

GAHC010085712019



2024:GAU-AS:7398

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

Case No. : WP(C)/2826/2019

ABDUL BAREQUE MIAH
S/O. LT. MAHIM UDDIN SARKAR, R/O. VILL.- AND P.O.- SOUTH SALMARA,
DIST.- SOUTH SALMARA MANKACHAR, ASSAM, PIN- 783127.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
THROUGH- THE COMM. AND SECY. TO THE GOVT. OF ASSAM,
EDUCATION (HIGHER) DEPTT., DISPUR, GHY.- 781006.

2:THE DIRECTOR OF HIGHER EDUCATION
ASSAM KAHILIPARA GHY.- 781019.

3:THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM
FINANCE DEPTT. DISPUR GHY.-06.

4:THE GAUHATI UNIVERSITY THROUGH THE REGISTRAR
JALUKBARI GHY.-12.

5:THE UNIVERSITY GRANTS COMMISSION
THROUGH THE CHAIRMAN BAHADUR SHAH ZAFAR MARG
NEW DELHI PIN- 110002.

6:THE GOVERNING BODY OF SOUTH SALMARA COLLEGE
THROUGH THE PRESIDENT SOUTH SALMARA COLLEGE
P.O. AND P.S. SOUTH SALMARA
DIST.- SOUTH SALMARA MANKACHAR PIN- 783129

Advocate for the Petitioner : MR. I H SAIKIA, MR. K KALITA,MR. M R CHOUDHURY,MS L
HMAR

Advocate for the Respondent : SC, EDU, MR. J GOGOI, SC, Higher Education Dpt.,SC,
FINANCE,SC, G U,SC, U G C,MR. I HUSSAIN

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date of hearing : 01.08.2024

Date of Judgment : 01.08.2024

Judgment & order(Oral)

Heard Mr. I. H. Saikia, learned counsel, appearing on behalf of the petitioner. Also heard Mr. K. Gogoi, learned standing counsel, Higher Education Department; Mr. B. Gogoi, learned standing counsel, Finance Department; Mr. P. J. Phukan, learned standing counsel, Gauhati University; and Mr. A. Chamuah, learned standing counsel, University Grants Commission(UGC); appearing on behalf of their respective respondents.

2. The petitioner, in the present proceeding, has prayed for a direction upon the respondent authorities to provincialize his service as a Principal of South Salmara College with effect from the date the other teaching and non-teaching staff of the said College were so provincialized i.e. w.e.f. 14.08.2013, along with all consequential benefits. The petitioner has also prayed for a declaration that he was qualified to hold the post of Principal of the said College since the date of his initial appointment i.e. w.e.f. 08.08.1988, in terms of the University Grants Commission(UGC) regulation as in force *read with* the relaxation as provided in the matter of qualification by the State Government vide a Notification, dated 05.12.1987.

3. As projected in the writ petition, a Governing Body of South Salmara College was constituted in the year 1986. The said Governing Body adopted a resolution on 06.08.1988, to start the first year TDC classes in the said College with effect from the academic session 1988-89. In the said meeting, a

further resolution was adopted to appoint the petitioner, herein, as the Principal of South Salmara College along with 9(nine) other teaching staff. Accordingly, the appointment order was issued to the petitioner, appointing him as the Principal of the said College and thereafter, the petitioner joined his service in South Salmara College.

It is to be noted that the petitioner had completed his MA Degree in Economics in the year 1983 with 50.23% marks. The petitioner on joining the post of Principal in the South Salmara College, initiated steps for receiving permission to start the Degree College from the Gauhati University and accordingly, on receiving such permission; the Degree courses were started in the said College from the academic session 1988-89. Thereafter, on further processing being made in the matter; the Government of Assam in the Education Department, vide Notification, dated 27.09.1999, granted concurrence to start the first year TDC classes in the said College with effect from the academic session 1988-89. The Gauhati University granted temporary affiliation upto TDC Part II(Arts) [General Course] to the said College for the academic session 2000-01. The said temporary affiliation was also renewed by the Gauhati University from time to time. The South Salmara College was also granted permission to start TDC(Arts) [Major Course] in Assamese and the same was also granted affiliation by the Gauhati University. The said College was, thereafter, granted permanent affiliation by the Gauhati University vide resolutions, dated 30.07.2010 and 09.07.2011.

The petitioner, herein, contends that being a "venture educational institution", the South Salmara College was extended, by the authorities in the Education Department with financial assistance from time to time. The petitioner further contends that by grant of such financial assistance which

was also extended to him; the respondent authorities had recognized that he had the requisite qualification to hold the post of Principal of South Salmara College.

Upon enactment of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, and the said College being also brought within the purview of the said Act; the petitioner submitted the particulars of the teaching and non-teaching staff working in the College, on 15.12.2011, in the format so specified for the purpose. However, on a consideration of the particulars so submitted, in the list that was so published of the serving teachers of the said College; the name of the petitioner was so published in the disqualified list with the observation "below norms" and his date of joining was shown as 08.08.1998 instead of 08.08.1988. The petitioner raised his grievance in the matter before the respondent authorities. However, the same was not so considered and the respondent authorities proceeded to provincialize the services of the teaching and non-teaching staff of South Salmara College vide order, dated 26.05.2014, w.e.f. 14.08.2013, excluding the name of the petitioner from such list. On an inquiry being made by the petitioner; he was given to understand that his service were not provincialized on account of the fact that he did not have the requisite qualification for holding the post of Principal of a Degree College. The petitioner also contends that after the initial order of provincialization was so issued on 26.05.2014; further orders were issued provincializing the services of teaching staff of the said College whose names did not figure in the original list.

The petitioner further contends that the Government of Assam in the Higher Education Department vide Notification, dated 24.03.2014, required

the provincialization of the services of Principal(yet to be qualified) of newly provincialized Colleges of the State, by considering their cases on the basis of University Grants Commission(UGC) norms prevailing at the time of their joining i.e. the norms prevailing prior to the University Grants Commission Regulations, 1998, and if it is found that any of such Principal is yet to qualify; option may be offered to such Principal for regularization of their services as Assistant Professor if they are so qualified for the purpose or may permit them to continue as the Principal of the College under total administrative control of the Governing Body without financial power.

The petitioner in terms of the said decision, was directed to furnish his option as per the said communication, dated 24.03.2014. The petitioner also contends that he had submitted the requisite option in the matter. However, before the same could be further processed; the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, came to be declared as unconstitutional by this Court in the proceedings of WP(c)3190/2012 [**Chandan Kumar Neog & ors. v. State of Assam & ors.**]. Thereafter, the Government of Assam in the Education Department, had enacted the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and in pursuance of the Act being brought into force; the petitioner had applied for provincialization of his service under the said Act of 2017. However, the name of the petitioner was again not considered for such provincialization of his service under the said Act of 2017.

The petitioner being aggrieved by the deprivation caused to him and by contending that he had the requisite University Grants Commission(UGC) norms *read with* the relaxation granted to him by the Government of Assam in the Education Department to hold the post of Principal of South Salmara

College, on the date, he was so initially appointed i.e. 08.08.1988 and accordingly, he would not be required to acquire the revised University Grants Commission(UGC) norms as coming into force from time to time; has instituted the present proceeding, praying for reliefs, as noticed hereinabove.

4. Mr. Saikia, learned counsel for the petitioner, submits that the petitioner, herein, was appointed as the Principal of South Salmara College on 08.08.1988 and thereafter, was rendering his service therein in such capacity till 31.10.2020, i.e. till the date of his retirement on attaining the age of superannuation. He further submits that the petitioner, herein, was instrumental in processing the matter for grant of Government concurrence as well as affiliations from the Gauhati University to the College, in question, from time to time and the said concurrence as well as affiliation was so granted after the qualification possessed by the petitioner was so noticed by the authorities concerned which would go to reveal that the petitioner, herein, at the relevant point of time, had satisfied the University Grants Commission(UGC) norms for being so appointed as the Principal of a Degree College.

5. Mr. Saikia, learned counsel, by referring to a Notification, dated 05.12.1987, issued towards relaxing the University Grants Commission(UGC) norms regarding the appointment of College teachers, submits that the petitioner, herein, having possessed the requisite norms as applied in the matter by the Government of Assam in the Education Department; he should be construed to have the requisite qualification for appointment as the Principal of the Degree College on his date of such appointment.

6. Mr. Saikia, learned counsel, further submits that the petitioner being in

the University system at least from the date of grant of temporary affiliation permission of South Salmara College i.e. with effect from the academic session 1988-89 and he being in the University system; the University Grants Commission(UGC) norms coming into effect subsequent thereto, cannot be made applicable to him and his case has to be considered basing on the norms so existing at the time of his appointment and/or at least, with effect from the date, the Gauhati University authorities had granted permission for starting the first year Degree classes in the said College.

7. Mr. Saikia, learned counsel for the petitioner, further submits that the petitioner, herein, being otherwise qualified, his service was required to be so provincialized under the provisions of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, and a right in this connection having accrued to him; the declaration of the Act of 2011, to be unconstitutional in the case of **Chandan Kumar Neog**(supra), would be of no consequence and in this context; relies on a judgment & order, dated 03.10.2018, passed by a coordinate Bench of this Court in WP(c)6804/2017 [**Dilip Das v. State of Assam & ors.**] and accordingly, prays that the service of the petitioner, herein, be deemed to have been provincialized under the said Act of 2011 with effect from the date, the other teaching and non-teaching staff of the College, in question, were so provincialized i.e. w.e.f. 14.08.2013.

8. Mr. Saikia, learned counsel, also submits that the requirement of acquiring the NET/SLET having been made compulsory after 1998; the said requirement would not be attracted to the case of the petitioner, herein, in-as-much as he came into the University system much prior to the said date on account of his appointment of the Principal of South Salmara College as on 08.08.1988. Accordingly, the case of the petitioner has to be so considered in

terms of the existing University Grants Commission(UGC) norms as on 08.08.1988 *read with* relaxed norms as applied by the State for the purpose of implementation in the State of Assam of the University Grants Commission (UGC) norms. In this connection, M. Saikia, learned counsel, also contends that the services of the teachers serving in deficit Colleges at the relevant point of time without the prescribed University Grants Commission (UGC) norms and appointed proximate to the date of such appointment being effected in the case of the petitioner, herein, as Principal of the College, in question, were so permitted to draw the University Grants Commission (UGC) scale of pay without insisting for the University Grants Commission(UGC) norms applicable with certain conditions. The said relaxation is contended to be also required to be applicable to the case of the petitioner, herein, and as such, he must be construed to have possessed the prescribed University Grants Commission (UGC) norms as being applied in the State, at the time of his initial appointment. Accordingly, it is contended that the respondent could not have deprived the petitioner of provincialization of his service under the provisions of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011. In the above premises, Mr. Saikia, learned counsel, submits that this Court would be pleased to direct the respondent authorities to provincialize the service of the petitioner, herein, w.e.f. 14.08.2013, with all consequential benefits.

9. Per contra, Mr. Chamuah, learned standing counsel, appearing on behalf of the University Grants Commission (UGC), by placing on record, the University Grants Commission(UGC) Regulations as brought into force in the year 1987, contends that a minimum qualification for appointment against the post of a Lecturer, Professor, etc., at the relevant point of time, was a Masters Degree in the relevant subject, with at least 55% marks or its equivalent grade and a good academic record. The learned standing counsel, University

Grants Commission(UGC), contends that the said qualification was not permissible to be so relaxed and an incumbent ought to have possessed such prescribed University Grants Commission (UGC) norms for the purpose of drawal of the University Grants Commission (UGC) scale of pay after the year 1987.

10. Mr. Gogoi, learned standing counsel, Higher Education Department, submits that the petitioner, admittedly, did not possess the requisite University Grants Commission(UGC) qualifications for having his case considered for provincialization under the provisions of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011. The learned standing counsel, by referring to the provisions of Section 4(3) of the Act of 2011, submits that an employee of a Venture Degree College for having his/her service provincialized, must have the educational as well as professional qualification as may be prescribed by the University Grants Commission(UGC) authorities from time to time.

11. Mr. Gogoi, learned standing counsel, Higher Education Department, also submits that the proviso to Rule 4(3) of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, further mandates that in the event, any employee not having the prescribed educational qualification and/or the professional qualification; his/her provincialization would be subject to acquisition of such prescribed qualification within a period of 5 years from the date of coming into force of the Act of 2011, and during the intervening period, he/she may be permitted to continue to work under the existing terms and conditions under which he/she was so working until his/her services are so provincialized.

12. Mr. Gogoi, learned standing counsel, Higher Education Department, further submits that the petitioner, herein, having not acquired the University Grants Commission (UGC) norms as applicable on the date, the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, was brought into force, and admittedly, he having not acquired the qualification so prescribed within a period of 5 years from the date the said Act of 2011, has come into force; the petitioner, herein, was rightly not considered for provincialization of his service under the provisions of the said Act of 2011.

13. Mr. Gogoi, learned standing counsel, Higher Education Department, in connection with the contention of the petitioner that he possessed the requisite University Grants Commission(UGC) norms *read with* the relaxation as provided by the Education Department for implementation of such University Grants Commission(UGC) norms and ought to be construed to be a person in the University system, contends that the petitioner had rendered such service in a “venture educational institution” where such entry in service is not regulated by the University Grants Commission(UGC) norms and accordingly, the case of the petitioner cannot be considered by reckoning such qualification as possessed by him at the time of initial appointment in the year 1988.

14. In this connection, Mr. Gogoi, learned standing counsel, Higher Education Department, relies upon a decision of the Division Bench of this Court in the case of **Prahlad Konch v. State of Assam & ors.**, reported in **2017 (3) GLR 56**, wherein, the contentions as raised in the present proceeding on behalf of the petitioner, herein, was rejected by this Court.

15. Mr. Gogoi, learned standing counsel, Higher Education Department,

submits that it was laid to rest by the said decision of this Court that for the purpose of provincialization of the service of a serving employee of a "Venture Educational Institution" under the provisions of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011; such employee must satisfy the educational qualification norms applicable on the date of consideration of his/her case for such provincialization. The learned standing counsel submits that the petitioner, admittedly, having not satisfied the University Grants Commission(UGC) norms as on the date of consideration of his case under the provisions of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011; the exclusion of the name of the petitioner, herein, from the purview of the said Act of 2011, cannot be denoted to be erroneous.

16. Mr. Gogoi, learned standing counsel, Higher Education Department, has further relied upon the following decisions in support of his contentions:

- (i). Judgment & order, dated 13.11.2019, passed by this Court in WA 283/2019[Purnabati Brahma v. State of Assam]
- (ii). Judgment & order, dated 29.01.2024, passed by this Court in WP(c)8035/2017[Om Prakash Sah v. State of Assam]
- (iii). A decision of the Hon'ble Supreme Court rendered in the case of **State of Manipur & ors. v. Surjakumar Okram & ors.**, reported in **2023 SCC Online SC 130.**

17. Mr. Gogoi, learned standing counsel, Higher Education Department, by referring to the stipulations as made in Section 4(3) of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, which

requires a serving employee in a venture Degree College to acquire such educational qualification as well as professional qualification, as may be determined by the University Grants Commission (UGC) from time to time, contends that the said prescription would mean the University Grants Commission(UGC) norms holding the field on the date, the case of such employee is considered for provincialization.

18. Mr. Gogoi, learned standing counsel, Higher Education Department, by relying on a decision rendered by the Full Bench of the Punjab & Haryana High Court reported in **Gurdit Singh Aulakh v. State of Punjab**, reported in **AIR 1970 Punjab & Haryana 491**, contends that the expression "may from time to time" has to be so understood to mean that the University Grants Commission(UGC) norms cannot be construed to be a fixed parameter i.e. the one so existing as on the date of appointment of an employee in a "Venture Educational Institution" but, has to be so construed to mean the acquisition of such University Grants Commission(UGC) norms coming into force from time to time till the date of consideration of such employee for provincialization of his service.

19. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

20. The petitioner, herein, admittedly, on the date of his appointment as a Principal of South Salmara College, did not possess the University Grants Commission(UGC) norms as mandated on the date of his such appointment i.e. 08.08.1988. As brought on record, the University Grants Commission(UGC) norms for appointment as a Lecturer/ Professor w.e.f. 1987, was the possession of a Masters Degree in the relevant subject with at

least 55% marks. The University Grants Commission(UGC) norms as existing on the date of his appointment, is not disputed by the petitioner. The petitioner, however, contends that such University Grants Commission(UGC) norms, were so applied in the State of Assam by the Education Department by providing a relaxation thereon vide an Office Memorandum, dated 07.12.1987, wherein, in respect of employees working in the deficit Colleges in the State, who did not have the University Grants Commission(UGC) norms prescribed, in their cases; the educational qualification in Masters Degree was relaxed to 50% marks and they were extended with the requisite scale of pay w.e.f. 01.04.1987. The said Office Memorandum, dated 07.12.1987, further provided that the employees not having the University Grants Commission (UGC) norms but having completed 3 years of service as on 01.01.1987 and working against the sanctioned posts in a Degree College brought in the deficit system of grants-in-aid; would be given a pay of Rs. 700/- p.m. w.e.f. 01.04.1987, and if, in the event, such teaching staff acquire the M.Phil./Ph.D. Degree, etc., within 8 years, then they would be entitled to the scale of pay of Rs. 700-1500/- p.m..

21. At the outset, it is to be noted that the relaxation as provided by the State Government with regard to the University Grants Commission(UGC) norms of requiring 55% marks in the Masters Degree level examination was so extended only to persons working in the College brought under the deficit system of grants-in-aid and with further stipulations that such persons had to have a residency of 3 years of service as on 01.01.1987. Admittedly, the petitioner, herein, was so appointed in South Salmara College, a venture College, on 08.08.1988, and on that day, neither, the College, in question, had a Government concurrence, nor, a temporary affiliation from the Gauhati University.

22. The temporary affiliation was so extended to the said College only on 18.07.1989, for starting the first year TDC degree classes therein for the academic session for 1988-89. Thereafter, the concurrence of the State Government for starting the first year Degree classes in the said College from 1988-89 was so granted vide Notification, dated 27.07.1989. The permanent affiliation for the College was so granted only in the year 2010-2011 by the Gauhati University authorities.

23. Having noticed the University Grants Commission(UGC) norms existing on the date, the petitioner was appointed as Principal of South Salmara College, it is now required to consider the contentions of the petitioner, herein, that the University Grants Commission(UGC) norms as coming into force after the date of his such appointment cannot be applied in his case and his case for provincialization, has to be construed basing on the University Grants Commission (UGC) norms as prevailing on the date of his such appointment. The said issue is no longer *res integra* and a Division Bench of this Court, in the case of **Prahlad Konch**(supra), under similar circumstances, had drawn the following conclusions:

“11. The petitioners may have expectation (legitimate or otherwise) to be considered for appointment as Lecturer/Asstt. Professor but they must satisfy the qualification norms applicable on the date of consideration. When the exemption period has ended, even the M.Phil degree holders are disentitled to claim exemption from the essential qualification of NET/SLET, on the strength of the 2006 Regulations since norms were re-laid w.e.f. 11.7.2009, through the 2009 Regulations. for exemption.

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16. The court must not pass any order which will undermine the required standard of excellence in appointment of faculty members for higher education and, therefore, on the strength of pursuing M.Phil curriculum in distance mode, the quality of education cannot be allowed to suffer, through recruitment of aspirants, without possession of the required degree which reflect on their suitability and credentials for the job.

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18. The petitioners are serving in venture category institutions, where they must have been appointed under relaxed criterion and, therefore, by virtue of such appointment,

they cannot have a legitimate expectation to be provincialised, as faculty members for under graduate level teaching. Such indulgence in our mind would be undeserved, as it will compromise the uniform standard of excellence, intended through NET/ SLET qualification, on account of the wide variation of standards in different institutions, for pursuing the M.Phil degrees.”

24. The petitioner, admittedly, did not possess the University Grants Commission(UGC) norms as applicable on the date, the cases of the serving employees serving in South Salmara College were considered for provincialization of their services under the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011. Applying the decision of the Division Bench of this Court in the case of **Prahlad Konch**(supra) to the facts of the present case, it is seen that the exclusion of the petitioner, herein, from the purview of the said Act of 2011, under such circumstances, cannot be said to be erroneous, in-as-much as, it is settled position of law that it is the University Grants Commission (UGC) norms as prevailing at the time of consideration of the case of a serving employee of a venture College for provincialization, that would be reckonable for the purpose.

25. The Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, was declared *ultra vires* on 23.09.2016, in the proceedings of WP(c)3190/2012 [Chandan Kumar Neog & ors. v. State of Assam & ors.]. The Hon'ble Supreme Court in the case of **State of Manipur & ors. v. Surjakumar Okram & ors.**, reported in **(2022) SCC Online SC 130**; held that a statute which is made by a competent legislature is valid till it is declared unconstitutional by a Court of law. After declaration of a statute as unconstitutional by a Court of law, it is non-est for all purposes. The Hon'ble Supreme Court further proceeded to hold that in declaration of the law; the doctrine of prospective overruling can be applied by the Hon'ble Supreme Court only. The Hon'ble Supreme Court in the decision of **Surjakumar Okram**(supra), further proceeded to hold that when a statute is adjudged to

be unconstitutional, it is, as if, it had never been. Rights cannot be built up under it. Contracts which depend upon it for their consideration are void and it constitutes a protection to no one who has acted under it and no one can be punished for having refused obedience to it before the decision was made. The said statute would be void since its inception.

26. It is also to be noted that this Court, vide order, dated 02.01.2017, in Review Pet. No. 167/2016, wherein, after the declaration of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, as unconstitutional; this Court had provided that the rights of the employees who were benefitted under the struck-down statute, can be taken care of by giving retrospective effect to the new statute contemplated then to be brought into effect by the legislature and till then; the services of the provincialized employees and their status as government employees, was directed not to be disturbed.

27. Having noticed the decision of the Hon'ble Supreme Court in **Surjakumar Okram**(supra) as well as the decision in Review Petition No. 167/2016; the decision of this Court as relied upon by Mr. Saikia, learned counsel for the petitioner in the case of **Dilip Das**(supra), is considered. This Court in the case of **Dilip Das**(supra), had required the consideration of the case of the petitioner, therein, for provincialization of his service under the provisions of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, after it was so declared unconstitutional by this Court in the case of **Chandan Kumar Neog**(supra).

28. This Court, in the case of **Dilip Das**(supra), had taken note of the decision of this Court in Review Petition No. 167/2016, and thereafter, by

concluding that the services of the petitioner, therein, was held to be so eligible for provincialization of his service under the provisions of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, and having noted the said position, this Court had proceeded to hold that in respect of the petitioner, therein, it was a case of deemed provincialization.

29. The said decision of this Court in the case of **Dilip Das**(supra) would not have any application to the facts of the present proceeding in-as-much as the case of the petitioner, herein, was held to be not eligible for provincialization under the provisions of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, before the same was declared so unconstitutional by this Court in the case of **Chandan Kumar Neog**(supra).

30. It is also to be noted that the effect of the directions as passed in Review Petition No. 167/2016, vide order, dated 02.01.2017; was considered by a Division Bench of this Court in the case of **Purnabati Brahma**(supra) and the following conclusions were drawn:

“7. We, having considered the rival contentions, deem it proper to extract the relevant portion from judgment rendered in Chandan Kumar Neog (supra). Relevant portion of the judgment is contained in paragraphs 34, 35, 36, 37, 38 and 39.

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34. But this litigation reveals the total non-application of mind and it is all pervading in the state enactment. The discriminatory impact of the Provincialisation Act is found to be glaring here. In order to avoid impermissible discrimination, the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from other left out of the group, and also the differentia must have a rational relation to the object sought to be achieved by the statute in question. The petitioners here project that the teachers whose services are provincialized and those who have been left out are at par in all aspects. In most cases, both categories have been rendering service in the school since inception and are similarly qualified as well as rendering similar duties. There is nothing on the face of the statute or the surrounding circumstances to show any distinguishing factor. Also no rational relation of such differentia with the object of the Act is discernible from reading of the provision. In fact the object

of the Act is to provincialise the services of teachers in venture educational institutions and prevent further growth of such institutions. However, the object of provincializing the services of the required teachers in the institutions established bonafide stands negated by the enactment in its present shape.

35. The venture schools which were set up bonafide on need basis, in our perception, do serve the students in remote places and it may not be wrong to say that due to the inability of the State to discharge its constitutional obligations, the venture educational institutions were allowed to function. We may also say that the State has been discharging its constitutional obligation through these venture educational institutions. In this backdrop, when the venture schools are taken over, the government in a sense is taking steps towards discharging its constitutional obligations. However the action of the State in taking over such schools with only a given number of teachers, when the number is not commensurate with the prescribed requirements of the RTE Act (the law framed for implementation of Article 21A), the relevant prescription is absolutely arbitrary. The spirit of Article 21A stands defeated in our perception if the mechanism prescribed under the RTE Act is not conformed to encourage those bonafide elements who have aided the State in discharging its constitutional obligation.

36. It is also questionable whether the mode of entry into government service facilitated by the Provincialisation Act can ignore the applicable reservation laws relating to SC/ST category, women and disabled groups. The role of the authorities in the field of education in the Sixth Schedule areas of Assam is also undermined by the 2011 Act.

37. The appointment of teachers in the venture institutions is not competition based and is opaque and therefore quality of education is bound to suffer if this is allowed to continue. This naturally will negatively impact the next generation of our State. Moreover, the norms and qualification prescribed by the competent authorities like the UGC, NCTE, SEBA, etc. is the major casualty in application of the Provincialisation Act.

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 reshaped 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 (Provincialization 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.

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(emphasised by us)

8. On perusal of the judgment rendered on the Review Petition No.167 of 2016 (supra), it becomes evident that the Court was required to consider rights of the persons who had already been given service benefits under the Act of 2011; who is getting salary as provincialised employee or who had retired and drawing pension. Considering the said peculiar facts and circumstances, the Court decided in the following terms in paragraphs 18 and 19 of the order passed on the review petition.

“XXXXX

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 23 rd 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.”

(emphasised by us)

Bare reading of the above extracted portion from the decision rendered on the review petition would indicate that the Court showed indulgence only in the cases where it found that the right had already been vested under the Act of 2011.

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”.

31. Applying the decision of the Division Bench of this Court in **Purnabati Brahma**(supra) to the facts of this case; it is seen that the rights of the petitioner having not crystallized under the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, for provincialization of his services, after the declaration of the Act of 2011, as unconstitutional by this Court; the case of the petitioner cannot now be directed to be so considered for provincialization, thereunder.

32. Having drawn the above conclusions pertaining to the contentions of the petitioner qua to the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, this Court would now examine as to whether the petitioner, herein, was entitled to have his services provincialized under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

33. In terms of the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, the services of a teacher in a “Venture Educational Institution”, can be

provincialized as a teacher and/or a tutor. A serving teacher of a venture College can be so provincialized as a "teacher", provided he possesses the requisite University Grants Commission(UGC) norms on the date of his such provincialization. The term "tutor" has been defined to mean a "teacher" working in an educational institution who is not eligible for provincialization of his service and whose service cannot be provincialized in the post of teacher under this Act due to his or her lack of educational qualification and/or professional qualification as required, amongst others, under the provisions of the University Grants Commission (UGC) Act, 1956, and the Regulations framed, thereunder. Such category of employees is mandated to be so provincialized as a "tutor" with separate terms and conditions to be notified by the Administrative Department. The petitioner, herein, admittedly, does not possess the University Grants Commission(UGC) norms, on the date, the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, had come into force.

34. The provisions of Section 6(2) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, mandates that services of a teaching employee in a "Venture Educational Institution", shall be considered for provincialization as a "teacher" only if he/she have the requisite educational and professional qualifications as prescribed, amongst others, under the University Grants Commission(UGC) Act, 1956, and the University Grants Commission Regulations, 2010. Admittedly, the petitioner, in the present proceeding, does not possess the University Grants Commission(UGC) norms as coming into force under the University Grants Commission Regulation, 2010. Accordingly, his case for provincialization as a "teacher" under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, would not be called for. However, the petitioner being

in service of the said Degree College since the year 1988 and he not having the minimum prescribed educational qualification and professional qualification as laid down under the University Grants Commission(UGC) Act, 1956, and University Grants Commission Regulations, 2010, coming into force from time to time, is entitled to have his considered for provincialization of his service as a "tutor".

35. In view of the above position; the case of the petitioner, herein, being eligible for consideration for provincialization of his case as a "tutor", more particularly, with application of the terms and conditions as mandated under Section 8(3) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017; the petitioner, herein, was entitled to a consideration for provincialization of his service by the respondent authorities, in this connection. However, the petitioner, admittedly, was not extended with a consideration for having his case provincialized as a "tutor" under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

36. The above position having been noticed by this Court and also appreciating the fact that the petitioner had retired from his service on 31.10.2020, on attaining the age of superannuation; this Court requires the Director, Higher Education Department, Assam, to take all requisite steps for consideration of the petitioner's case for provincialization of his service as a "tutor", strictly, in accordance with the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and after having had the case of the petitioner considered by the committees as constituted under the said Act of 2017; to

take further steps in the matter in terms of the recommendations that would now come on record of the constituted committees under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

37. In the event, the case of the petitioner, herein, is so considered favourably by the constituted committees for provincialization of his services as a “tutor”; the Director, Higher Education Department, Assam, shall take further steps for issuance of necessary orders for provincialization of the services of the petitioner, herein, as a “tutor” after receiving due approval for such provincialization from the Government of Assam in the Higher Education Department.

38. In the event, a decision is arrived at to provincialize the services of the petitioner, herein, as a “tutor” under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017; such provincialization shall be so effected with effect from the date, the Act of 2017, was brought into force and the petitioner, herein, shall be entitled to receive all consequential benefits of pay and allowances with effect from the date of such provincialization of his service till the date of his superannuation.

39. To facilitate the early consideration of his case, the petitioner, shall within 9th of September, 2024, submit a representation along with a certified copy of this order before the Director, Higher Education Department, Assam, and therein, shall, in addition to his educational qualification, disclose the service particulars and stake a claim for provincialization of his service as a “tutor” in terms of the provisions of the Assam Education (Provincialization of Services

of Teachers and Re-organization of Educational Institutions) Act, 2017.

40. The Director, Higher Education Department, Assam, on receipt of such representation from the petitioner, herein, shall initiate measures for compliance of the directions passed by this Court hereinabove and conclude the same with the issuance of a speaking order in the matter intimating the petitioner about the outcome of such consideration made in his case within a period of 3(three) months from the date of receipt of a certified copy of this order.

41. With the above directions and observations, this writ petition stands disposed of.

JUDGE

Comparing Assistant