAD
DIST-KARIMGANJ
ASSAM
PIN-788713

13: MD. ABDUL AHAD
S/O MD. ABDUL SAMAD
R/O WEST KANISHAIL
P.O.-KANISHAIL
DIST-KARIMGANJ
ASSAM
PIN-788711
VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY ITS COMMISSIONER AND SECRETARY EDUCATION
DEPARTMENT (SECONDARY) TO THE GOVERNMENT OF ASSAM
DISPUR-06

2:THE DEPUTY SECRETARY TO THE GOVT. OF ASSAM
SECONDARY EDUCATION
TO THE GOVERNMENT OF ASSAM
DISPUR-06

3:THE DIRECTOR
SECONDARY EDUCATION
ASSAM
KAHILIPARA

GUWAHATI-19
4:THE JOINT DIRECTOR SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19
5:THE INSPECTOR OF SCHOOLS
KARIMGANJ
DIST-KARIMGANJ
ASSAM

Advocate for : MR. B P BORAH
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND 4 ORS.

Linked Case : WP(C)/3832/2020

BILAL UDDIN ALI AHMED AND 5 ORS.
S/O- LT. MUBASHIN ALI
R/O- WEST KANISHAIL
P.O.- KANISHAIL
DIST.- KARIMGANJ
ASSAM
PIN- 788711.

2: SHUAIBUR RAHMAN
S/O- LT. SHOFIQR RAHMAN
R/O- KANISHAIL
P.O.- KANISHAIL
DIST.- KARIMGANJ
ASSAM
PIN- 788711.

3: SALEHA KHANAM
D/O- HAFIZ ABDUL LATIF
R/O- EAST KANISHAIL
P.O.- KANISHAIL
DIST.- KARIMGANJ
ASSAM
PIN- 788711.

4: PURABI DUTTA
D/O- LT. HIMANSU KUMAR DUTTA
R/O- SUPROKANDI
P.O.- GIRISHGANJ BAZAR
DIST.- KARIMGANJ
ASSAM

PIN- 788711.

5: RITA MONI BORA
D/O- LT. KHITISH CH. BORA
R/O- DOOMDOOMIA
P.O.- BALISATRA
DIST.- NAGAON
ASSAM.

6: NAZIM UDDIN
S/O- LT. ABDUL LATIF
R/O- KANISHAIL P.O.- KANISHAIL
DIST.- KARIMGANJ
ASSAM
PIN- 788711.
VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY ITS COMMISSIONER AND SECY.
EDUCATION DEPTT. (SECONDARY) TO THE GOVT. OF ASSAM
DISPUR- 6.

2:THE DY. SECY. TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPARTMENT TO THE GOVT. OF ASSAM
DISPUR- 6.

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI.

4:THE JOINT DIRECTOR
SECONDARY EDUCATION
ASSAM
KAHILIPARA

GHY- 19.
5:THE INSPECTOR OF SCHOOLS
KARIMGANJ
DIST.- KARIMGANJ
ASSAM.

Advocate for : MR S GOSWAMI
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND 4 ORS.

Linked Case : WP(C)/1726/2022

ANJAN KUMAR BORUAH

S/O- BETHARAM BARUAH
R/O- VILLAGE DOLAHAT TINIALI
P.O- DOOLAHAT
DIST- LAKHIMPUR
ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF SECONDARY EDUCATION
DISPUR
GUWAHATI-6
ASSAM

2:THE DIRECTOR
OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19
ASSAM

3:THE INSPECTOR OF SCHOOLS
LAKHIMPUR
P.O AND DISTRICT- LAKHIMPUR
ASSAM

Advocate for : DR. B AHMED
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WP(C)/3908/2020

GAJENDRA CH. DEKA AND 8 ORS.
S/O- MANO RAM DEKA
R/O- KHASRANTHALI
P.O. CHENGAPATHAR
DIST.- UDALGURI
PIN- 784509

2: DILIP NATH
S/O- BHUSAN CH NATH
VILL AND P.O. CHENGAPATHAR
DIST.- UDALGURI
ASSAM
PIN- 784509

3: JATINDRA KR. SARMAH
S/O- HARICHANDRA SARMAH
VILL AND P.O. NAHARBARI
DIST.- DARRANG
ASSAM
PIN- 784509

4: HARISH RAJBANSHI
S/O- JANI RAM DEKA
R/O- 1 NO KALAIGAON
P.O. KALIAGAON
DIST.- UDALGURI
ASSAM
PIN- 784509

5: PARIKHIT DEKA
S/O- SUBHA RAM DEKA
R/O- OJAGAON
P.O. CHENGAPATHAR
DIST.- UDALGURI
PIN- 784509
ASSAM

6: MAINA NATH
W/O- TARUN NATH
R/O- GANAKPARA
P.O. BHOLABARI
DIST.- UDALGURI
PIN- 784509
ASSAM

7: NIRMAL JYOTI SARMAH
S/O- SIBA PRASAD SARMAH
R/O- PATIDARRANG
P.O. DEMORNOI
DIST.- DARRANG
PIN- 784125
ASSAM

8: JANEN DEKA
S/O- THANESWAR DEKA
VILL- OJAGAON
P.O. CHENGAPATHAR
DIST.- UDALGURI
ASSAM

9: BANGSHIDHAR DEKA

S/O- RUDRA DEKA
VILL- OJAGAON
P.O. CHENGAPATHAR
DIST.- UDALGURI
PIN- 784509
VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY ITS COMM. AND SECY. EDUCATION DEPTT. (SECONDARY)
TO THE GOVT. OF ASSAM
DISPUR-06

2:THE DY. SECRETARY TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPTT.
TO THE GOVT. OF ASSAM
DISPUR-06

3:THE DIRECTOR
SECONDARY EDUCATION
ASSAM KAHILIPARA
GHY-19

4:THE JOINT DIRECTOR
SECONDARY EDUCATION
ASSAM KAHILIPARA
GHY-19

5:THE INSPECTOR OF SCHOOLS
UDALGURI DISTRICT CIRCLE
DIST.- UDALGURI
ASSAM

Advocate for : MR. P K GOSWAMI
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND 4 ORS.

Linked Case : WP(C)/3940/2020

FAKHARUDDIN ALI AHMED AND 8 ORS
S/O. NAYAMUDDIN AHMED
VILL. SUTAR PARA
P.O. SUTAR PARA
PIN-783125
DIST. GOALPARA.

2: RAMALA RABHA
D/O. LANGKESWAR RABHA
VILL. HABANGGIRI
P.O. DAMRA

PIN-783122
DIST. GOALPARA.

3: DILIP CHOUDHURY
S/O. RAMESH CHOUDHURY
VILL. DUDHNOI
P.O. DHUDHNOI
PIN-783124. DIST. GOALPARA.

4: JAHIRUL ISLAM
S/O. ABDUL HUSSAIN
VILL. KARIPARA
P.O. CHAKLA
PIN-783125
DIST. GOALPARA.

5: JEUTI BALA DAS
D/O. MONOMOCHAN DAS
VILL. MAKHIPARA
P.O. DUDHNOI
PIN-783124
DIST. GOALPARA.

6: WASHINGTONA RABHA
S/O. GANDHESWAR RABHA
VILL. CHHOTOMATIA
P.O. CHHOTOMATIA
PIN-783126
DIST. GOALPARA.

7: REETU MONI DUTTA
D/O. DIMBESWAR DUTTA
VILL. THEKASU
P.O. DUDHNOI PT-I
PIN-783124
DIST. GOALPARA.

8: HITESH SARMA
S/O. LANKESWAR DEVA SARMA
VILL. KALITAPARA
P.O. BHULUKADOBA
PIN-781317
DIST. BARPETA.

9: NAL KUMAR SHIRA
S/O. SENTAM PAM
VILL. HABANGGIRI
P.O. DAMRA

PIN-783122
DIST. GOALPARA.
VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY ITS COMM. AND SECY. EDUCATION DEPTT. (SECONDARY)
TO THE GOVT. OF ASSAM
DISPUR-06.

2:THE DY. SECRETARY
TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPTT.
TO THE GOVT. OF ASSAM
DISPUR-06.

3:THE DIRECTOR SECONDARY EDUCATION

ASSAM KAHILIPARA
GUWAHATI-19.

4:THE JOINT DIRECTOR SECONDARY EDUCATION

KAHILIPARA
ASSAM
GUWAHATI-19.

5:THE INSPECTOR OF SCHOOLS

GOALPARA
DIST. GOALPARA
ASSAM.

Advocate for : MR. S S GOSWAMI
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND 4 ORS

Linked Case : WP(C)/3836/2020

MIRA BARUAH AND 10 ORS.
D/O- SONESWAR BARUAH
R/O- CHINTAGAON
P.O.- KALAIGAON
DIST.- UDALGURI
ASSAM
PIN- 784525.

2: BISWAJIT DEKA
S/O- TIRTHA DEKA
R/O- MAZGAON

P.O.- PALAHGARH
DIST.- UDALGURI
ASSAM
PIN- 784521.

3: DURLAV SARMAH
S/O- PADMA DEV SARMAH
R/O- KEOTPARA
P.O.- JANARAM CHOWKA
DIST.- DARRANG
ASSAM
PIN- 784125.

4: FAZAR ALI
S/O- LT. ARAB ALI
R/O- GHILAKURI
P.O.- BARAMPUR
DIST.- DARRANG
ASSAM
PIN- 784144.

5: ANIL CHANDRA BORAH
S/O- KANAK CH. BORAH
R/O- BATIAMARI
P.O.- KALAIGAON
DIST.- UDALGURI
ASSAM
PIN- 784525.

6: BHARAT CHANDRA BAISHYA
S/O- HARANATH BAISHYA
R/O- NAHARBARI
P.O.- BHOLABARI
DIST.- UDALGURI
ASSAM
PIN- 784521.

7: JADAV CH. DAS
S/O- DANPATI DAS
R/O- BARPUKHURI
P.O.- KABIRALI
DIST.- UDALGURI
ASSAM
PINI- 784525.

8: KUSHESWAR SAHARIA
S/O- GADOW SAHARIAH
R/O- BARPUKHURI

P.O.- KABIRALI
DIST.- UDALGURI
ASSAM
PIN- 784525.

9: IMDADUL HOQUE
S/O- LT. IBRAHIM ALI
R/O- UTTAR BARPUKHURI
P.O.- KABIRALI
DIST.- UDALGURI
ASSAM
PIN- 784525.

10: DANDADHAR BARUAH
S/O- LT. SANTIRAM BARUAH
R/O- BARPUKHURI
P.O.- KABIRALI
DIST.- UDALGURI
ASSAM
PIN- 784525.

11: BANI SAHARIAH
S/O- DANDA SAHARIAH
R/OO- BAGICHACHUBA
P.O.- KALAIGAON
DIST.- UDALGURI
ASSAM
PIN- 784525.
VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY ITS COMMISSIONER AND SECY.
EDUCATION DEPTT. (SECONDARY) TO THE GOVT. OF ASSAM
DISPUR- 6.

2:THE DY. SECY. TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPTT. TO THE GOVT. OF ASSAM
DISPUR- 6.

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY- 19.

4:THE JOINT DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY- 19.

5:THE INSPECTOR OF SCHOOLS
UDALGURI

DIST.- UDALGURI
ASSAM.

Advocate for : MR. B P BORAH
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND 4 ORS.

Linked Case : WP(C)/4019/2020

RANJIT KUMAR ADHIKARY AND 10 ORS.
S/O- LT. RAJESWAR ADHIKARY
VILL- NORTH MARAGADADHAR
P.O. MARAGADADHAR
PIN- 783335
DIST.- DHUBRI

2: ABDUL AHMED
S/O- LT. BIDESHI MONDOL
VILL- ATGHATITARI
P.O. MARAGADADHAR
PIN- 783335
DIST.- DHUBRI

3: AKBAR ALI SARKAR
S/O- LT. TAIYAB ALI MUNSHI
VILL- SONAKHULI
P.O. DIGHALTARI
PIN- 783335
DIST.- DHUBRI

4: RADHAKRISHNAN ADHIKARY
S/O- LT. SAILEN CHANDRA ADHIKARY
VILL- NORTH MARAGADADHAR
P.O. MARAGADADHAR
PIN- 783335
DIST.- DHUBRI

5: DWIPENDRA NATH ADHIKARY
S/O- GAJENDRA NATH ADHIKARY
VILL- JHAPUSABARI-I
P.O. JHAPUSABARI
PIN- 783335
DIST.- DHUBRI

6: ABDUL HAKIM ALI
S/O- EACHIN ALI

VILL- LOHAJANI
P.O. MARAGADADHAR
PIN- 783335
DIST.- DHUBRI

7: HRIDAYA ADHIKARY
S/O- RAJKUMAR ADHIKARI
VILL- KALDOBA-P-II
PIN- 783335
P.O. AGOMANI
DIST.- DHUBRI

8: JYOTSNA ADHIKARI
C/O- SUSHANTA ADHIKARI
VILL- NORTH MARAGADADHAR
P.O. MARAGADADHAR
PIN- 783335
DIST.- DHUBRI

9: EBRAHIM ALI
S/O- LT. OMAR ALI MUNSHI
VILL- BOROBALARCHAR
P.O. MARAGADADHAR
PIN- 783335
DIST.- DHUBRI

10: AMIRUDDIN SK
S/O- LT. MISILUDDIN SK
VILL- LOHAJANI
P.O. MARAGADADHAR
PIN- 783335
DIST.- DHUBRI

11: HARENDRA NATH ADHIKARI
S/O- LT. GAJENDRA NATH ADHIKARI
VILL- NORTH MARAGADADHAR
P.O. MARAGADADHAR
PIN- 783335
DIST.- DHUBRI
VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY ITS COMM. AND SECY. EDUCATION DEPTT. (SECONDARY)
TO THE GOVT. OF ASSAM
DISPUR-06

2:THE DY. SECRETARY TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPTT.

TO THE GOVT. OF ASSAM
DISPUR- 06
3:THE DIRECTOR SECONDARY EDUCATION
ASSAM KAHILIPARA
GHY-19
4:THE JOINT DIRECTOR SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19
5:THE INSPECTOR OF SCHOOLS
DHUBRI
DIST.- DHUBRI
ASSAM

Advocate for : MR. B P BORAH
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND 4 ORS.

Linked Case : WP(C)/3494/2020

DILIP KUMAR NATH AND 8 ORS
S/O LATE MADHA RAM NATH
VILLAGE BOKRAJHAR BAGICHA
PO TENGABARI
784525 UDALGURI

2: ARCHANA SAHARIAH
D/O TAPESWAR SAHARIAH
VILLAGE BARUAHOWLI
PO KABIRALI
784525 DIST UDALGURI

3: SARALA RABHA
D/O PURNA KANTA RABHA
VILLAGE NIZ KALAIGAON
PO KALAIGAON
DIST UDALGURI
784525

4: SRI BINOD CH. MANDAL
S/O FATIK CH. MANDAL

RESIDENT OF VILLAGE DAKHIN BHOKELIKANDA
PO BHOKELIKANDA
DIST UDALGURI 785425

5: MANIK DEKA
S/O SUNDAR DEKA
VILLAGE GOHAIKHAT PO MESKA PUKHURI
DIST UDALGURI
784521

6: TANKESWAR DEKA
VILLAGE NO. 1 MAKELI KANDA
PO BHOKELIKANDA
784525 UDALGURI

7: DIPJYOTI SAHARIAH
S/O HARESWAR SAHARIAH
VILLAGE BARUA HOWLI
PO KABIRALI

784525 DIST UDALGURI

8: MADAN CH. DAS
S/O LATE BRAJENDRA DAS

VILLAGE RUPATAL
PO BHOKELIKANDA
UDALGURI 784525

9: LUNA SAHARIAH
D/O TAPESWAR SAHARIAH
VILLAGE BARUAH HOWLI
PO KABIRALI

784525 DIST UDALGURI
VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY ITS COMMISSIONER AND SECRETARY EDUCATION
DEPARTMENT (SECONDARY) TO THE GOVERNMENT OF ASSAM DISPUR 6

2:THE DEPUTY SECRETARY
TO THE GOVERNMENT OF ASSAM
SECONDARY EDUCATION DEPARTMENT TO THE GOVT. OF ASSAM
DISPUR

6

3:THE DIRECTOR SECONDARY EDUCATION
ASSAM KAHILIPARA
GUWAHATI 19

4:THE JOINT DIRECTOR SECONDARY EDUCATION
ASSAM KAHILIPARA

GUWAHATI 19
5:THE INSPECTOR OF SCHOOLS
UDALGURI ASSAM

Advocate for : MR. S S GOSWAMI
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND 4 ORS

Linked Case : WP(C)/3906/2020

BUDDHI RAM KAKATI AND 9 ORS.
S/O- LT. JAJNA DHAR KAKATI
R/O- TAMULBARI
P.O. NICHILAMARI
PIN- 784522
DIST.- UDALGURI
ASSAM

2: RUKMINI BHARALI
W/O- BUDDHI RAM KAKATI
R/O- TAMULBARI
P.O. NICHILAMARI
PIN- 784522
DIST.- UDALGURI
ASSAM

3: SAMPAWATI DEKA
W/O- KHAGEN DEKA
R/O- SIMILA
P.O. MAHARIPARA
PIN- 781364
DIST.- BAKSA
ASSAM

4: RAMEN CH. DEKA
S/O- KESHAB CH. DEKA
R/O- TAMULBARI
P.O. NICHILAMARI
PIN- 784522
DIST.- UDALGURI
ASSAM

5: JAYANTA DEKA
S/O- MATI RAM DEKA
R/O- NO. 2 ROWMARI
P.O. THAKURIAPARA

PIN- 784522
DIST.- UDALGURI
ASSAM

6: AMITABH DEKA
S/O- LT. CHANDRA KANTA DEKA
R/O- RAMCHAJHAR
P.O. MAHARIPARA
PIN- 781364
DIST.- BAKSA
ASSAM

7: LANKESWAR DEKA
S/O- LT. SANTORAM DEKA
R/O- BARIGAON
P.O. NICHILAMARI
PIN- 784522
DIST.- UDALGURI
ASSAM

8: TRAILOKYA CHAKRAVARTY
S/O- KAILASH CHAKRAVARTY
R/O- BARBALISHITHA
P.O. KHOIRABARI
PIN- 784522
DIST.- UDALGURI
ASSAM

9: LAKHI KANTA DEKA
S/O- JANI RAM DEKA
R/O- JAGANNATHJHAR
P.O. MALMURA
PIN- 784522
DIST.- UDALGURI
ASSAM

10: KANAK DEKA
S/O- LT. DADHI DEKA
R/O- NO. 1 ROWMARI
P.O. NICHILAMARI
PIN- 784522
DIST.- UDALGURI
ASSAM
VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY ITS COMM. AND SECY. EDUCATION DEPTT. (SECONDARY)
TO THE GOVT. OF ASSAM

DISPUR-06

2:THE DY. SECRETARY TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPTT.

TO THE GOVT. OF ASSAM

DISPUR-06

3:THE DIRECTOR
SECONDARY EDUCATION
ASSAM KAHILIPARA

GHY-19

4:THE JOINT DIRECTOR
SECONDARY EDUCATION
ASSAM KAHILIPARA

GHY-19

5:THE INSPECTOR OF SCHOOLS
UDALGURI

DIST.- UDALGURI

ASSAM

Advocate for : MR. B P BORAH

Advocate for : SC

SEC. EDU. appearing for THE STATE OF ASSAM AND 4 ORS.

Linked Case : WP(C)/3486/2020

NITYANANDA DAS AND 8 ORS.

S/O- LAKSHIKANTA DAS

VILL- BARTANGLA

P.O. PURANI TANGLA

PIN- 784528

DIST.- UDALGURI

ASSAM

2: PRADIP KUMAR SEN
S/O- SATYA RANJAN SEN

VILL- BARTANGLA

P.O. PURANI TANGLA

PIN- 784528

DIST.- UDALGURI

ASSAM

3: SANKAR BHAT
S/O- JOGESH CH. BHAT

VILL- BARTANGLA

P.O. PURANI TANGLA

PIN- 784528

DIST.- UDALGURI
ASSAM

4: RATAN SARKAR
S/O- DHIRENDRA SARKAR
VILL- CHAMUAPARA
P.O. TANGLA
PIN- 784521
DIST.- UDALGURI
ASSAM

5: BINITA DAS
D/O- DIN DAYAL DAS
TOWN- TANGLA
WARD NO.-1
P.O. TANGLA
PIN- 784521
DIST.- UDALGURI
ASSAM

6: ARATI MANDAL
W/O- NITYANANDA DAS
VILL- KUKURAKATA
P.O. PURANI TANGLA
PIN- 784528
DIST.- UDALGURI
ASSAM

7: NEPAL ROY
S/O- BIMAL ROY
TOWN - TANGLA
WARD NO. 3
P.O. TANGLA
PIN- 784521
DIST.- UDALGURI
ASSAM

8: SUBODH CH. ROY
S/O- MANO MOHAN ROY
VILL- BARTANGLA
P.O. PURANI TANGLA
PIN- 784528
DIST.- UDALGURI
ASSAM

9: BABUL CH. DEY
S/O- ARUN CH. DEY
VILL- KUKURAKATA

P.O. PURANI TANGLA
PIN- 784528
DIST.- UDALGURI
ASSAM
VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY ITS COMM. AND SECY. EDUCATION DEPTT. (SECONDARY)
TO THE GOVT. OF ASSAM
DISPUR-06

2:THE DY. SECRETARY TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPTT.
TO THE GOVT. OF ASSAM
DISPUR-06

3:THE DIRECTOR
SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

4:THE JOINT DIRECTOR
SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

5:THE INSPECTOR OF SCHOOLS
UDALGURI
DIST.- UDALGURI
ASSAM

Advocate for : MR. B P BORAH
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND 4 ORS.

Linked Case : WP(C)/3848/2020

PRATIVA DEVI AND 12 ORS.
C/O- LT. NAGENDRA NATH SARMAH
R/O- BARJALAH
P.O.- TANGLA
P.S.- TANGLA
DIST.- UDALGURI
PIN- 784521.

2: DIPANJALI DAS
C/O- LT. LAKSHMI KANTA DAS

R/O- WARD NO. 2
P.O. AND P.S.- TANGLA
DIST.- UDALGURI
PIN- 784521.

3: RAJMOHAN DAS
C/O- LT. HARENDRA DAS
R/O AND P.O. - CHAMUAPARA
P.S.- TANGLA
DIST.- UDALGURI
PIN- 784521.

4: KHAGEN RABHA
C/O- LT. BISHNU PRASAD RABHA
R/O AND P.O. - CHAMUAPARA
P.S.- TANGLA
DIST.- UDALGURI
PIN- 784521.

5: INDRAJIT GOSWAMI
C/O- LT. MAKHAN LAL GOSWAMI
R/O- NABINPALLI W/D NO. 1
P.O. AND P.S.- TANGLA
DIST.- UDALGURI
PIN- 784521.

6: BARUN BARO
C/O- LT. DEBA RAM BARO
R/O AND P.O. - CHAMUAPARA
P.S.- TANGLA
DIST.- UDALGURI
PIN- 784521.

7: GUNJAN BARO
C/O- LT. GUNIDHAR BARO
R/O AND P.O. - CHAMUAPARA
P.S.- TANGLA
DIST.- UDALGURI
PIN- 784521.

8: NIRMALI BORO
C/O-MIZI RAM BORO
R/O- DARGACHUBA
P.O.- PASCHIM PATALA
P.S.- DIMAKUCHI
DIST.- UDALGURI
PIN- 784526.

9: MAMANI NARZARY
C/O- LT. LABA KUMAR NARZARY
R/O AND P.O. - CHAMUAPARA
P.S.- TANGLA
DIST.- UDALGURI
PIN- 784521.

10: ABITRA BARO
C/O- ANANTA BARO
R/O PUB NALBARI
P.O. AND P.S.- TANGLA
DIST.- UDALGURI
PIN- 784521.

11: PABITRA BARO
C/O- KANIA BARO
R/O- NO. DAROGACHUBA
P.O.- PASCHIM PATALA
P.S.- DIMAKUCHI
DIST.- UDALGURI
PIN-784526.

12: NAGEN SARANIA
C/O- LT. BATALA SARANIA
R/O- DHUPTAL (CHAMUAARA)
P.O.- CHAMUAPARA
P.S.- TANGLA
DIST.- UDALGURI
PIN- 784521.

13: NIRMAL KUMAR DAS
C/O- HARIPADA DAS
R/O- BABUPARA W/N NO. 3
P.O. AND P.S.- TANGLA
DIST.- UDALGURI
PIN- 784521.
VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY ITS COMMISSIONER AND SECY.
EDUCATION DEPTT. (SECONDARY) TO THE GOVT. OF ASSAM
DISPUR- 6.

2:THE DY. SECY. TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPTT. TO THE GOVT. OF ASSAM
DISPUR- 6.

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM

KAHILIPARA
GHY- 19.
4:THE JOINT DIRECTOR
SECONDARY EDUCATION
ASSAM

KAHILIPARA
GHY- 19.
5:THE INSPECTOR OF SCHOOLS
UDALGURI DIST. CIRCLE
DIST.- UDALGURI
ASSAM.

Advocate for : MR. P K GOSWAMI
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND 4 ORS.

Linked Case : WP(C)/4025/2020

DEBABRATA CHOUDHURY AND 8 ORS.
S/O. LT. ROHINI KUMAR CHOUDHURY
VILL. AND P.O. PALASH BOSTI PATHAR
PIN-784112
DIST. SONITPUR
ASSAM.

2: GOBINDA DAIMARI
S/O. INDRA DAIMARI
R/O. NO.2 SANTI PUR
P.O. GORMARA
P.S. DHEKIA JULI
DIST. SONITPUR
ASSAM.

3: JOY KUMAR BASUMATARY
S/O. THANESWAR BASUMATARY
R/O. GORJULI
P.O. GHAGRA
PIN-784110
DIST. SONITPUR
ASSAM.

4: LOHIT KR. BRAHMA
S/O. NILESWAR BRAHMA
R/O. BATASIPUR
P.O. BATASIPUR
PIN-784111

DIST. SONITPUR
ASSAM.

5: PURNA CH BORO
S/O. LT. NABLA BORO
R/O. NO.2 SONITPUR
P.O. GORMARA
PIN-784111
DIST. SONITPUR
ASSAM.

6: MAYA CHARAN BASUMATARI

S/O. BICHITRA NARAYAN BASUMATARY
R/O. MONUJULI GAON
P.O. DHEKIAJULI
PIN-784110
DIST. SONITPUR
ASSAM.

7: DHANESWAR BORO
S/O. LT. BULAW BORO
R/O. KRISHNA NAGAR
WARD NO.5
P.O. DHEKIAJULI
DIST. SONITPUR
ASSAM.

8: BALINDRA MOSHARI
S/O. LT. SAHI RAM MOSHARI
VILL. MATIKHUNDA GAON
P.O. GORMARA
PIN-784111
DIST. SONITPUR
ASSAM.

9: JASHEP TOPNO

S/O. LT. JOHN TAPNA
R/O. GORMORA
PIN-78411
DIST. SONITPUR
VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY ITS COMM. AND SECY. EDUCATION DEPTT. (SECONDARY)
TO THE GOVT. OF ASSAM
DISPUR-06.

2:THE DY. SECRETARY
TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPTT.
TO THE GOVT. OF ASSAM
DISPUR-06.
3:THE DIRECTOR SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-19.
4:THE JOINT DIRECTOR SECONDARY EDUCATION

ASSAM KAHILIPARA
GUWAHATI-19.
5:THE INSPECTOR OF SCHOOLS

SONITPUR
DIST. SONITPUR
ASSAM.

Advocate for the Petitioners : Mr. P. K. Goswami, Senior Advocate.

Mr. B. P. Borah, Advocate.

Advocate for the respondents: Mr. N. J. Khataniar, Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 23.05.2023

Date of Judgment : 06.06.2023

JUDGMENT AND ORDER (CAV)

Heard Mr. P. K. Goswami, the learned senior counsel assisted by Mr. B. P. Borah, the learned counsel for the petitioners and Mr. N. J. Khataniar, the learned counsel appearing on behalf of the School Education Department and the various functionaries arrayed as respondents.

2. The common adjudication is being made in respect to the instant batch of writ petitions having regard to the contextual semblance of the facts and the legal issues involved.

3. The petitioners in the instant batch of writ petitions have sought for a mandamus directing the schools of the petitioners to be treated as provincialised before 23.09.2016 and for a further direction upon the respondent authorities to take necessary steps to extend the financial benefits of provincialisation to the petitioners from such date as given to other schools in their respective districts who were provincialised before 23.09.2016 as per the provisions of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 (for short, 'the Act of 2011') read with Section 24 of the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017 (for short, 'the Act of 2017') and the General Clauses Act.

4. Before dealing with the issues involved, this Court finds it relevant to take note of certain pertinent facts which have a bearing on the adjudication of the instant dispute. The Act of 2011 was enacted to provincialise the services of employees of the Venture Educational Institutions in the State of Assam and to restrict further establishment of such educational institutions in the State. It may be relevant to mention that the said Act of 2011 was amended in the year 2012 as well as also in the year 2013. The said Act of 2011 was put to challenge in various writ petitions before this Court. The substance of the challenge to the Act of 2011 was on account of Section 4 (2) and Section 10 as well as also the Schedule appended thereto whereby the State had fixed the cap on the maximum number of employees, whose services can be provincialised in the concerned category of Venture Institutions. It was also the case of the petitioners therein that when the number of serving employees exceeds the number as specified in the Schedule, the provincialisation shall be on the basis of seniority and the State shall not have any liability with regard to the excess employees. Therefore, the excess teachers

who were not provincialised in view of the provisions of the Act of 2011, challenged the legality of the said provisions as aforesaid.

5. The learned Division Bench of this Court vide the judgment and order dated 23.09.2016 passed in WP(C) No.3190/2012 and analogous writ petitions was of the opinion that the Act of 2011 was inoperable although the ultra vires declaration sought was limited to some segments of the Act of 2011. Under such circumstances, it was the opinion of the learned Division Bench that when the unconstitutionality is noticed in major provisions starting from the Preamble to the Schedule of the Act of 2011, a piece meal exercise would not serve the purpose. Therefore, the learned Division Bench of this Court declared that the Act of 2011 to be constitutionally invalid. Paragraph Nos.38 & 39 of the said judgment are reproduced herein under:-

“38. When such substantial defects are perceived, in a given context, the court can strike down only the offending provisions. However when unconstitutionality is noticed in the major provisions starting from the Preamble to the Schedule of the Provincialisation Act, striking down the offending portion will practically de-capacitate the 2011 Act. In other words, the statute itself will become inoperable although the ultra vires declaration is limited to some segments of the Act.

39. Therefore, we feel that a piecemeal exercise will not serve the purpose. But at the same time, to suggest how the Provincialisation Act should be re-shaped would be intruding into the domain of the legislature. Moreover amendment exercise might have to be preceded by a consultative process with all the stakeholders and this is surely the responsibility of the State. That apart it is certainly difficult to separate the bad from the good portion of the Provincialisation Act. Under these compulsions, being convinced with the arguments of the petitioners, we declare that the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 is constitutionally invalid. As the State has decided to bring in a fresh legislation, considering the likely time needed for the process, we direct the State to do their exercise as committed in the additional affidavit, expeditiously and preferably in the next 6(six) months. It is ordered accordingly.”

6. Subsequent to the declaration made by this Court holding the Act of 2011

to be unconstitutional, the State Government filed a Review Petition which was registered and numbered as Review Pet. No.167/2016. The issue before the learned Division Bench of this Court in the said Review Proceedings was whether the judgment and order dated 23.09.2016 would have a prospective effect, i.e. without any effect on the already provincialised category of teachers and staff or alternatively, on account of the declaration that the Act of 2011 to be unconstitutional and void, all things done under the said Act of 2011 since its inception, would be set at naught by the Court's declaration in the judgment dated 23.09.2016. It was the specific case of the State of Assam in the said Review Proceedings that if the judgment was given retrospective effect from the date of the inception of the Act of 2011, it would impact nearly 41,634 provincialised teachers and staff. Further, it was also the case of the State that if the Act of 2011 was to be treated as invalid since inception, all the benefits which have accrued to the beneficiaries, would have to be recovered and the status of the provincialised category would turn into private employees. It was also contended that the impact on those beneficiaries who have already superannuated from service would be harsh as their pension payment will have to be stopped. In the similar manner, wages for the provincialised staff cannot be paid from the Government coffer and the question of recovery of the already paid sum may have to be considered. It was also the case of the State that the Government pursuant to the declaration that the Act of 2011 to be unconstitutional was working on a fresh legislation after repeal of the Act of 2011 and hence the status of the already provincialised group should not be impacted and this can be achieved by declaring that the Court's judgment dated 23.09.2016 would apply prospectively and would not impact those, who have already benefited under the Act of 2011.

7. The learned Division Bench of this Court in the case of ***State of Assam vs. Sri Bimal Kutum & 5 Others***, reported in (2017) 2 GLR 749 delivered its judgment on 02.01.2017 holding *inter-alia* that the doctrine of prospective overruling vests only on the Supreme Court and not on the High Court. It was further observed that the High Court had the power to pass appropriate order on the principle of equity even without invocation of the principle of prospective over-ruling. It was under such circumstances, the learned Division Bench of this Court in its judgment and order dated 02.01.2017 by taking note that the State had conceded to the legal defects and has decided to bring in a fresh Act to deal with the teachers and staff of the venture educational institutions of Assam, therefore, observed that those who were regularized through due process under the Act of 2011, deserve to be protected in the interregnum (since the new Act could legitimately address this contingency) as the litigants who challenged the vires of the Act of 2011, never desired disruption of the concluded rights of those, who benefited under the repealed Act of 2011. Under such circumstances, the learned Division Bench observed that the rights of the employees who have benefited under the Act of 2011 could be taken care of by giving retrospective effect to the proposed legislation, if the legislature so decides. However, till then, the learned Division Bench directed that the services of the provincialised category and their status as Government employees should not be disturbed and they would continue to receive all the benefits which they were getting under the Act of 2011, since struck down by the judgment and order dated 23.09.2016. Paragraph Nos.17, 18 & 19 of the said judgment are reproduced herein under:-

“17. In the backdrop of the above discussion, let us now examine whether equitable consideration should be applied in the present context. Because of the legal deficiencies in the

Provincialization Act 2011 the legislation was declared as constitutionally invalid. The State conceded to the legal defects and has decided to bring in a fresh Act to deal with the teachers and staff of the venture educational institutions of Assam. Therefore, provincialization of more persons under the proposed legislation, is expected in due course. If that be the future scenario, those whose services were regularized through due process under the recently repealed legislation, deserve to be protected in the interregnum (since the new Act can legitimately address this contingency) as the litigants who challenged the vires of the Provincialisation Act, never desired disruption of the concluded rights of those, who benefited under the repealed Act.

18. The State in their application have stated that the group they are concerned with are those who have retired and are drawing pension, another category who are now govt. employees and are receiving regular scale of pay and people of same class, who have moved on in their careers and in life. There are around 41,634 employees for whom vested rights are already created under the 2011 enactment but through retrospective application of our 23rd September, 2016 judgment, they may not only lose their govt. jobs but will also be disentitled to pension and salary. Moreover, the question of recovery of the already disbursed salary and pension may emerge. The harsh impact of the retrospective application will be crippling for the already provincialized group and their livelihood and in turn life itself, will be adversely impacted. All such debilitating consequences will occur without any opportunity or hearing to this category. Many families, dependant on the earnings of the provincialised staff are enjoying a measure of social and economic security, and they all will be thrown to the streets, without any fault on their part.

19. In the above circumstances, we are of the considered view that the rights of the employees who have been benefited under the struck down statute can be taken care of by giving retrospective effect to the proposed legislation, if the legislature so decides. Till then it is ordered that the services of the provincialised category and their status as govt. employees shall not be disturbed and they will continue to receive all the benefits which they are getting under the Provincialisation Act, 2011, since struck down by the judgment under Review. With this observation and direction, the matter stands disposed of.”

8. It is also relevant to take note of that the Act of 2017 was enacted pursuant thereto and came into effect from 05.05.2017. In the said Act, in order to protect those employees who were provincialised under the Act of 2011, a

specific provision was inserted, i.e. Section 24. The said provision having relevant to the dispute involved is extracted herein under:-

“24. The Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 as amended vide the Assam Venture Educational Institutions (Provincialisation of Services) (Amendment) Act 2012 and the Assam Venture Educational Institutions (Provincialisation of Services) (Amendment) Act, 2013, which have been struck down by the Hon’ble Gauhati High Court vide order dated 23.09.2016 in WP(C) No. 3190/2012, and all rules, orders, notifications issued thereunder shall stand repealed, however, all the teachers whose were provincialised prior to 23.9.2016, shall continue and their cases shall be reviewed as per the eligibility norms set forth for provincialisation under this Act.”

9. A perusal of the said provision would show that all the teachers whose services were provincialised prior to 23.9.2016 under the Act of 2011 as well as its amending provisions, shall continue and their cases shall be reviewed as per the eligibility norms set forth for provincialisation under the Act of 2017.

10. In the backdrop of the above, let this Court take into consideration the factual matrix in the present batch of writ petitions which are similar in content.

11. It is the case of petitioners that the Venture Educational Institutions wherein they are working in the teaching and non-teaching staff were granted permission by the Government and recognised as they fulfilled the norms and stipulations. The petitioners claim that their schools were found eligible for provincialisation as the said schools fulfilled the required criteria of completing 7 years. It was also claimed that as per the laid down procedure, the schools of the petitioners were placed before the Distinct Scrutiny Committee in terms with Section 10 of the Act of 2011. The District Scrutiny Committee verified and

scrutinized the application for provincialisation and prepared a list of all Venture Educational Institutions within their districts who were eligible in terms of the provisions of the Act of 2011 and had also scrutinized and verified the service records of the petitioners who were also found eligible or would become eligible for being considered for provincialisation of their services. It was further mentioned that after such scrutiny and verification, the names of the schools of the petitioners were included in a list which was uploaded in the website of the Directorate of Secondary Education and their names were mentioned in the said list. Specific details as regards the said aspect could be seen from the fact that on 02.06.2015 at 2:59 PM, a list was uploaded in the website of the Directorate of Secondary Education of 410 venture High Schools, Higher Secondary Schools and Junior Colleges wherein it was mentioned that the said list had been submitted to the Government on 01.06.2015 for onward submission to the Finance Department. In the said website, it was mentioned that the list contained the names of institutions who were eligible having completed 7 years as per the Amendment to the Act of 2011. Amongst the 410 eligible Venture Educational Institutions, the names of the schools where the petitioners are working were included. It was further mentioned that whilst the process was going on, the learned Division Bench of this Court vide the judgment and order dated 23.09.2016 declared the entire Act of 2011 to be unconstitutional with a direction to the State Government to enact a fresh legislation and complete the exercise within six months. It was the further case of the petitioners pursuant to the orders passed in the Review Pet. No.167/2016 dated 02.01.2017, the Act of 2017 was enacted which contained a Repeal and Savings provision which is Section 24.

12. The present writ petitions, therefore, have been filed on the ground that

as the formalities under Section 10 of the Act of 2011 stood completed prior to the judgment and order dated 23.09.2016 services of the petitioners are deemed to have been provincialised prior to the Act of 2011 being declared unconstitutional for which on the basis of the order dated 02.01.2017 in the Review Proceedings and Section 24 of the Act of 2017 are entitled to the relief sought for in the writ petitions.

13. It is very pertinent to mention that the relief sought for in the batch of writ petitions is for a direction that the schools of the petitioners are to be treated as provincialised before 23.09.2016 and further for a direction that the respondent authorities to take all necessary steps to extend the benefit of provincialisation to the petitioners from such date as given to other schools from their respective districts who were provincialised before 23.09.2016 as per the Act of 2011 read with Section 24 of the Act of 2017 and the General Clauses Act.

14. Before further proceedings to adjudicate the dispute, it is pertinent to take note of that the District Scrutiny Committee, upon verification, had found that the Venture Educational Institutions where the petitioners in the instant batch of writ petitions have been rendering their services were eligible as per the Act of 2011 and it was at the final stages when the Act of 2011 was struck down. The petitioners, have on the basis of the list so uploaded in the website by the Director of Secondary Education claims that the schools of the petitioners, therefore, should considered to have been provincialised under the Act of 2011 and by virtue of Section 4 of the Act of 2011, the services of the petitioners also shall be deemed to be provincialised from the date of coming effect of the Act of 2011 or such date as on which similar institutions in the

same District have been provincialised. It is further relevant to take note from the contents of the writ petitions that on one hand the petitioners claims that their schools were provincialised by the District Scrutiny Committee constituted under Section 10 of the Act of 2011 and on the other hand it is also claimed that it was at the final stages; when the Act of 2011 was struck down by this Court. The relief sought for in the writ petitions to the effect that a direction be issued that the schools of the petitioners to be treated as provincialised before 23.09.2016 and for a further direction that the respondent authorities to take all necessary steps to extend the financial benefit of provincialisation to the petitioners from such date as given to other schools of their respective districts who were provincialised before 23.09.2016; is however a pointer that the concerned authorities have not recognised the provincialisation of the schools and services of the petitioners.

15. It appears on record that that the Director of Secondary Education had filed an affidavit on 22.03.2023. It was submitted during the course of hearing that the said affidavit would take care of the issues involved in the instant batch of writ petitions. In the said affidavit-in-opposition, it was mentioned that the services of the petitioners have not been provincialised under the Act of 2011. It was stated that though in some cases, the District Scrutiny Committee forwarded the list of eligible teachers school wise to the Director under Section 10 of the Act of 2011 for verification by the Director before the declaration of the Act of 2010 as ultra vires by this Court. It was stated that Section 10 of the Act of 2011 provided for 3 (three) stages of scrutiny prior to provincialisation. First stage of scrutiny has to be carried out by the District Scrutiny Committee to be constituted by the Deputy Commissioner of the concerned district. Upon scrutiny of the service records and other related issues of the teaching and non-teaching staff of the Venture Educational Institutions as forwarded by the school authority, the District

Scrutiny Committee shall prepare a list of eligible teaching and non-teaching staff for provincialisation, school wise and forward the verified list to the concerned Director. The second stage is before the Directorate wherein the Director may make further scrutiny at his end, whereafter, he shall forward the re-verified list to the concerned Department of the State Government which is the third stage for final consideration and for the provincialisation notification under Section 10(4) of the Act of 2011. It was further mentioned that till issuance of the provincialisation notification under Section 10(4) of the Act of 2011, no indefeasible right is conferred on the recommendee. Further it was mentioned that it is only after the issuance of the provincialisation notification when Section 4 of the Act of 2011 comes into play and only at that stage, it can be said that the matter has attained finality in so far the administrative decision making is concerned. It was therefore submitted in the said affidavit that until and unless the verification process is completed at the level of the State Government consequent upon which provincialisation notification is issued, no right is created in favour of anybody. It was further mentioned that since the verification processes were not completed in respect of the petitioners and the said stage of issuance of notification under Section 10 (4) of the Act of 2011 did not happen and in the meanwhile the Act of 2011 was declared ultra vires, therefore, the question of provincialisation of the services of the petitioners under the Act of 2011 do not arise and hence the relief sought for in the writ petitions cannot be granted to the petitioners.

16. It further appears from the records that affidavit-in-reply was filed by some of the petitioners. It was mentioned that services of the petitioners stood provincialised under the Act of 2011 before 23.09.2016. As per the petitioners, the process of provincialisation essentially is a verification process by a statutory committee under Section 10 of the Act of 2011 and the District Scrutiny Committee scrutinizes the applications based on compliance of Sections 3 and 4 of the Act of 2011. It was stated that the District Scrutiny Committee under Sections 10(3) and 10(4) scrutinizes the

application and prepares a list to be notified. In the case of the petitioners, the same were scrutinized and forwarded to the Director. The Director then forwards to the Department, who upon further scrutiny and verification enlists the names of the eligible candidates in the Departmental website and formally issues individual notifications. It was mentioned that the Director in the instant case had taken all necessary steps and the concerned list of eligible teachers under Section 4 (1) was published in the concerned website. It was therefore the case of the petitioners that the stand of the Director of Secondary Education that the services of the petitioners were not provincialised before 23.09.2016 was misconceived. It was further mentioned that the services of the petitioners were provincialised as the petitioners came within the cap in the Schedule as appended under Section 4 of the Act of 2011 before 23.09.2016, and therefore, the requirements under the Act of 2011 have been fulfilled. Moreover, the deeming provision under Section 4(1) does not require an individual notification to be issued. On the aspect of three stages of verification under the Act of 2011 which was mentioned by the Director of the Secondary Education in its affidavit, it was the categorical stand of the petitioners that the same were duly complied with in the case of the petitioners as the District Scrutiny Committee had ascertained the service records of the petitioners. Thereafter the District Scrutiny Committee had forwarded the list to the concerned Director, and the Director after scrutiny had sent the list to the State Government and it was published in the concerned website. Therefore, all the stages mentioned in paragraph No. 6 of the affidavit of the Director of the Secondary Education were fulfilled. In that regard, a reference was made to the judgment dated 03.10.2018 in the case of *Dilip Das vs. State of Assam & Two Others*, reported in 2019 (2) GLT 135 in the affidavit-in-reply wherein the publication of separate notification was held to be not required, and as such, the petitioners claimed that their services were provincialised on all counts and the provincialisation process in case of the petitioners had attained finality. It was further mentioned that the judgment in the case of *Dilip Das* (supra) was identical with the case of the petitioners and the said judgment had attained finality. Further to that it was also

mentioned that this Court had followed the said judgment in *Dilip Das* (supra) in various cases. It was mentioned that the directions in the case of Dilip Das (supra) have also been implemented.

17. In the said affidavit-in-reply, another aspect of the matter was also mentioned that provincialisation notification was duly issued and published in the Departmental website under Section 4 of the Act of 2011 for which the petitioners would be entitled to the relief as sought for. It was further stated that the Department had published in the website before 23.09.2016 and it was due to the recklessness of the Department that the individual notifications were not issued before 23.09.2016, which in fact, is not required in view of the law laid down by the Coordinate Bench of this Court in the case of *Dilip Das* (supra). It was mentioned that the list dated 02.06.2015 which was uploaded in the website of the respondent Department wherein the schools of the petitioners were part of the said list suggests forwarding the same to the Finance Department. Therefore, in view of the above, there were no further steps left to be complied with for the provincialisation of the services of the petitioners under the Act of 2011.

18. It further appears from the records that an additional affidavit was filed by the respondent No.3, i.e. the Director of Secondary Education on 10.05.2023. The said affidavit was filed pursuant to the order passed by this Court on 02.05.2023 wherein this Court directed the Director of Secondary Education to file an affidavit stating as to whether the documents which were part of the affidavit-in-reply in WP(C) No.3817/2020 as well as other writ petitions were uploaded in the website of the said Department. Liberty was also given to bring on record as to whether the institutions in which provincialisation was sought for have already been provincialised under the Act of 2017 and if not for why. In paragraph No.3 of the additional affidavit filed by the Director of Secondary Education, it was mentioned that during the year 2012, the report of the District Scrutiny Committee along with the particulars of the Venture Educational Institutions of the State of Assam were submitted by the Inspector of Schools of all

districts as per the Act of 2011 as amended in 2012 for provincialisation of services of teaching and non-teaching staff. The report/particulars submitted by the District Scrutiny Committee in respect of the schools of the petitioners received by the Office of the Director of Secondary Education, Assam were scrutinized by the State Level Scrutiny Committee. After scrutiny at the State level, a district wise check list of schools with details of teaching and non-teaching staff was prepared and uploaded in the web portal of the Department for general information for all concerned for necessary correction/rectification, if arises. However, in the meanwhile, the Act of 2011 was declared to be ultra vires vide the judgment and order dated 23.09.2016, and as such, the process for provincialisation of services of the petitioners under the Act of 2011 could not be progressed. It was further mentioned that in terms with said Act of 2017, the school/teaching staff whose services were not provincialised under the earlier Act of 2011, were allowed to apply through the concerned District Scrutiny Committee for provincialisation of their services under the Act of 2017. On receipt of the report/recommendation of the District Scrutiny Committee of the concerned district, the State Level Scrutiny Committee had scrutinized the report/particulars of the schools as well as the teaching staff as per the Act of 2017. It was mentioned that the school wherein the petitioners are rendering service could not be considered for provincialisation due to non-fulfillment of eligibility criteria under the Act of 2017 in as much as Section 3(1)(v) of the Act of 2017 provides that the Venture Educational Institutions to have a minimum total enrolment of 25 students in class-X, if it is a Venture High School as on the date of coming into force of the Act of 2017. Further, Section 3(1)(vi) stipulates that in case of a Venture High School or a Venture Higher Secondary School or a Venture Junior College or a Venture Degree College, the concerned Venture Educational Institutions must have a consistent good academic performance which would mean that at least 30% of the candidates appearing for the final examination as a whole must have passed in the last three consecutive examinations held during previous three consecutive years prior to the date of coming

into force of the Act of 2017. As the schools of the petitioners did not fulfill the said criteria as enumerated under Section 3(1)(v) and Section 3(1)(vi), therefore, their services could not be provincialised under the Act of 2017.

19. It further appears from the records that the petitioners have also filed an additional affidavit-in-reply to the additional affidavit filed by the respondent No.3. It was stated in the said affidavit-in-reply filed on 23.05.2023 that the statement made in the additional affidavit by the respondent No.3 that the list was uploaded for necessary correction and rectification is incorrect and was denied. It was denied that the said was uploaded for rectification/objection/corrections. It was mentioned that the law governing provincialisation process do not authorize uploading for rectification, objection and corrections. It was mentioned that the petitioners were provincialised by operation of law before 23.09.2016 as the list uploaded on 02.06.2015 would suggest. It was mentioned that the same method was followed in every case for which the institutions and employees including teachers whenever found eligible and duly provincialised and such schools and teachers were continuing and were getting paid which could be seen from the Government Press release dated 10.07.2014 enclosed as Annexure-A to the said affidavit-in-reply filed on 23.05.2023.

20. Reiterating the stand that the case of the petitioners was duly covered by the judgment of the Coordinate Bench in *Dilip Das* (supra), it was stated that this Court may also grant the reliefs as prayed for. It was further mentioned that the question of granting provincialisation of the schools of the petitioners under the Act of 2017 did not arise as by operation of law under the Act of 2011, the schools as well as the services of the petitioners were duly provincialised. Further to that, it was mentioned that the question of review in terms with Section 24 of the Act of 2017 has no bearing to the issue involved in the present writ petitions. The power to review under the Act of 2017 is only as per the eligible norms set forth for provincialisation under the Act of 2017 and the review process as per the information of the petitioners has not commenced till date.

21. In the backdrop of the above, let this Court take into consideration the respective submissions of the learned counsels for the parties.

22. Mr. P. K. Goswami, the learned senior counsel for the petitioners submitted that from a perusal of Annexure-A to the affidavit-in-reply filed by the petitioners in WP(C) No.3817/2020, it would be seen that on 02.06.2015, in the website of the Education Department, it was mentioned that the records of 410 eligible Venture High Schools, Venture Higher Secondary Schools and Venture Junior Colleges were submitted to the Government on 01.06.2015 for onward submission to the Finance Department. It was further submitted that these institutions were eligible completing 7 years as per the amendment as can be seen from the said document itself. From the enclosure to the said Annexure-A, the learned senior counsel submitted that the names of the schools in question wherein the petitioners have been rendering their services appears in the said list. The learned Senior Counsel further referring to Annexure-B of the said affidavit submitted that the petitioners' names have been duly included in the said list wherein it has been mentioned that the petitioners were eligible for provincialisation, and therefore, by virtue of Section 4 (1) of the Act of 2011, by operation of law, the petitioners who were employees of the eligible Venture Educational Institutions shall be deemed to have been provincialised on the basis of the said list so uploaded in the website of the Department. The learned Senior Counsel for the petitioners, therefore, submitted as it is an admitted fact as could be seen from the Annexure-A to the affidavit-in-reply, the educational institutions in so far as the petitioners are concerned have been found to be eligible in terms with Section 4 (1) of the Act of 2011 as they have completed at least 7 years of imparting education from the date of affiliation, recognition, concurrence or permission as the case may be as on the date of coming into force of the Act, the petitioners are entitled to the relief so sought for.

23. The learned Senior Counsel for the petitioners further submitted that it was on account of delay so caused by the concerned respondent authorities that individual

notifications were not issued. However, taking into account the judgment which has been rendered by the Coordinate Bench in the case of *Dilip Das* (supra) wherein it has been categorically held that an employee of an eligible Venture Educational Institutions, if comes within the permissible numbers prescribed in the Schedule to the Act of 2011, the services of such employees would stand provincialised under Section 4 (1) of the Act of 2011 by operation of law and there is no requirement of individual notification.

24. The learned Senior Counsel for the petitioners further drawing the attention to paragraph Nos.7 & 8 of the said judgment in the case of *Dilip Das* (supra) submitted that as the services of the concerned employee stood provincialised by operation of law under Section 4 (1) of the Act of 2011 itself, there was no requirement of the authorities for issuance of a notification except in administrative side a formal administrative order to further the services of the given employee. The non-issuance of the administrative order cannot affect the provincialisation of the services of the employees as by operation of law, the service of the employee had already been provincialised. The learned senior counsel for the petitioners further submitted that the Coordinate Bench of this Court has categorically held that the provisions of Section 10 (4) of the Act of 2011 is merely for providing a procedure to be followed by the authority to arrive at a conclusion that as to whether the given employee is within the permissible numbers as provided in the Schedule. In the event the authorities pursuant to such process arrived at a conclusion that the concerned employee is within the permissible numbers provided in the Schedule, there is no further requirement of issuing any administrative order for provincialisation of the services of the concerned employee in as much as his service already stood provincialised by the operation of law under Section 4 (1) of the Act of 2011. The learned senior counsel, therefore, submitted that any such order to which the respondent No.3 has referred to in its affidavit is in the nature of an order recognizing provincialisation of the concerned employee which had already taken place by the operation of law and such order of recognition cannot be construed to be an order

provincialising his services. It is therefore the submission of the learned senior counsel that by operation of law as the petitioners services were already provincialised, the requirement of a notification as mentioned in the affidavit of the respondent No.3 is nothing but a formality for recognizing the provincialisation of the petitioners which already stood provincialised by virtue of Section 4 (1) of the Act of 2011. The learned senior counsel submitted that there is a difference between a notification conferring right and a notification which recognizes a right which had already stood conferred. The notification so referred to under Section 10 (4) of the Act of 2011 is a notification recognizing the right which already stood conferred under Section 4 (1) of the Act of 2011, and as such, such notification is nothing but an administrative order and thereby non-issuance of such notification cannot be a reason to deprive the petitioners of their rights under the Act of 2011 which have been saved by the judgment of the learned Division Bench vide the order dated 02.01.2017 in the Review Pet. No.167/2016 {(*Bimal Kutum* (supra))} as well as by Section 24 of the Act of 2017.

25. The learned Senior Counsel submitted that the judgment in the case of *Dilip Das* (supra) had been followed by the various subsequent Coordinate Benches of this Court and such orders have already been enclosed in the instant writ petitions. He, therefore, submitted that the petitioners herein, are therefore, entitled to the reliefs as was granted to similarly situated persons.

26. Referring to the Press Release which has been enclosed as Annexure-A to the affidavit-in-reply filed by the petitioners to the additional affidavit filed by the respondent No.3, the learned senior counsel for the petitioners submitted that the Chief Minister had also on 10.07.2014 disclosed that his Government had approved the provincialisation of 4865 posts in 461 High and Higher Secondary Schools under the Act of 2011 which was in addition to 41455 posts already provincialised in 2011-12 and 2012-13. Therefore, the learned senior counsel submitted that the uploading of the list in the website on 21.06.2015 has to be taken that it was a notification in terms with Section

10 (4) of the Act of 2011 thereby recognizing that the schools in question as well as the services of the teachers and non-teaching staff were provincialised as on 21.06.2015.

27. On the other hand, Mr. N. J. Khataniar, the learned counsel appearing on behalf of the respondents in the School Education Department submitted that the Act of 2011, and more particularly Section 10 (4) clearly mandates the requirement that after making of such scrutiny by the concerned Director, the same shall be forwarded to the Department of the State of Assam for consideration and for issuance of notification in respect to the eligible institutions and employees eligible for getting their services provincialised. It is, therefore, the submission of the learned counsel for the respondents that the right of provincialisation shall only accrue when such notification is issued as it is the requirement of Section 10 (4) of the Act of 2011 to do so. The learned counsel for the respondents, therefore, submitted that it is the specific stand of the respondents that no such notifications were issued and it was still at the verification stage, and as such, neither the schools nor the services of the petitioners were provincialised or can be said to be provincialised without the said notification.

28. The learned counsel for the respondents further submitted that if without the notification as is required under Section 10 (4) of the Act of 2011, it can be said that the schools have been provincialised as well as the services of the eligible employees, it would lead to an anomalous situation and Section 6 of the Act of 2011 would become otiose in as much as Section 6 of the Act of 2011 categorically mandates that the superintendence and control of all educational institutions coming within the purview of the Act of 2011 shall vest in the State Government only with effect from the date of publication of the notification under Section 10 (4) of the Act of 2011. The learned counsel appearing on behalf of the respondents, therefore, submitted that it is only upon the notification under Section 10 (4) of the Act of 2011 that the superintendence and control of the educational institutions coming within the purview of the Act of 2011 is vested upon the State Government, and as such, it would be impossible to read that the

Notification under Section 10 (4) of the Act of 2011 is a mere formality. The learned counsel appearing on behalf of the respondents further submitted that without the superintendence and control of the educational institutions vesting in the State Government, it would result to an anomalous situation in as much as on one hand, the schools would be provincialised and the services of the employees would also be provincialised and they would become the employees of the State Government, but on the other hand, the State Government would not have the superintendence and control over the educational institutions as well as its employees. Therefore, it is the submission of the learned counsel for the respondents that the notification under Section 10 (4) of the Act of 2011 is a must in respect to eligible institutions and employees eligible for getting their services provincialised in order to get the benefits under the Act of 2011.

29. The learned counsel for the respondents while distinguishing the judgment in the case of *Dilip Das* (supra) submitted that the said judgment was rendered in the peculiar facts of the case wherein the Venture Educational Institutions was already provincialised and it was a dispute amongst the employees as to whose services was required to be provincialised. In that regard, the learned counsel for the respondents submitted that prior to the judgment rendered in the case of *Dilip Das* (supra), the said dispute as to who should be provincialised in respect to the said Venture Educational Institutions arose in the case of *Tarun Nath vs. the State of Assam & 4 Others* in WP(C) No.2908/2013. The Coordinate Bench of this Court vide the judgment and order dated 01.09.2016 much prior to the judgment in the case of *Dipil Das* (supra) had categorically observed that the Commerce Stream of the College was provincialised and as per the seniority list, also provincialised the three Grade-IV staff including the respondent No.5 therein but left out others on the ground that they were in excess of the posts mentioned in the Schedule to the Act of 2011. The learned counsel submitted that the respondent No.5 in the said writ proceedings was Dilip Das who was the petitioner in the case of *Dilip Das* (supra). In the said judgment delivered on 01.09.2016, the Coordinate Bench of this Court duly took

into account the scope and ambit of Section 10 of the Act of 2011 and observed that unless and until the verification process is completed at the level of the State Government, consequent upon which provincialisation notification is issued, the rival claims to provincialisation would remain within the realm of verification without any finality attached. The learned counsel for the respondents while referring to the said judgment in *Tarun Nath* (supra) submitted that it was also observed by the Coordinate Bench that at the interim stage of verification, be it at the level of District Scrutiny Committee or at the level of the Director, nothing is finalized and consequently, no right is created in favour of anybody and it was further held that the writ petition filed in the midst of the verification process under Section 10 of the Act of 2011, would be premature. Therefore, it is submission of the learned counsel for the respondents that the Coordinate Bench in its judgment rendered in the case of *Dilip Das* (supra) did not take into consideration the judgment rendered in the case of *Tarun Nath* (supra) by a Coordinate Bench of this Court wherein it was clearly and categorically held that till the notification is not issued, the rival claims to provincialisation would remain within the realm of verification without any finality attached. It is, therefore, the submission of the learned counsel appearing on behalf of the respondents that the judgment in the case of *Dilip Das* (supra) was per incuriam in as much as the law laid down by the Coordinate Bench on 01.09.2016 in the case of *Tarun Nath* (supra) was not taken into consideration.

30. Be that as it may, it was further submitted that perusal of the judgment in the case of *Tarun Nath* (supra) as well as in the case of *Dilip Das* (supra) would clearly show that the Venture Educational Institution concerned, i.e. Paschim Guwahati Mahavidyalaya has already been provincialised by issuance of a notification. The only issue in the case of *Dilip Das* (supra) was as to whether the services of the petitioner was required to be provincialised. The learned counsel for the respondents, therefore, submitted that the judgment in the case of *Dilip Das* (supra) was rendered in the peculiar facts of that case which is completely different from the facts of the instant case in as much as the Venture

Educational Schools in the present batch of writ petitions, there is no notification under Section 10 (4) of the Act of 2011.

31. The learned counsel for the respondents further placed reliance upon a judgment rendered by the learned Division Bench in the case of *Smti. Purnabati Brahma vs. the State of Assam & 6 Others* (WA No.283/2019) dated 13.11.2019 wherein the learned Division Bench, taking into account that the services of the petitioner therein were not provincialised, observed that the case of the petitioner therein would not cover within the four corners of the decision rendered in the Review Petition. The learned counsel for the respondents further had drawn the attention to paragraph No.9 of the said judgment in *Purnabati Brahma* (supra) and submitted that the learned Division Bench of this Court, taking into account that the petitioner therein was not receiving the salary as provincialised employee, observed that it would be a fallacy in law and facts to consider that right had already been vested in the writ petitioner under the Act of 2011, which admittedly has been struck down as constitutionally invalid.

32. The learned counsel for the respondents further drew the attention of this Court to the judgment of the Supreme Court in the case of *State of Manipur and Others vs. Surjakumar Okram and Others*, reported in *2022 SCC OnLine SC 130* and referred to paragraph Nos.24, 25, 28 & 29 for the purpose of showing what is the effect upon a law being declared unconstitutional by a Court of Law.

33. To analyze and adjudicate upon the respective contentions of the parties, this Court finds it relevant first to take into consideration the provisions of the Act of 2011; the affect upon the said statute being declared to be unconstitutional; the review order dated 02.01.2017 and the implications of the same on the rights of the petitioners before this Court. Further to that, this Court also taking into account the respective submissions has to adjudicate as to whether the judgment in the case of *Dilip Das* (supra) is applicable to the facts involved in the instant proceedings or for that matter, the said judgment rendered by a Coordinate Bench is binding upon this Court in respect to the issues

involved in the present batch of writ petitions.

34. The Act of 2011 as already stated herein above was an Act to provincialise the services of employees of Venture Educational Institutions in the State of Assam and to restrict further establishment of such educational institutions in the State. Section 2 (t) defines “Venture Educational Institutions” to mean and include Venture Degree College, Venture Higher Secondary School, Venture High School, Venture ME School and Venture Primary School situated within the State of Assam. Sections 2 (o), 2 (p) 2 (q), 2 (r) and 2 (s) respectively defines “Venture Degree College”; “Venture High School”; “Venture Higher Secondary School”; “Venture ME School” and “Venture Primary School”. From the said definitions, it is clear that for a particular institution to come within the ambit there is the requirement to fulfill the conditions mentioned therein. For example- Section 2 (p) defines “Venture High School” to mean High School including a High Madrassa imparting education upto Class X and established by the people of the locality prior to 01.01.2006 which had received permission from the State Government and recognition from the Board of Secondary Education, Assam on or before 01.01.2006 and not provincialised under any Act enacted by the State legislature. The “Venture Higher Secondary School” as defined under Section 2 (q) means a Higher Secondary School imparting education upto Class XII and established by the people of the locality on or before 01.01.2006 which had received permission from the State Government on or before 01.01.2006 and not provincialised under any Act earlier enacted by the State legislature so far and it includes a Junior College established by the people of the locality on or before 01.01.2006 which has received concurrence from the Government and permission from the Assam Higher Secondary Education Council on or before 01.01.2006. Therefore, it is clear that to come within the ambit of ‘Venture Educational Institutions’ as defined under Section 2 (t), the said Venture Educational Institutions has to fulfill certain criteria as mentioned in Sections 2 (o), 2 (p) 2 (q), 2 (r) and 2 (s) respectively for the different kinds of ‘Venture Educational Institutions’.

35. Apart from the above, Section 3 of the Act of 2011 stipulates the Eligibility criteria for selection of educational institutions for provincialisation of services of its employees. Sub-Section (1) of Section 3 of the Act of 2011 clearly mandates that subject to the provisions of Article 30 of the Constitution of India, the categories of Venture Educational Institutions mentioned in the Sub-Sections of Section 3 of the Act of 2011 shall be eligible for being considered for provincialisation of the services of its employees. Sub-clauses (i) and (ii) of Section 3 (1) mentions the requirements to be fulfilled. Sub-section (2) of Section 3 relates to Degree College and the Junior College wherein the eligibility criteria as specified in Sub-Section (1) of Section 3 was modified to the extent as stated therein. Sub-Section (3) of Section 3 relates to the required infrastructure in respect to a Degree College as well as in respect to a Primary or Upper Primary School and all other educational institutions. Sub-Section (4) of Section 3 stipulates that an institution, which does not have the required infrastructure specified in Sub-Section (3) of Section 3 of the Act of 2011, may be considered as eligible for provincialisation of the services of the employees, provided such institution acquires the required infrastructure within two years from the date of commencement of the Act of 2011. Sub-section (5) of Section 3 of the Act of 2011 stipulates that the Degree College, Primary or Upper Primary School and in case of all other institutions, which do not fulfill the eligibility criteria as on the date of coming into force of the Act of 2011 or does not acquire eligibility under Sub-section (4) of Section 3 of the Act of 2011 within the two years period shall not be eligible to be considered for provincialisation of the services of its employees but may be allowed to run as a Private Institution or a Non-Government Educational Institution. Sub-section (6) of Section 3 of the Act of 2011 is in respect to an institution covered under Article 30 of the Constitution of India which is already getting some financial assistance or grants-in-aid, no Private or Non-Government educational institution shall be entitled to get any aid or assistance except incentives for academic excellence from the State Government in any form with effect from the date of coming into force of the Act of 2011. Therefore, a perusal of Section 3

read with the definitions Clauses as mentioned herein above makes it clear that subject to fulfillment of the requirements, the Venture Educational Institutions shall be eligible for being considered for provincialisation of the services of its employees. The word “consider” as used in Sub-section (1) of Section 3 and also as could be seen in Sub-section (4) of Section 3 makes it clear that merely by fulfilling the requirement by a Venture Educational Institution there is no automatic right for provincialisation of the services of the employees.

36. Now coming to Section 4 of the Act of 2011, the interpretation of which is the focal point of dispute in respect to the present batch of writ petitions, would show that in terms with Sub-Section (1) of Section 4 of the Act of 2011, the services of the employees of all eligible Venture Educational Institutions under Section 3 of the Act of 2011 shall be deemed to have been provincialised on the date of coming into force the Act of 2011 and they shall become employees of the State Government with effect from that date provided such institutions have completed at least 7 years of imparting education from the date of affiliation, recognition, concurrence or permission as the case may be as on the date of coming into force the Act of 2011. The proviso to Sub-Section (1) of Section 4 stipulates that in case the Venture Educational Institutions eligible for provincialisation under Section 3 of the Act of 2011 have not completed 7 years of their imparting education from the date of affiliation, recognition, concurrence or permission as the case may be, as on the date of coming into force of the Act of 2011, the services of those employees of Venture Educational Institutions shall be provincialised as and when the concerned educational institutions completes 7 years of imparting education from the date of such affiliation, recognition, concurrence or permission as the case may be. Therefore, from a perusal of Sub-section (1) of Section 4, it appears that the provincialisation of the services of those employees of the Venture Educational Institutions would be on the basis that the Venture Educational Institutions are eligible under Section 3 of the Act of 2011 and such eligible Venture Educational Institutions

have completed at least 7 years of imparting education from the date of such affiliation, recognition, concurrence or permission as on the date of coming into force of the Act of 2011, the services of such employees deemed to be provincialised from the date of coming into effect of the said Act of 2011. However, in case such educational institutions which are eligible in terms with Section 3 of the Act of 2011 but have not imparted education for a period of 7 years from the date of their affiliation, recognition, concurrence or permission as the case may be, the provincialisation of the services of its employees shall be when the concerned educational institutions completes 7 years of imparting education from the date of such affiliation, recognition, concurrence or permission as the case may be. Therefore, it would be seen from the deeming provision so used in Sub-Section (1) of Section 4 of the Act of 2011 is only in relation to giving effect of the provincialisation of the services of the employees. The said deeming provision under no circumstances can mean that the employees of ineligible Venture Educational Institutions would be entitled to provincialisation.

37. Sub-Section (2) of Section 4 relates to the number of employees in both teaching and non-teaching cadre in each of the Venture Educational Institutions, the services of whom are provincialised or to be provincialised under the Act of 2011, shall not exceed as specified in the Schedule appended to this Act of 2011. The proviso to Sub-Section (2) of Section 4 stipulates that if the employees serving in such Venture Educational Institutions exceeds the numbers as specified in the Schedule, the provincialisation of the services of the employees shall be on the basis of seniority in the respective category in the concerned educational institution and the State Government shall not have liability whatsoever in regard to such excess employees. The second proviso to Section 4 (2) further stipulates that the State Government shall not have liability whatsoever in respect of any past liability of the Venture Educational Institutions whose employees have been provincialised under the Act of 2011 or in other words, upon the provincialisation of the services of the employees of the Venture Educational Institutions, the State Government

would be liable. This proviso has great relevance if read with Section 6 of the Act of 2011 to which this Court shall refer in detail in the later part of the instant judgment.

38. Sub-Section (3) of Section 4 stipulates that the services of teaching or non-teaching employees who have the required academic and professional qualifications prescribed by the relevant Rules at the time of their initial appointment shall be considered for provincialisation. In respect of employees of Degree College, such employees must have acquired such requisite educational as well as professional qualification as may be determined by the University Grants Commission from time to time. The proviso to Section 4 (3), however, makes it clear that if the employee is required to acquire any prescribed academic or professional qualifications, services of such employee may be considered for provincialisation, if otherwise eligible, but in such case the provincialisation would be subject to acquisition of such prescribed qualifications within a period of five years from the date of coming into force of the Act of 2011, and during this intervening period, till he/she acquires the prescribed academic professional qualifications, the employee may continue to work under the existing terms and conditions under which he/she was working, until his/her services are provincialised. It is also mentioned in the said proviso that in case the employee fails to acquire the required academic or professional qualifications within the stipulated period, his services shall stand terminated with effect from the date of expiry of stipulated period of five years.

39. Therefore, from a conjoint reading of Section 4 (2) and Section 4 (3) of the Act of 2011, there is a requirement that the employees of both teaching and non-teaching cadre have to come within the ambit of the Schedule appended to the Act of 2011 for the purpose of getting the benefit of their services being provincialised and that these employees should also have the requisite academic or professional qualifications for their services to be provincialised. It is further made clear that if they do not have the said academic or professional qualifications, but are otherwise eligible, their

provincialisation would be subject to acquisition of the prescribed qualification within a period of five years and during the period of five years till the employee acquires the prescribed academic or professional qualifications that employee continues to work under the existing terms and conditions under which he/she was working, until his/her services are provincialised. Therefore, without the prescribed academic and professional qualification, the service of the employee cannot be provincialised.

40. Section 5 of the Act of 2011 relates to the terms and conditions of the service of those employees whose services have been provincialised under the Act of 2011. In short, such employees would be entitled to the benefits and subject to Rules as applicable to a State Government Servant of corresponding rank.

41. Section 6 of the Act of 2011 stipulates when superintendence and control of all educational institutions would vest upon the State Government. The said Section is relevant for which the same is reproduced herein under:-

“6. Superintendence and control of the educational institutions where services of employees are provincialised.- With effect from the date of publication of the notification under sub-section (4) of Section 10, the superintendence and control of all educational institutions coming within the purview of this Act shall vest in the State Government.”

The above quoted Section would show that only with effect from the date of publication of the notification under Sub-section (4) of Section 10 of the Act of 2011, the superintendence and control of all educational institutions coming under the purview of the Act of 2011 shall vest upon the State Government. In other words, without a notification under Section 10 (4) in terms of the Act of 2011, the State Government would neither has the superintendence and control over the educational institutions coming within the purview of the Act of 2011.

42. For the verification as to whether the Venture Educational Institutions are eligible for the services of the employees of such Venture Educational Institutions to be provincialised, Section 10 of the Act of 2011 stipulates a process of verification as well

as the requirements to be followed therein. For the purpose of the instant dispute, Sub-section (1) to Sub-section (4) of Section 10 of the Act of 2011 being relevant, the same are quoted herein under:-

10. District Scrutiny Committee.- (1) *There shall be one District Scrutiny Committee in each district separately for Elementary, Secondary and for Higher Education to scrutinize service records and other related issues of the serving teachers and staff of Venture Educational Institutions pertaining to provincialisation of their services.*

(2) *The Deputy Commissioner of the District, by an order, shall constitute the District Scrutiny Committee for the respective district under preceding sub-section.*

(3) *The District Committee shall first scrutinize and prepare a list of all Venture Educational Institutions within the district, which are eligible in terms of the provisions of this Act and shall thereafter proceed to scrutinize and verify the service records of all the serving employees, who are eligible or would become eligible for being considered for provincialisation of their services.*

(4) *The District Scrutiny Committee shall forward the verified list of eligible teachers school-wise in accordance with the number of posts specified in the Schedule appended to this Act, to the concerned Director who shall, after making such further scrutiny as may be required, shall forward the same to the concerned Department of the State Government for consideration and for issuing Notification in respect of the eligible institutions and employees eligible for getting their services provincialised.*

(5) *The District Scrutiny Committee shall have the powers to inspect all documents and records produced before it and call for such further records and documents as may be required for the purpose of causing verification and scrutiny and examine witnesses for the purpose, if considered necessary and while doing so it shall have the powers of a Civil Court for the purpose of compelling attendance of persons and production of documents.*

43. Sub-section (1) to Section 10 stipulates that there shall be a District Scrutiny Committee in each district separately for Elementary, Secondary and for Higher Education to scrutinize the service records and other related issues of the serving teachers and staff of Venture Educational Institutions pertaining to provincialisation of

their services. In that respect, it is relevant to take note of that the manner of constitution of District Scrutiny Committee for Higher Education, Secondary Education and Elementary Education have been specifically mentioned in Sub-section 10 (6), 10 (7) and 10 (8) respectively. The power has been given to the Deputy Commissioner of the District by an order to constitute the District Scrutiny Committee for the respective district. Sub-section (3) of Section 10 stipulates that the District Committee shall first scrutinize and prepare a list of all Venture Educational Institutions within the district, which are eligible in terms of the provisions of the Act of 2011 and shall thereafter proceed to scrutinize and verify the service records of all the serving employees, who are eligible or would become eligible for being considered for provincialisation of their services. In other words, the scrutinisation and verification of the service records of all the serving employees would be dependent upon the Venture Educational Institutions within the district being first found eligible in terms with the provisions of the Act of 2011. Sub-section (4) of Section 10 further stipulates that the District Scrutiny Committee shall upon making the necessary verifications, forward the list of eligible teachers school-wise in accordance with the number of posts specified in the Schedule appended to the Act of 2011 to the concerned Director, i.e. the Director of Elementary Education or the Director of Secondary Education or the Director of Higher Education as the case may be. The concerned Director of the particular Department of the School Education shall thereupon make further scrutiny as may be required and then shall forward the same to the concerned Department of the Government of Assam for consideration. The concerned Department of the State Government shall thereupon after due consideration shall issue a notification in respect of the eligible institutions and employees eligible for getting their services provincialised.

44. Now the question arises as to what consequences of the notification as has been mentioned in Section 10 (4) of the Act of 2011. A conjoint reading of Section 3 (1), 4 (1), 5, 6 and 10 (4) of the Act of 2011 would show that the Notification issued under

Section 10 (4) of the Act of 2011 has the effect of declaring that the Venture Educational Institution is an eligible Venture Educational Institution; the said notification would bring the employees of such eligible Venture Educational Institutions within the fold of the employment and affairs of the State Government from the date of coming into force of the Act of 2011 or such date when the Venture Educational Institutions complete 7 years of imparting education from the date of affiliation, recognition etc.; the said notification would entitle those employees whose services have been provincialised by dint of the said notification to get the benefit under Section 5 of the Act of 2011; the said notification would vest the superintendence and control of all Venture Educational Institutions coming under the purview of the Act of 2011 upon the State Government. Therefore, it would be seen that the said notification under Section 10 (4) of the Act of 2011 is of vital importance and bearing on bringing the services of the employees of the eligible Venture Educational Institutions within the affairs of the State including vesting of the superintendence and control of all Venture Educational Institutions coming under the purview of the Act of 2011, with the State Government.

45. Now the question arises as to whether the notification under Section 10 (4) of the Act of 2011 can be said to be a mere administrative order or an Executive order/instrument of the State Government. Taking into account that by dint of the notification under Section 10 (4) of the Act of 2011 and the consequences which ensues upon such notification being issued, this Court is of the opinion that the said notification under no circumstances can be brought within the purview of mere administrative order but would come within the ambit of an Executive order/instrument of the State.

46. This Court at this stage finds it relevant to take note of the provisions of Article 166 of the Constitution of India, which would show that all executive actions of the Government of a State shall be expressed to be taken in the name of the Governor. In terms with Article 166 (2) of the Constitution, orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be

specified in Rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor. Article 166 (3) empowers the Governor to make Rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under the Constitution required to act in his own discretion.

47. In exercise of the powers under Sub-clauses (2) and (3) of Article 166 of the Constitution, the Assam Rules of Executive Business, 1968 were framed. Rule 11 of the Rules of the Assam Rules of Executive Business, 1968 specifically mentions that all orders or instruments made or executed by or on behalf of the Government of Assam shall be expressed to be made or executed in the name of the Governor. Rule 12 stipulates that every order or instrument of the Government of the State shall be expressed to be made in the name of the Governor and shall be signed either by a Secretary, an Additional Secretary, a Special Secretary, a Joint Secretary, a Deputy Secretary, an Under Secretary or such other Officer as may be specially empowered in that behalf and such signature shall be deemed to be the proper authentication of such order or instrument. Therefore, from a conjoint reading of the provisions of Sections 3, 4, 5, 6 and 10(4) of the Act of 2011, it would be apparent that the said notification to be issued in terms with Section 10 (4) of the Act of 2011 would be an Executive order/instrument in terms with Article 166 of the Constitution and the same has to be done in the manner stipulated under Rules 11 & 12 of the Assam Rules of Executive Business, 1968. Now coming back to the facts involved in the instant case it would be seen that admittedly no notification(s) have been issued under Section 10 (4) of the Act of 2011 in terms with Article 166 of the Constitution read with Rule 11 & 12 of the Assam Rules of Executive Business, 1968.

48. Be that as it may, one aspect of the matter is apparent and admitted that the process

of verification in so far as by the District Scrutiny Committee were over and the Director of Secondary Education had uploaded a list of eligible Venture Educational Institutions in the website on 02.06.2015. While uploading in the website of the Secondary Education Department on 02.06.2015, it was mentioned that the records of 410 eligible Venture High Schools, Higher Secondary Junior Colleges were submitted to the Government on 01.06.2015 for onward submission to the Finance Department. It was also mentioned that these are eligible Institutes completing 7 years as per amendment. The Venture Educational Institutions wherein the petitioners were employees have been included in the said list of 410 eligible Venture Educational Institutions as have been shown in the affidavit-in-reply filed on 27.04.2023 in WP(C) No.4019/2020 as a part of the Annexure-A. In the additional affidavit-in-opposition filed by the respondent No.3, it has been mentioned at paragraph No.3 that the report/particulars submitted by the District Scrutiny Committee in respect to the petitioners' schools received by the Office of the Director of Secondary Education, Assam were scrutinized by the State Level Scrutiny Committee. After scrutiny at State level, a district-wise check list of schools with details of teaching and non-teaching staff were prepared and uploaded in the web portal of the Department for general information for all concerned for necessary correction/rectification, if arises. It was further mentioned that while the said process was on, vide the judgment and order dated 23.09.2016, the Act of 2011 was rendered unconstitutional, as such, the process for provincialisation of the services of the petitioners under the Act of 2011 could not be progressed.

49. At this stage, this Court finds it relevant to take note of the submission of Mr. P. K. Goswami, the learned senior counsel to the effect that the uploading in the website on 02.06.2015 would be a notification in terms with Section 10 (4) of the Act of 2011, and as such, the services of the petitioners were provincialised on the basis of the said uploading in the website of the Director of Secondary Education. The said submission in the opinion of this Court is misconceived for two reasons. First, as already held above

that a notification under Section 10 (4) of the Act of 2011 would be an executive order, the same can only be made and executed in the name of the Governor as is required under Article 166 (1) and Rule 11 of the Assam Rules of Executive Business, 1968 framed under Article 166 (2) and 166 (3) of the Constitution. Rule 12 of the Assam Rules of Executive Business, 1968 further stipulates as to who could sign in the name of the Governor. The categorical stand of the Director of Secondary Education in its affidavit was that the same details were uploaded for general information for all concerned for necessary correction/rectification, if arises. Under such circumstances, this Court is of the opinion that merely uploading in the website would not meet the requirement in terms with Article 166 (1) of the Constitution read with Rule 11 & 12 of the Assam Rules of Executive Business.

50. Secondly, it is well settled that noting recorded in official files by officers of the Government at different level and even the ministers do not become decision of the Government unless the same is sanctified and acted upon by issuing an order in the name of the President or the Governor as the case may be, authenticated in the matter under Article 77 (2) and 166 (2) of the Constitution as the case may be and is communicated to the affected persons. In the same vein, mere uploading in the website by the Department of Secondary Education would not confer any right upon any person unless the same is done in terms with the Act of 2011 read with Article 166 of the Constitution and the Assam Rules of Executive Business, 1968. The Supreme Court in the case of *Shanti Sports Club and Another vs. Union of India & Others*, reported in (2009) 15 SCC 705 observed that the noting recorded in the file is merely a noting simpliciter and nothing more. It was observed that it merely represents expression of opinion by a particular individual and by no stretch of imagination, such noting can be treated as a decision of the Government. It was observed that even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing

an order in accordance with [Article 77\(1\)](#) and [\(2\)](#) of the Constitution or [Article 166\(1\)](#) and [\(2\)](#). It was observed that the noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided under [Article 77\(2\)](#) or [Article 166\(2\)](#). The Supreme Court further observed in the said judgment that a notings and/or decisions recorded in the file do not confer any right or adversely affects the right of any person and the same can neither be challenged in a court nor made a basis for seeking relief. It was further observed that even if the competent authority records a noting in the file, which indicates that some decision has been taken by the authority concerned, the same can always be reviewed by the same authority or reversed or over-turned or overruled by the higher functionary/authority in the Government. Paragraph Nos.43 and 52 of the said judgment being relevant are quoted herein under:-

”43. A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review.

44-51

52. As a result of the above discussion, we hold that the notings recorded in the official files by the officers of the Government at different levels and even the Ministers do not become decisions of the Government unless the same is sanctified and acted upon by issuing an order in the name of the President or Governor, as the case may be, authenticated in the manner

provided in Articles 77(2) and 166(2) and is communicated to the affected persons. The notings and/or decisions recorded in the file do not confer any right or adversely affect the right of any person and the same can neither be challenged in a court nor made basis for seeking relief. Even if the competent authority records a noting in the file, which indicates that some decision has been taken by the authority concerned, the same can always be reviewed by the same authority or reversed or overturned or overruled by higher functionary/authority in the Government.”

51. Applying the above law and further taking into consideration that no order or instrument have been shown that the Director of Secondary Education Department did have the power to issue the notification under Section 10 (4) of the Act of 2011, the mere uploading in the website by the said Director of Secondary Education Department in its Department’s website would not confer any right upon the petitioners on the basis of such uploading without a notification under Section 10 (4) of the Act of 2011 to be issued by the State Government in terms with Article 166 read with Rules 11 & 12 of the Assam Rules of Executive Business, 1968.

52. In the backdrop of the above, let this Court take into account as to whether the rights accrued upon the the petitioners in terms with the order dated 02.01.2017 in Review Pet No.167/2016 in the case of **Bimal Kutum** (supra) as well as Section 24 of the Act of 2017.

53. This Court had in the previous segments of the instant judgment has already quoted paragraph Nos.17, 18 & 19 of the judgment in the case of **Bimal Kutum** (supra) whereby the learned Division Bench of this Court ordered that the services of the provincialised category and their status as Government employees shall not be disturbed and they would continue to receive all the benefits which they were getting under the Act of 2011. It would be apposite herein to mention that the said observations were made by the learned Division Bench of this Court taking into account that there were around 41,634 employees for whom vested rights have already been created under the Act of 2011 and the declaration of the Act of 2011 to be unconstitutional would befall

upon them to the extent that they may not only lose their jobs but also be disentitled to pension and salary and in consequence thereof, the question of recovery of the already disbursed salary and pension may emerge.

54. In the instant case, admittedly there was no notification under Section 10 (4) of the Act of 2011 in so far as the petitioners are concerned and they were not in receipt of any salary or upon their retirement, they have received any pension. Therefore, the question of losing any Government job or being disentitled to salary or pension or the consequence of recovery do not arise in so far as the petitioners are concerned, and therefore, the observation made in paragraph no.19 in the judgment of *Bimal Kutum* (supra) would not apply to the case of the petitioners herein. It is also relevant to mention that vide the judgment and order dated 23.09.2016, the Act of 2011 was declared to be unconstitutional and the consequence of such declaration was that the said Act is nonest for all purposes unless the past transactions are saved by applying the doctrine of prospective overruling. The learned Division Bench of this Court in *Bimal Kutum* (supra) had categorically held that this Court under Article 226 of the Constitution do not have the power to apply the doctrine of prospective overruling. However, taking into account that the existing employees would lose their jobs and would be disentitled to the salary and pension and consequently would be liable for recovery of the amounts so received, the limited protection was given in paragraph No.29 only safeguarding such employees.

55. Now coming to the Act of 2017 whereby Section 24 as already quoted herein above only protected those teachers whose services were provincialised prior to 23.09.2016 subject to their cases being reviewed as pre the eligibility norms set up for provincialisation under the Act of 2017. As already observed herein above, as there was no notification under Section 10(4) of the Act of 2011, the petitioners herein would not be entitled to the benefit in terms with Section 24 of the Act of 2017.

56. This Court, therefore, finds it relevant to refer to the judgment of the learned

Division Bench in the case of **Purnabati Brahma** (supra) wherein at paragraph No.9, the learned Division Bench observed that the very fact that the services of the petitioners have not been provincialised, and therefore, the writ petition was filed makes it clear that the case of the petitioner would not be covered within the four corners of the decision rendered in the Review Petition. It was observed that the petitioner therein was not paid salary as provincialised employee, and therefore, it would be a fallacy in law and facts to consider that the rights had already vested on the petitioner under the Act of 2011 which admittedly have been struck down as unconstitutionally invalid. Paragraph No.9 of the said judgment, being relevant, is quoted herein below:-

“9. The case as projected by learned counsel for appellant to the effect that the appellant was vested with rights under the Act of 2011 on the date when judgment was rendered in Chandan Kumar Neog (supra), cannot be accepted. The very fact that the services of the petitioner had not been provincialised and therefore, the writ petition was filed, makes it clear that the case of the petitioner would not be covered within the four corners of the decision rendered on the review petition. Admittedly, the petitioner was not getting salary as provincialised employee. Therefore, it would be a fallacy in law and facts to consider that right had already been vested in the writ petitioner under the Act of 2011, which admittedly has been struck down as constitutionally invalid. The Review Court has held that doctrine of prospective overruling would not apply as the said power is vested only with the Supreme Court of India. It is in such circumstances it has been provided in Para 19(supra) of judgment rendered by the Review court that “the rights of the employees who have been benefited under the struck down statute can be taken care of by giving retrospective effect to the proposed legislation, if the legislature so decides. Till then it is ordered that the services of the provincialised category and their status as govt. employees shall not be disturbed and they will continue to receive all the benefits which they are getting under the Provincialisation Act, 2011, since struck down by the judgment under Review.”

57. In view of the above observation made herein above by this Court, the judgment of the Division Bench in the case of **Purnabati Brahma** (supra) and taking into account that the petitioners herein have sought for the relief for a direction upon the respondent

authorities that the schools of the petitioners to recognized as provincialised before 23.09.2016 and further direct the respondent authorities to take all necessary steps to extend the financial benefit of provincialisation to the petitioners from such date as given to other schools from the same district; makes it apparently clear that the petitioners also are aware that the schools have not been provincialised and they have not got any benefits under the Act of 2011 till date, for which the observations made by the learned Division Bench of this Court shall dully apply.

58. Now coming to the judgment of the Coordinate Bench in the case of *Dilip Das* (supra), this Court finds it relevant to first take into account the judgment of the earlier Coordinate Bench in the case of *Tarun Nath* (supra). In the said judgment, i.e. *Tarun Nath* (supra), the Coordinate Bench of this Court had categorically observed that the Commerce Stream of College was provincialised by the Government and as per the seniority list, provincialised the services of three Grade-IV staff including the respondent No.5, but left out others on the ground of being incumbents in excess posts. The respondent No.5 in the case of *Tarun Nath* (supra) was the petitioner in the case of *Dilip Das* (supra). The Coordinate Bench in the case of the *Tarun Nath* (supra) further observed while dealing with Section 10 of the Act of 2011 that until and unless the verification process is completed at the level of the State Government consequent upon which provincialisation notification is issued, the rival claims to provincialisation would remain within the realm of verification without any finality attached. It was further observed that at the stage of verification, be it at the level of District Scrutiny Committee or at the level of the Director, nothing is finalized and consequently, no right is created in favour of anybody. It was further observed that if no right is created, question of enforcement of any right and correspondingly infringement of any right of any other person would not arise, and as such, the Coordinate Bench held in the case of *Tarun Nath* (supra) that the writ petition filed in the midst of the verification process under Section 10 of the Act of 2011 would be premature. It was further made clear that upon issuance

of the notification under the Act of 2011, if any person is aggrieved by the same, the aggrieved person may avail the appropriate remedy in terms of the Full Bench judgment of this Court in *Abdul Gofur Mondal vs. The State of Assam*, reported in 2015 (2) GLT 2 337. The relevant portion of the judgment in the case of *Tarun Nath* (supra) is quoted herein under:-

“Section 10 of the Provincialisation Act lays down a detailed procedure for scrutiny and verification of service records of eligible teaching and non-teaching staff of a venture educational institution for the purpose of provincialisation. Section 10 provides for three levels of scrutiny, viz, at the initial stage, scrutiny by the District Scrutiny Committee constituted by the Deputy Commissioner of the district. After scrutiny at this level is over, the verified list is to be forwarded to the concerned Director, who at his level shall make further scrutiny, if required. Therefore, scrutiny by the Director is the intermediate level scrutiny. After this round is over, he shall forward the verified list as scrutinized by him to the concerned Department of the State Govt. for final consideration and for issuance of provincialisation notification. Thus, until and unless the verification process is completed at the level of the State Govt., consequent upon which provincialisation notification is issued, the rival claims to provincialisation would remain within the realm of verification without any finality attached. At the interim stage of verification, be it at the level of District Scrutiny Committee or at the level of Director, nothing is finalized. Consequently, no right is created in favour of anybody. If no right is created, question of enforcement of any right and correspondingly infringement of any right of any other person would not arise. Therefore, a writ petition filed in the midst of the verification process under section 10 of the Provincialisation Act would be premature.”

59. At this stage, this Court finds it relevant to take note of that the Venture Educational Schools involved in the case of *Tarun Nath* (supra) as well as in the case of *Dilip Das* (supra) is one and the same, i.e. Paschim Guwahati Mahavidyalaya, Commerce Stream. The eligibility of the said Venture Educational Institution, i.e. Paschim Guwahati Mahavidyalaya was not a matter in issue in both *Tarun Nath* (supra) as well as also in the case of *Dilip Das* (supra). In *Tarun Nath* (supra) , the issue was that the petitioner therein claimed to be senior to the respondent No.5, and as such, by virtue of

the proviso to Section 4 (2) of the Act of 2011, claimed that his services should be provincialised and not the respondent No.5. At the time of delivering the judgment on 01.09.2016 in the case of *Tarun Nath* (supra), the Coordinate Bench of this Court had also observed that from the materials on record, it was not discernable as to whether the additional Commerce Stream of the College was provincialised or not as no order was placed. It is under such circumstances, the Coordinate Bench of this Court had observed that in absence of a notification under Section 10 (4) of the Act of 2011, there cannot be any finality arrived at as no rights accrued without such a notification.

60. On the other hand, if this Court duly takes note of the judgment of the Coordinate Bench in the case of *Dilip Das* (supra), it would be apparent from paragraph No.9 that Venture Educational Institutions in the case of the *Tarun Nath* (supra) and in the case of *Dilip Das* (supra) is one and the same, i.e. Paschim Guwahati Mahavidyalaya. It would be further seen from the paragraph No.9 that the authorities arrived at the conclusion that the petitioner, i.e. Dilip Das was within the permissible number as provided in the Schedule of the Act of 2011. The issue involved in both the writ petitions was as to whether in the provincialisation notification, the name of Dilip Das should have been inserted or not. It is under such circumstances, the Coordinate Bench of this Court observed that once this conclusion was arrived at by the authority there is no further requirement of issuing any order to provincialise the services of the petitioner in as much as his service stood provincialised by the operation of law under Section 4 (1) of the Act of 2011.

61. As already observed herein above that the Venture Educational Institution in question involved both in the case of *Tarun Nath* (supra) and in the case of *Dilip Das* (supra) was found eligible for which due notification has been issued under Section 10 (4) of the Act of 2011. The Coordinate Bench of this Court, therefore did not find it necessary to deal with the definition Clauses of the various Venture Educational Institutions, Section 3, 4 (3) and Section 6 of the Act of 2011. At the cost of repetition, it

is reiterated that there was no issue in the case of *Dilip Das* (supra) as to whether the Venture Educational Institution(s) in question was eligible for their being no notification under Section 10 (4) of the Act of 2011. In fact, during the course of hearing, the learned counsel for the respondents placed before this Court an order dated 20.01.2014 issued by the Director of Higher Education wherein it is seen that pursuant to the Government sanctioned order bearing No.AHE.133/2013/428 dated 04.01.2014, the services of the employees mentioned therein of Paschim Guwahati Mahavidyalaya (Commerce Stream) were provincialised w.e.f. 01.01.2013. It is in that prospective the Coordinate Bench of this Court in *Dilip Das* (supra) observed that whether the name of the petitioner, i.e. Dilip Das should have been inserted in the provincialisation notification or not had no bearing with Section 10 (4) of the Act of 2011 as the Notification under Section 10 (4) of the Act of 2011 was already issued by then.

62. This Court finds it relevant to refer to the judgment of the Supreme Court in the case of *Regional Manager vs. Pawan Kumar Dubey and Another*, reported in (1976) 3 SCC 334 wherein at paragraph No.7, it was observed that one additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts. Paragraph No.7 of the said judgment is quoted herein below:-

“7. We think that the principles involved in applying Article 311(2) having been sufficiently explained in Shamsher Singh's case it should no longer be possible to urge that Sughar Singh's case could give rise to some misapprehension of the law. Indeed, we do not think that the principles of law declared and applied so often have really changed. But, the application of the same law to the differing circumstances and facts of various cases which have come up to this Court could create the impression sometimes that there is some conflict between different decisions of this Court. Even where there appears to be some conflict, it would, we think, vanish when the ratio decidendi of each case is correctly understood. It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases

even when the same principles are applied in each case to similar facts.”

63. In a recent judgment of the Supreme Court in the case of ***Kotak Mahindra Bank Limited vs. A. Balakrishnan***, reported in (2022) 9 SCC 186, the Supreme Court reiterating the principles as laid down in the case of ***Pawan Kumar Dubey*** (supra) observed at paragraph No.64 that one additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts.

64. Another vital aspect of the matter arises in view of certain observations made by the Coordinate Bench in the case of ***Dilip Das*** (supra) on the basis of which the petitioner contend that Notification under Section 10 (4) of the Act of 2011 is merely a formality recognizing a conferred right created by operation of law. As observed by this Court, the Notification under Section 10 (4) of the Act of 2011 is an Executive Order having great ramification. The observation so made by the Coordinate Bench in ***Dilip Das*** (supra) was in different context for which it cannot be made applicable. Be that as it may, certain observations so made in ***Dilip Das*** (supra) more particularly at paragraph No.8 have been relied upon to contend that the said observations are binding upon this Court. This Court is of the opinion that the said observations made in paragraph No.8 of the judgment in ***Dilip Das*** (supra) cannot be said to be the ratio as would bind this Court in respect to the present issue. In this regard, this Court finds it relevant to refer to the judgment of the Supreme Court in the case of ***Union of India vs. Dhanwanti Devi***, reported in (1996) 6 SCC 44 wherein at paragraph No.9, the Supreme Court observed what constitutes ratio decidendi. It was observed that not every observation found therein nor what logically follows from the said judgment can be said to be the ratio. The enunciation of the reason or principle on which a question before a court is decided is alone binding. Paragraph No.9 of the said judgment is quoted herein below:-

“9. Before advertng to and considering whether solatium and interest would be payable under the Act, at the outset, we will dispose of the objection raised by Shri Vaidyanathan that

Hari Krishan Khosla case is not a binding precedent nor does it operate as ratio decidendi to be followed as a precedent and is per se per incuriam. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates—(i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi.”

65. In the instant case, as already observed the issue before this Court relates to a declaration to be given that the Venture Educational Institutions wherein the petitioners are employees to be treated as provincialised before 23.09.2016 and further direct the respondent authorities to take all necessary steps to extend financial benefit of

provincialisation to the petitioners from such date as given to other schools from the respective districts who were provincialised before 23.09.2016, which therefore, means that the question to be adjudicated is as to whether the schools where the petitioners are employees can be treated to be provincialised before 23.09.2016 which was however not the issue in the case of ***Dilip Das*** (supra) wherein the Venture Educational Institution, i.e. Paschim Guwahati Mahavidyalaya was already provincialised prior to 23.09.2016 and the issue therein was as to whether the services of the petitioner therein should have been provincialised. Therefore, the judgment in the case of ***Dilip Das*** (supra) cannot be applied to the facts of the instant case as well as the observations so made at paragraph No.8 which was only an observation in the peculiar facts of that case.

66. An additional submission was also made to the effect that the judgment in the case of ***Dilip Das*** (supra) has been subsequently followed by the subsequent Coordinate Benches and the Government as per the information of the petitioners had implemented the same for which the petitioners herein should also be given the same benefit. The answer to the said submission can be found from the judgment of the Supreme Court in the case of ***Col. (Retd.) B. J. Akkara vs. Govt. of India & Others***, reported in (2006) 11 SCC 709. Paragraph Nos. 25 & 26 in the case of ***Col. (Retd.) B. J. Akkara*** (supra) are quoted herein under:-

“25. A similar contention was considered by this Court in State of Maharashtra v. Digambar’.

This Court held:

“Sometimes, as it was stated on behalf of the State, the State Government may not choose to file appeals against certain judgments of the High Court rendered in writ petitions when they are considered as stray cases and not worthwhile invoking the discretionary jurisdiction of this Court under Article 136 of the Constitution, for seeking redressal therefor. At other times, it is also possible for the State, not to file appeals before this Court in some matters on account of improper advice or negligence or improper conduct of officers concerned. It is further possible, that even where SLPs are filed by the State against judgments of the High Court, such SLPs may not be

entertained by this Court in exercise of its discretionary jurisdiction under Article 136 of the Constitution either because they are considered as individual cases or because they are considered as cases not involving stakes which may adversely affect the interest of the State. Therefore, the circumstance of the non-filing of the appeals by the State in some similar matters or the rejection of some SLPs in limine by this Court in some other similar matters by itself, in our view, cannot be held as a bar against the State in filing an SLP or SLPs in other similar matter(s) where it is considered on behalf of the State that non-filing of such SLP or SLPs and pursuing them is likely to seriously jeopardise the interest of the State or public interest.”

26. The said observations apply to this case. A particular judgment of the 2 High Court may not be challenged by the State where the financial repercussions are negligible or where the appeal is barred by limitation. It may also not be challenged due to negligence or oversight of the dealing officers or on account of wrong legal advice, or on account of the non-comprehension of the seriousness or magnitude of the issue involved. However, when similar matters subsequently crop up and the magnitude of the financial implications is realised, the State is not prevented or barred from challenging the subsequent decisions or resisting subsequent writ petitions, even though judgment in a case involving similar issue was allowed to reach finality in the case of others. Of course, the position would be viewed differently, if petitioners plead and prove that the State had adopted a “pick and-choose” method only to exclude petitioners on account of malafides or ulterior motives, Be that as it may. On the facts and circumstances, neither the principle of res judicata nor the principle of estoppel is attracted. The administrative law principles of legitimate expectation or fairness in action are also not attracted. Therefore, the fact that in some cases the validity of the circular dated 29-10-1999 (corresponding to the Defence Ministry circular dated 11-9-2001) has been upheld and that decision has attained finality will not come in the way of the State defending or enforcing its circular dated 11-9-2001.”

67. As already observed that the judgment in the case of **Dilip Das** (supra) is not applicable to the facts involved in the instant batch of writ petitions for which any implementation of the judgment in the case of Dilip Das (supra) would have no relevance. Even otherwise in view of the law laid down by the Supreme Court in the case of **Col. (Retd.) B. J. Akkara** (supra), the principle of res judicata or estoppel cannot bar

or prevent the State from resisting the present writ petitions, more so, when no case of pick and choose have been pleaded and proved by the writ petitioners.

68. Considering the above, this Court, therefore, does not find any merit in the instant batch of writ petitions for which the same stand dismissed.

69. However, in the facts of the instant case, this Court does not incline to impose any costs.

JUDGE

Comparing Assistant