

GAHC010104922019



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

Case No. : WP(C)/3278/2019

ROFI UZ ZAMAN AND 35 ORS.
SON OF MAKBUL ALI
RESIDENT OF HOUSE NO.28, L.N.B.ROAD,
SHAHNAGAR, HATIGAON, DISPUR,
GUWAHATI, ASSAM-781038.

2: FIRFILA MWSHAHARY
DAUGHTER OF RABINDRA MUSHAHARY
RESIDENT OF WARD NO.10
DWIMALU ROAD
KOKRAJHAR
P.O. KOKRAJAR
ASSAM-783370.

3: SHAIK NAZMA AHMED
DAUGHTER OF SHAIK NAZIM AHMED
RESIDENT OF ATHALBASTI
NEAR SHIVBARI
P.O.SMC
DIST-CACHAR
ASSAM-788014.

4: RAJIB DEORI
SON OF KUKIL DEORI
RESIDENT OF HOUSE NO. 308
KHANIAGAON
SOMALIPATH
P.O. C R BULIDING
DIBRUGARH
ASSAM-786003.

5: SHALINI SAHARIA
DAUGHTER OF DR. DUNGARMAL MAHESHWARI
C/O SANTOSH BASTRALAYA
NEW MARKET

DIBRUGARH.

6: HITASHI KAKATI
DAUGHTER OF PRAMOD CHANDRA KAKATI
RESIDENT OF HOUSE NO. 50
JYOTINAGAR (WEST)
P.O. BAMUNIMAIDAN
GUWAHATI
ASSAM-781021.

7: NIYARKANA SAIKIA
DAUGHTER OF DURGESHWAR SAIKIA
RESIDENT OF BAMGAON
BISWANATH CHARIALI
ASSAM-784176.

8: DIMBESWAR KALITA
SON OF BIRENDRA NATH KALITA
HOUSE NO. 32
GOPALNAGAR
NOONMATI
GUWAHATI
ASSAM-781020.

9: SUBHASIS SAIKIA
SON OF MOHIT CHANDRA SAIKIA
RESIDENT OF BISHNUNAGAR
GURASTHAN ROAD
NEAR D.I.C. OFFICE
NAGAON
P.O. ITACHALLI
ASSAM-782003.

10: PAPPU SAIKIA
SON OF BIBEKANANDA SAIKIA
RESIDENT OF NAHARANI GAON
P.O. BURIKHOWANG P.S. KHOWANG
DIBRUGARH.

11: NANDITA GOGOI
DAUGHTER OF LATE DILIP KR. GOGOI
RESIDENT OF C/O LATE DILIP KR. GOGOI
HOUSE NO. 8
DAKHINGAON
OPPOSITE BURHA MASJID
KAHILIPARA
GUWAHATI
ASSAM-781019.

12: SUNSWRANG BRAHMA
SON OF ABINASH BRAHMA
RESIDENT OF VILLAGE- HATIGARH
P.O. ROWTA CHARIALI
DIST- UDALGURI
ASSAM-784508.

13: PANCHALI BORA
DAUGHTER OF DR. ANUP KUMAR BORA
RESIDENT OF NANDANPUR
JAIL ROAD
JORHAT
ASSAM-785001.

14: MOUSUMI DAS
DAUGHTER OF SATYENDRA KR. DAS
RESIDENT OF SUBHA MARKET
G.S. ROAD
PALTAN BAZAR
GUWAHATI.

15: SNIGDHA SAIKIA
DAUGHTER OF RUDRAM SAIKIA
RESIDENT OF DEMOW KUSHAL PATH
P.O. DEMOW
DIST- SIBSAGAR
ASSAM-785662.

16: MADHURJYA BORA
SON OF SHYAM BORA
RESIDENT OF DELEHE DHAI
ALI
NEAR A.S.E.B. SUB DIVISION
NEAR RAJIV GANDHI INSTITUTE OF PETROLEUMTECH
P.O. AND P.S. SIBSAGAR
ASSAM-785640.

17: MANASH JYOTI PHUKAN
SON OF SUJIT KR. PHUKAN
RESIDENT OF HARUPATHAR
N.C.GAON
DULIAJAN
P.O. AND P.S. DULIAJAN
ASSAM-786602.

18: DEBOJIT KONWAR
SON OF GOLAP KONWAR

RESIDENT OF NABA KATHARBARI
P.O. DHAKUWAKHANA
LAKHIMPUR
ASSAM-787055.

19: BORKHA GOGOI
DAUGHTER OF PADMESHWAR GOGOI
RESIDENT OF WARD NO. 14
LAKHIMI NAGAR MIDDLE LANE
P.O. CHEREKAPAR
SIBSAGAR
ASSAM-785640.

20: NASRIN SULTANA
DAUGHTER OF PASHAN ALI SHEIKH
RESIDENT OF RUPNAGAR
P.O. BALADMARI
GOALPARA
ASSAM

21: SUMAN DAS
SON OF SAMIRAN DAS
RESIDENT OF RAJIBPATH
JHOOLANPUL
LUMDING
DISTRICT-HOJAI
ASSAM-782447.

22: TANUSHREE DEVI
DAUGHTER OF LAKSHMI NANDAN NATH
RESIDENT OF HOUSE NO. 17
NANDAN PATH
RUKMINI NAGAR
GNRC - WEST
GUWAHATI
ASSAM-781006.

23: ANGSHUMAN NAG
SON OF DR. ASHIT BARAN NAG
RESIDENT OF HOUSE NO. 20
CHITTARANJAN ROAD
RANGIRKHARI
SILCHAR
CACHAR
ASSAM-788005

24: SANGEETA BAYAN
DAUGHTER OF DEBESHWAR BAYAN

RESIDENT OF HOUSE NO.16
HARIMANDIR PATH
MATHURANAGAR
DISPUR
GUWAHATI
ASSAM-781006.

25: MINDAR TERON
SON/DAUGHTER OF KALOI TERON
RESIDENT OF RONGMONJIR
WARD NO. 7
P.S. AND P.O. DIPHU
ASSAM-782460.

26: PRODYUT NARZARY
SON OF MUNINDRA NARZARY
RESIDENT OF P.O. DOKMOKA BAZAAR
DIST- KARBI ANGLONG
ASSAM-782441.

27: NABANITA AICH
DAUGHTER OF LATE DR. NANI GOPAL AICH
RESIDENT OF C/O MANJULA AICH
NEAR GODHA PUKHURI
CHATTESHWARI
KALIBARI ROAD
SRIPURIA
TINSUKIA
ASSAM-786125.

28: GUNINDRA NARAYAN BORA
SON OF SOMESHWAR BORA
RESIDENT OF VILL. PAHUKOTA
P.O. BHELUGURI
DIST- NAGAON
ASSAM-782140.

29: RINI MAZUMDAR
DAUGHTER OF RAJENDRA PRASAD MAZUMDAR
C/O DEEPANKAR KAKATI
HOUSE NO. 60
SRIMANTAPUR
BHANGAGARH
GUWAHATI
ASSAM-781032.

30: SUMI PRABHA BRAHMA
DAUGHTER OF PRABIN KUMAR BRAHMA

RESIDENT OF CHAPAGURI ROAD NO.2
P.O. CHAPAGURI
P.S. DHALIGAON
CHIRANG
ASSAM-783380.

31: AFSANA HOQUE CHOUDHURY
DAUGHTER OF AYNAL HOQUE CHOUDHURY
RESIDENT OF HEDAYETPUR
WARD NO. 16
P.O. BALADMARI
DIST- GOALPARA
ASSAM- 783121.

32: BIKASH DEKA
SON OF PARIKSHIT DEKA
RESIDENT OF DANGUAPARA
P.O. BANEKUCHI
DIST- NALBARI
ASSAM-781340.

33: NANDITA DAS
DAUGHTER OF LATE BIDHU BHUSAN DAS
RESIDENT OF RAM KRISHNA LANE
HOUSE NO. 2
CHENGCOORIE ROAD
P.O. SILCHAR
ASSAM-788004.

34: HIMANGSHU SINGHA
SON OF HARIPADA SINGHA
VILL. GHRITINGARKUTI
P.O. KAMANDANGA
DIST- DHUBRI
ASSAM-783332.

35: UDIPTA PRAN DAS
SON OF SUSHIL KUMAR DAS
RESIDENT OF SANKARDEV PATH
JAILROAD
JORHAT.

36: DEBOSUBHRO KUNDU
SON OF DEEPAK KUMAR KUNDU
RESIDENT OF HOUSE NO. 21-1-A
MANGALDEEP APARTMENT
(KUNDUENCLAVE)
NEAR ISKON TEMPLE

AMICAPATTY
SILCHAR
CACHAR
ASSAM-78004

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
HEALTH AND FAMILY WELFARE DEPTT. DISPUR, GUWAHATI-781006

2:THE DIRECTOR
HEALTH SERVICES
GOVERNMENT OF ASSAM
HENGRABARI
GUWAHATI
ASSAM

3:THE DEPUTY SECRETARY
TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE DEPARTMENT
DISPUR
GUWAHATI-781006.

4:THE MEDICAL AND HEALTH RECRUITMENT BOARD
ASSAM
REPRESENTED BY THE CHAIRMAN

Advocates for the petitioners : Mr. KN Choudhury, Senior Advocate
Ms. R R Kakati

Advocates for the respondents : Mr. DP Borah
Standing Counsel, Health
Department, Govt. of Assam

Date of hearing and judgment :28.11.2024

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT & ORDER(ORAL)

Heard Mr. KN Choudhury, the learned senior counsel assisted by Ms. R R Kakati, the learned counsel appearing on behalf of the petitioners. Mr. DP Borah, the learned standing counsel appears on behalf of the Health Department, Government of Assam.

2. The present writ petition has been jointly filed by 36 writ petitioners seeking a direction upon the respondents to frame a scheme for regularization of the services of the petitioners as Dental Surgeons and further seeking directions not to fill up the post of Dental Surgeons as held by the petitioners.

3. From the materials on record, it is seen that pursuant to advertisements being issued vide Notifications dated 22.11.2011, 31.12.2013, 13.10.2014 and 26.06.2015, the petitioners herein were appointed as Dental Surgeons under Regulations 3(f) of the *Assam Public Service Commission (Limitation & Function) Regulation, 1951* (for short, the Regulation of 1951). The said appointments were made for a period of 4(four) months and were continued from time to time by granting extension every four months.

4. It is further seen from the records that the Government of Assam in the

Health and Family Welfare Department after getting approval from the Finance (SIU) Department vide letter dated 24.08.2012 had sanctioned the creation of 1640 numbers of posts in different categories, including 58 posts of Dental Surgeons in usual scale of pay as per the ROP Rules, 2010.

5. Subsequent thereto, the Assam Public Service Commission (for short, the APSC) on 14.05.2016, issued an advertisement for filling up of 61 (sixty-one) numbers of post of Dental Surgeons. Though a selection process was initiated and the petitioners herein had participated, however, the said selection process did not meet the logical end, due to some complaints filed regarding anomalies in the selection process. Subsequent thereto, the Health and Family Welfare Department, Assam by the Notification dated 25.10.2017 constituted the Medical and Health Recruitment Board (for short, the MHRB) to make recommendations for appointment to various posts under the Health and Family Welfare Department, including the post of the Dental Surgeons.

6. The record further reveals that the Chairman MHRB issued an advertisement on 29.12.2018, for filling up of 71 posts of Dental Surgeons. In the said advertisement, it is very relevant to mention that it was stipulated that weightage would be given to the candidates, who are already rendering service in the Health and Family Welfare Department under Regulation 3(f) of the Regulations of 1951 and on contractual basis under the Government Organization. The petitioners herein have contended that although there is a mention that certain weightage would be given, but there was no specification as to the manner in which the weightage would be given.

7. It is further mentioned in the writ petition that the petitioners, after coming to learn about the issuance of the advertisement, participated in the selection process, by submitting application before the authorities concerned within the prescribed time-limit. The Deputy Secretary, Health and Family Welfare Department, by the letter dated 30.01.2019, had forwarded the applications of the petitioners for the 71 numbers of advertised post of Dental Surgeons to the Chairman of MHRB.

8. Be that as it may, the petitioners' case herein is that as the petitioners have rendered services from their respective dates of their appointments, the petitioners ought to be regularized and be substantively appointed to the posts, which have been advertised. It is under such circumstances, the petitioners have, therefore, approached this Court seeking the reliefs as have been already mentioned supra.

9. The record reveals that pursuant to the filing of the instant writ petition, this Court by the order dated 22.05.2019 issued notice. Further to that, the consideration of the interim order was also deferred to the next date. It is further seen that on 24.06.2019, this Court directed that the 36 posts out of the 71 advertised posts may not be filled up on regular basis, in terms of the advertisement without the leave of the Court. The interim order, thereupon, had been continuing from time to time.

10. The record further shows that an additional affidavit was filed by the petitioners bringing on record, their subsequent extensions so granted to them,

pursuant to the filing of the writ petition. A perusal of the extensions so granted vide the various Notifications show that the services of the writ petitioners have been extended every four months.

11. The records further reveal that an affidavit-in-opposition was filed by the Health and Family Welfare Department. In the said affidavit, it has been mentioned that the Government in the Health and Family Welfare Department moved the APSC for filling up of 60 numbers of vacant posts of Dental Surgeons by the communication dated 26.06.2015 i.e. within eight months from the date of appointment of the petitioner Nos. 4 to 34 and before 13 days from the date of appointment of the petitioner Nos. 35 and 36. Further to that, it is also mentioned that steps were taken for carrying out the regular recruitment and to the post of Dental Surgeon which was scheduled to be held on 24.10.2016 to 28.10.2016. However, the said exercise could not be completed due to anomalies in the APSC.

12. In paragraph 9 of the said affidavit, it has been categorically mentioned that the weightage which is to be given to the 3(f) employees could be as per formulation of 5% marks for every completed year of service under Regulation 3(f) subject to a maximum of 20% marks of the total marks. It was also mentioned that as the matter of allotment of marks was confidential one, as such, the same was not mentioned in the advertisement. On the basis of the said affidavit, it was, therefore, submitted that the claim of the petitioners seeking regularization in the facts and circumstances of the case was not at all justified. In the backdrop of the above pleadings, this Court has also heard the learned counsels appearing on behalf of the parties.

13. Mr. K.N Choudhury, learned Senior Counsel appearing on behalf of the petitioners submitted that the petitioner Nos. 1 to 34 as on date have already completed 10 years of service. He, therefore, submitted that by virtue of paragraph 53 of the judgment of the Constitution Bench in the case of ***Secretary, State of Karnataka and others Vs. Umadevi and others reported in (2006) 4 SCC 1***, the petitioners ought to be considered for regularization, as a one-time measure, as they had completed 10 years of service. He further submitted that as regards the petitioner Nos. 35 and 36, they would be completing 10 years of service in 2025. The learned senior counsel submitted that as the petitioners herein have been duly appointed against sanctioned posts and by following a selection process, the petitioners services ought to have been regularized as the appointments of the petitioners can neither be said to be illegal or irregular, but are alternative modes of recruitment. He submitted that taking into account the judgment of the Supreme Court in ***Narendra Kumar Tiwari & Others Vs. State of Jharkhand and others*** reported in ***(2018) 8 SCC 238***, the State, instead of going for a fresh advertisement, ought to have first formulated a scheme for regularization for absorption of all the 3(f) employees, who have been duly rendering their services without any blemish. The State being a welfare State is constitutionally obligated to do so.

14. The learned Senior Counsel further submitted that in a recent judgment passed by the Coordinate Bench in the case of ***Hiren Chandra Das Vs. the State of Assam, represented by the Chief Secretary, Government Assam and others***, reported in ***2024 SCC Online GAU 1880***, the Coordinate

Bench had after consideration of all the various judgments of the Supreme Court, had observed that the respondent authorities may consider framing an appropriate regularization scheme so as to regularize the services of the petitioners therein as a one-time measure in the facts and circumstances of that case. He submitted that as the facts involved in the present case are similar, this Court also should pass appropriate directions to the State authorities for framing a scheme for regularization of the petitioners. In addition to that, the learned Senior Counsel also submitted that that the petitioners at present, cannot be treated similarly to the fresh recruits, *inasmuch as*, the petitioners have crossed certain age and, as such, permitting the petitioners to compete with the fresh recruits would not be an equality within the ambit of Articles 14 and 16 of the Constitution of India.

15. *Per contra*, Mr. DP Borah, the learned counsel appearing on behalf of the respondents submitted that the petitioners as on date, may have crossed 10(ten) years of service, but the question is that as on the date on which the proposals were invited for filling up of the posts in question, the petitioners Nos. 4 to 34 had only rendered 8 months of service and the petitioner Nos.35 to 36 had only rendered 13 days of service. He further submitted that the petitioners had on the earlier occasion in the year 2016 had duly participated pursuant to the advertisement and had also applied against the advertisement issued on 29.12.2018. This aspect of the matter is an admitted aspect from the perusal of the writ petition itself. However, while the selection proceedings was initiated, the petitioners have now approached this Court by filing a writ petition seeking a direction that the State respondents should frame a scheme for regularization of the services of the petitioners.

16. The learned counsel further submitted that what the petitioners are claiming as on date by way of the instant writ petition have been negated by the Constitution Bench of the Supreme Court, in the case of ***Uma Devi*** (supra). The learned counsel submitted that the Constitution Bench in ***Uma Devi*** (supra) had categorically negated the contentions raised herein by the petitioners to be regularized in service on the basis of long continuance, legitimate expectation, employment under the State and the Directive Principle. Under such circumstances, if any direction is issued for regularizing the petitioners on the basis of their legitimate expectations, the same would be contrary to the judgment passed by the Constitution Bench in ***Uma Devi*** (supra). He further submitted that as to whether the State should formulate a scheme is absolutely within the domain of the State and as such, it would not be proper on the part of this Court to exercise the powers under Article 226 of the Constitution.

17. He further submitted that as on the date of filing of the writ petition, none of the petitioners had completed 10 years, and as such the question of applicability of paragraph 53 of the said judgment in ***Uma Devi*** (supra) did not arise. More so, the cutoff date as stipulated in ***Uma Devi*** (supra) was 10.04.2006 and as on that date, none of the petitioners had entered into service. He, therefore, submitted that it is a fit case for dismissal of the writ petition.

18. This Court had duly heard the learned counsels appearing on behalf of the parties and had perused the materials on record.

19. At the outset, this Court put a specific query upon Mr. DP Borah, the learned counsel appearing on behalf of the respondents as to whether all the 3(f) appointees who would be given weightage in terms with Clause 6 of the advertisement dated 29.12.2018 had applied pursuant to the said advertisement. The learned counsel submits that to his instruction(s), most of the 3(f) appointees have already applied, however, the respondent authorities are not adverse to issuing of a corrigendum thereby permitting the other 3(f) appointees to apply pursuant to any orders being passed by this Court.

20. In the backdrop of the above, let this Court consider as to whether the petitioners herein would be entitled to the reliefs as sought for.

21. From the materials on record, it is seen that the petitioners Nos.1 and 2 herein were appointed in the year 2011, the petitioner No.3 was appointed in the year 2013, the petitioner Nos.4 to 34 were appointed in the year 2014 and the petitioner Nos.35 and 36 were appointed in the year 2015. It is further seen that in the year 2015 itself, steps were being taken by the Health Department for filing up 60 posts through the APSC by issuance of a communication dated 12.06.2015. Thereupon, an advertisement was issued on 14.05.2016 for filing up of 60 posts. However, this selection proceedings which were initiated, on the basis of the advertisement dated 14.05.2016 did not materialize in view of certain anomalies in the APSC. It is further seen that thereupon in the year 2017, vide a Notification dated 25.10.2017, the Medical and Health Recruitment Board was constituted and pursuant thereto on 29.12.2018, an advertisement was published for filing up the vacancies of 71 posts of Dental Surgeons.

22. The petitioners herein have also participated pursuant to the said advertisement dated 29.12.2018 as would appear from paragraph 8 of the writ petition. While the said process was going on, the instant writ petition was filed seeking the reliefs as afore-stated. Be that as it may, the advertisement dated 29.12.2018 is not under challenge.

23. It is seen from the above facts that the respondent authorities were taking due steps for filling up of the posts by regular selection. The question, which, however, arises for consideration in the instant writ petition is as to whether this Court can direct the respondents to frame a scheme for regularization of the services of the petitioners as Dental Surgeons.

24. For adjudicating the said issue, this Court needs to take note of the observations so made by the Constitution Bench of the Supreme Court in the case of ***Uma Devi*** (supra). In the case of ***Uma Devi*** (supra), there were two specific issues which fell for consideration: First, the right of employees seeking regularization on the strength of long and continuous service; and Secondly, the correctness of directions issued by Courts for regularization of employees under Article 226 of the Constitution. The first issue as regards the rights of the employees seeking regularization on the basis of long continuance of service, legitimate expectation, employment under the State as well as the Directive Principles of the State Policy (for short, DPSP) were negated by the Constitution Bench of the Supreme Court. It was further held while deciding the second issue that the Courts under Article 226 of the Constitution would not be justified in issuing directions for regularization based on such features such as equality and

long span of service.

25. In the case of ***State of Jammu & Kashmir and Others Vs. District Bar Association Bandipora***, reported in ***(2017) 3 SCC 410***, a decision rendered by three Judges Bench of the Supreme Court, it was clarified that the judgment passed by the Constitution Bench of the Supreme Court in ***Uma Devi*** (supra) is not an authority for the proposition that the executive or the legislature cannot frame a scheme for regularization, or in other words, it is absolutely within the domain of the State, or as well as the Legislature of the State to frame any policy for regularization. In the said judgment, it was also mentioned that regularization is not a source of recruitment, nor it is intended to confer permanency upon appointments which have been made without following the due process as envisaged under Articles 14 and 16 of the Constitution. Essentially, a scheme for regularization in order to be held to be legally valid in terms of the judgment of the Constitution Bench of the Supreme Court in ***Uma Devi*** (supra) must be one, which is aimed at validating certain irregular appointments which may have come to be made in genuine and legitimate administrative exigencies. In paragraph 26 of ***District Bar Association Bandipora*** (supra), the Supreme Court categorically observed that in the name of regularization, the State and its instrumentalities cannot be permitted to use this window to validate illegal appointments. Additionally, the power reserved to the Executive or the Legislative to frame a scheme for regularization is not meant to create or invest in a temporary or adhoc employee the right to seek a writ commanding the State to form a scheme for regularization. It was observed that if such a right is being conferred, it would simply reinvigorate a class of claims which have been permanently shut down

by **Uma Devi** (supra). Paragraph 26 of the said judgment being relevant is reproduced hereinunder:

26. The principles will have to be formulated bearing in mind the position set out in the above judgments. Regularisation is not a source of recruitment nor is it intended to confer permanency upon appointments which have been made without following the due process envisaged by Articles 14 and 16 of the Constitution. Essentially a scheme for regularisation, in order to be held to be legally valid, must be one which is aimed at validating certain irregular appointments which may have come to be made in genuine and legitimate administrative exigencies. In all such cases it may be left open to courts to lift the veil to enquire whether the scheme is aimed at achieving the above objective and is a genuine attempt at validating irregular appointments. The State and its instrumentalities cannot be permitted to use this window to validate illegal appointments. The second rider which must necessarily be placed is that the principle as formulated above is not meant to create or invest in a temporary or ad hoc employee the right to seek a writ commanding the State to frame a scheme for regularisation. Otherwise, this would simply reinvigorate a class of claims which has been shut out permanently by Umadevi. Ultimately, it would have to be left to the State and its instrumentalities to consider whether the circumstances warrant such a scheme being formulated. The formulation of such a scheme cannot be accorded the status of an enforceable right. It would perhaps be prudent to leave it to a claimant to establish whether he or she falls within the exceptions carved out in para 53 and falls within the ambit of a scheme that may be formulated by the State. Subject to the riders referred to above, a scheme of regularisation could fall within the permissible limits of Umadevi and be upheld.

26. In view of the above principles of law as laid down in the case of **District Bar Association Bandipora**, (supra), it would not be proper on the part of this Court to direct the respondents to frame a scheme for regularization

of the services of the petitioners as Dental Surgeons, as the said aspect is absolutely within the domain of the State and its instrumentalities to consider whether such scheme for regularization is necessary for the administrative exigencies.

27. At this stage, with great respect to the judgment of the Coordinate Bench in the case of **Hiren Chandra Das** (supra), it is the opinion of this Court that the observations so made in paragraphs 34 and 35 of the said judgment is contrary to the principles laid down in paragraph 26 in **District Bar Association Bandipora** (supra).

28. This Court also finds it very pertinent to take note of that the petitioners here in pursuance to the advertisement issued on 29.12.2018, have duly participated in the selection proceedings, inspite of a prayer for regularization being made on 18.02.2018. It is the opinion of this Court that when the petitioners have duly participated in the said selection proceedings, knowing fully well that posts wherein they were appointed were advertised, they cannot be allowed by way of a writ petition to annul the selection proceedings, that too, without challenging the advertisement.

29. Accordingly, this Court does not find any merit in the instant writ petition. In that view of the matter, the instant writ petition, therefore, stands disposed of with the following observation(s) and direction(s):

- (i) The relief so sought for directing the respondents to frame a

scheme for regularization of the services of the petitioners as Dental Surgeons is rejected;

(ii) The relief so sought for directing the respondents not to fill up the posts of Dental Surgeons held by the petitioners is rejected.

(iii). The petitioners as well as all the 3(f) appointees in terms of the advertisement dated 29.12.2018 would be entitled to weightage as categorically stated in the affidavit filed by the respondent Nos. 1 and 3. The weightage to be given would be as per the formulation of 5% marks for each completed years of service under Regulation 3(f), subject to a maximum of 20% marks out of the total marks.

(iv). From the materials placed before this Court and the submissions so made by the learned counsel for the respondents, it is not clear as to whether all the 3(f) appointees had applied pursuant to the said advertisement. Under such circumstances, this Court directs the respondent No.4 to issue a corrigendum to the advertisement dated 29.12.2018, thereby calling upon all the 3(f) appointees, thereby giving an additional window of 15 days to the 3(f) appointees from the date of such advertisement to apply in pursuance to the advertisement dated 29.12.2018.

30. With the above, the instant writ petition stands disposed of.

31. Interim order passed earlier stands vacated.

JUDGE

Comparing Assistant