

GAHC010176412022



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

Case No. : WP(C)/5817/2022

DIPAK BORAH AND 45 ORS
TINIGHARIA KONCH PATHAR LP SCHOOL
S/O LAKHI RAM BORAH,
RESIDENT OF TEKJURI, PO BISHNUPUR, DIST DHEMAJI, ASSAM 781057

2: RAJIB GOGOI
RAIDING 12 NO. LINE L.P SCHOOL
S/O BHUPENDRA NATH GOGOI

RESIDENT OF RAIDANG TEA ESTATE
PO HANSARA
DIST TINSUKIA
ASSAM 786190

3: PRABHAT GOHAIN
RAIPUR GHUGUWA L.P SCHOOL

S/O LATE KHAHUWA GOHAIN

RESIDENT OF RAIPUR MAJGAON
PO RAITING
DIST DHEMAJI .

4: NARGISH BEGUM
POWAI NAGAPARA
5 NO. LINE
RESIDENT OF POWAI TEA ESTATE
PO POWAI
DIST TINSUKIA
ASSAM

5: MAKANI DEKA
GERIMARI KRISHNA NAGAR L.P SCHOOL

D/O DANDIRAM DEKA
W/O NITUL LAHKAR

RESIDENT OF VILLAGE NO. 2 KOPATI (GRAND) PO KOPATI
PS DALGAON
DIST DARRANG

6: SYEDA AMBIA SIDDIQUE
NO. 2 MAGURMARI DAKHIN L.P SCHOOL
D/O ABU BAKKAR SIDDIQUE
RESIDENT OF NO. 1 MAGURMARI
PO ANDPS DHULIA
DIST DARRANG
ASSAM

7: RAJEN DAW
NO. 1 ARCHI MAJAR BARI
L.P SCHOOL

S/O LANKESWAR DAW

RESIDENT OF NO. 1 ARCHI MAJAR BARI

PO BHAGABAN
PS SILAPATHAR
DIST DHEMAJI

8: ABDUL KADIR
(NC KHARUPETIA L.P SCHOOL
S/O LATE MUZAHAR ALI

RESIDENT OF VILLAGE BAIGARMARI
PO KHARUPETIA
PS DHULA
DIST DARRANG
ASSAM 784115

9: ABDUL MAZID
(NO.2 MAGURMARI UTTAR PAR L.P. SCHOOL)
S/O- AMAN ALL
R/O- VILL-NO.2 MAGURMARI

P.O. AND P.S. DHULA
DIST- DARRANG

10: SRI LAKHI RAM DEKA
(NO.1 JANGALE BLOCK L.P. SCHOOL)

C/O-LATE PHANIDHAR DEKA
R/O- VILL-NO.1. JANGALE BLOCK
P.O. JAMUGURI
P.S. ORANG

DIST- UDALGURL
PIN-784114

11: LOK NATH GAUTAM
(NO.3 DHANSIRI KHUTI L.P. SCHOOL)
AGE)
AGE
C/O-DAMODAR GAUTAM
R/O- VILL- NO.3 DHANSIRI
P.O. ROUTA
P.S. ROUTA

DIST- UDALGURI
PIN-784508

12: SHEIKH ABDULLAH
(NO.2 DHANSIRI DAKHIN L.P. SCHOOL)
S/O- ATAB ALI
R/O-VILL- NO.2 DHANSIRI KASH
P.O. SHYAMTILA
P.S. DHULA

DIST- DARRANG

13: NASIM BANU BEGUM
(NO.236 KUMARGATI HILS (B) L.P. SCHOOL)
W/O-BODLUZAMAN
R/O-VILL-TANGAON
P.O. DHANUA
P.S. MANKACHAR
DIST-DHUBRI.

14: SABDER ALI
(NO.29 BORKANA AP NEW L.P. SCHOOL)
S/O- MD. SURMAN ALI
R/O- P.O. TELDHALA
P.S. BORKONA

DIST- MANKACHAR

15: KANIKA DEKA

(NATUN MAHALIA PARA L.P. SCHOOL)
D/O-KASTA RAM DEKA

R/O- VILL- MAHALIA PARA
P.O. GERUA BAZAR

DIST- UDALGURI

16: ANOWAR HUSSAIN
(UTTAR KEDIGHI L.P. SCHOOL)
S/O-DAROG ALI

R/O-VILL- PATHIMARI
P.O. KHOLABANDHA
P.S. KACHUMARA
DIST- BARPETA
PIN-781127

17: DINESH CH. DEKA
(NOWBONDHA HABI HAHARA BASTI L.P.
SCHOOL)
S/O-LATE ABIRAM DEKA
R/O- VILL-NAOBANDHA
P.O. ATTAREEKHAT
P.S. DIMAKUCHI

DIST- UDALGURI
PIN-784527

18: SRI BIJOYA DAS
(DOLEGAON
MAZKUCHI CHANDRADHAR L.P.
SCHOOL)
C/O-BISHNU KALITA
R/E-VILL- DOLEGAON
P.O. AMRANGA
P.S. PALASHBARI

DIST-KAMRUP

19: MD. SHARIF UDDIN
(BORDALOI PATHAR NEW L.P. SCHOOL)
S/O-LATE RIAZ UDDIN
R/O-VILL-BORDALOL PATHAR
P.O. TINIALI BAZAR
P.S. LANKA

DIST- HOJAL

20: ANJUMA AKTER
(065 NO. CHATIBHUI A.P. L.P. SCHOOL)
D/O- SHAHIDAR RAHMAN
R/O-VILL- DHAHIDOR KURALBHANGA PT-II

P.O. KALAPAN
P.S. MANKACHAR

DIST-SOUTH SALMARA MANKACHAR
PIN-783135

21: HALIMA KHATUN
(UTTAR CHUKABAHI L.P. SCHOOL)
D/O-LATE HASEN ALI
W/O- FAKARUDDIN AHMED
R/O- VILL- CHUKABAHI

P.O. DAIPAM
P.S. DALGAON.
PIN-784514

22: ABDUR ROSHID
(FCI BHARAI L.P. SCHOOL)
C/O-HAREJ ALL

R/O-VILL-BHARAIL KUNDI

P.O. ASHOK PAPER MILLS

P.S. JOGIGHOPA
DIST- BONGAIGAON
PIN-783384.

23: ABDUL MANNAN
(PACHIMPARA L.P. SCHOOL)
C/O-NUBU SHEIKH
R/O-VILL-BALADMARI CHAR
PT-2

P.O. BALADMARL CHAR
P.S. GOALPARA

DIST-GOALPARA
PIN-783101.

24: MD. SHAMSUL HOQUE
(UTTAR CHAMPU PARA PATER L.P. SCHOOL)
S/O- MD. TOFIZ UDDIN
R/O-VILL-CHAMPU PARA PATHER
P.O. JAMUGURI
P.S. ORANG

DIST-KAMRUP(R)
PIN-781136

25: MANJUR ALI AHMED
(NO.1 APARIA PACHIM SUBA L.P. SCHOOL)
C/O-MASER ALI
R/O- VILL- NO.1 APARIA

P.O. DHALPUR
P.S. MANGALDAI

DIST- DARRANG
PIN-784145

26: ABUL HUSSAIN
(ALIPUR L.P. SCHOOL)
S/O-HAMED ALI
R/O-VILL-NO.2 SARKAY BASTI

P.O. NAHKUTI BAZAR P.S. LAMDING

DIST-HOJAL.

27: NASIR UDDIN
(PUB ADURI PARA L.P. SCHOOL)
C/O-SUKUR MAHAMUD

R/O- VILL- ADURIPARA

P.O. AND P.S. KACHUMARA

DIST- BARPETA
PIN-781127

28: RAJIB SAIKIA
(NO. PUJA BILL L.P. SCHOOL)
C/O-LATE. MOLURAM SAIKIA
R/O- VILL- NO.1 BASA PATHAR GAON

P.O. URIAMGHAT
P.S. URIAMGHAT

DIST- GOLAGHAT

29: NAGEN SAIKIA
(LETEKUBOSTI KASARI CHUK NEW L.P.
SCHOOL)
C/O-LATE PRIYARAM SAIKIA
R/O- VILL- NO.2 MAJULI
ADARSHAGAON
P.O. UTTAJAN
P.S. BOGIJAN

DIST- GOLAGHAT

30: MD
ROFIQUL ALOM
(246 NO. ZAMIRA KANDI L.P. SCHOOL)
C/O-ABDUL KALOM MOLTAH
R/O- S.S. MANKACHAR
DIST-DHUBRI

31: SWAPNA HAZARIKA
(KHALDONGA L.P. SCHOOL)
D/O-KHAGEN HAZARIKA
R/O-VILL-RANGAMURI

P.O. PABHOL

DIST- BISWANATH

32: SALEHA BEGUM
(SARDERVITA WEST L.P. SCHOOL)
C/O-NAIM UDDIN AHMED
R/O-VILL-TARUNGAPUR

P.S. TULSHI BARL

DIST-GOALPARA

33: DILIP CHUTIA
(BHAKATBARI L.P. SCHOOL)
S/O-DUTI RAM CHULTA

R/O-VILL-BHATI JALBHARL

P.O. JALBHARL

DIST- LAKHIMPUR

34: RINA MEDHI
(BALI SUTI L.P. SCHOOL)
D/O- RAMESH MEDHI
R/O- VILL- BATOMARI
P.O. JAMUGURI

P.S. RANGACHAKUA

DIST-SONITPUR
PIN-784185

35: MILI BORA
(NO.1 MUPHOLLANI NEW L.P. SCHOOL)
C/O-LATE DHARMESWAR BORA
R/O-VILL- 1 NO. MUR PHULLANT

P.O. MURPHULONI P.S. BOGIJAN

DIST-GOLAGHAT

36: EUNUS ALI
(PABHA FOREST L.P. SCHOOL)
S/O-LATE SECUNDER ALL

R/O-VILL-MOHGULI
P.O. SALMORA

P.S. NORTH LAKHIMPUR
DIST- LAKHIMPUR.
PIN-787052

37: JULHAS ALI
(DAKHIN FALIHAMARI L.P. SCHOOL)
S/O-KUBBAS ALI
R/O-VILL-FALIHAMARI

P.O. FALIHAMARI
P.S. BHURAGAON
DIST-MORIGAON
PIN-782127

38: MUBARAK HUSSAIN
(BHAJAKHAITY PATHAR NEW L.P. SCHOOL)
C/O- HAJI ABDUR RAHIM
R/O-VILL-BHAJAKHAITY PATHAR

DIST-MORIGAON
PIN-782126

39: MONOWARA BEGUM
(DAKHIN PACHIM PALAHJURI L.P. SCHOOL)
W/O- ABDUL KHALEQUE
R/O-VILL-SARUCHALIA
DIST-MORIGAON
PIN-782123

40: ALTAF HUSSAIN LASKAR
(NO.2 SIMLAI PATHAR NEW L.P. SCHOOL)
S/O- MOZORAF ALL LASKAR
R/O-VILL-BLOCK- KHATIA TOLL
P.O. BOROPUTIA

DIST-NAGAON
PIN-782428

41: ABDUR RAHIM SHEIKH
(239 NO. PACHIM BOKTAR KANAIPARA L.P.
SCHOOL)
S/O- MD. BOKTAR ALI MUNSHI
R/O- VILL AND P.O. KANAIMARA

DIST-DHUBRI
PIN-783135.

42: MAHERJAN NESSA
(MADHYA ANDAVANGA L.P. SCHOOL)
C/O- ABU TAHER AHMED
R/O-VILL- KASHOMARA

P.O. KASHOMARA BAZAR

DIST- BARPETA.

43: SYED FARUQUE ISLAM
(MORISUTI L.P. SCHOOL)
S/O-LATE SYED NURUL ISLAM
R/O- VILL-KHALAYBIL

P.O. BHUJKHUWA CHAPARI

P.S. TEZPUR

DIST-SONITPUR
PIN-784027

44: RUPCHAND ALI
(KALA BAZAAR L.P. SCHOOL)
S/O- TAHAJ UDDIN
R/O-VILL- 2NO. BALADMARI CHAR
P.O.-BALADMARI CHAR
P.S.- GOALPARA DIST GOALPARA
ASSAM

45: MD. ABDUL ROSHID
(KOREYA PAHAR MIDDLE NEW L.P.
SCHOOL)
S/O- MD. KOMSED ALI
R/O-VILL- 181 NO. KOREYA
PAHAR
P.O. AND P.S.- JOGIGHOPA
DIST BONGAIGAON
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, ELEMENTARY EDUCATION DEPARTMENT, DISPUR,
GUWAHATI 781006

2:THE DEPUTY SECRETARY TO THE GOVT. OF ASSAM

ELEMENTARY EDUCATION DEPARTMENT
DISPUR
GUWAHATI

3:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI 19

4:THE MISSION DIRECTOR

SARBA SHIKSA ABHIYAN (SSA) KAHILIPARA
GUWAHATI 19

5:THE EXECUTIVE DIRECTOR

I/C SARBA SIKSHA ABHIYAN
KAHILIPARA
GUWAHATI 1

Advocate for the Petitioner : MR. M K DEURI

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Judgment & Order(Oral)

Date : 02.05.2024

Heard Mr. S. Dey, learned counsel for the petitioners. Also heard Mr. B. Kaushik, learned Standing Counsel for the Elementary Education, Assam and Mr. S. Bora, learned Standing Counsel appearing for the SSA, representing the respondents no. 4 & 5.

2. The petitioner, by way of instituting the present proceeding has prayed for a direction for consideration of their cases for appointment against the posts lying vacant out of the 353 posts, created under the State Pool of Teachers by condoning the over age in respect of each of them for being eligible for such appointment in terms of the directions passed by this Court vide an order dated 20.03.2019 in WP(C)/6955/2017.

3. As projected in the writ petition, it is the contention of the petitioners that they were all initially selected and appointed as Siksha Mitras in different districts of the State. The nature of work of the Siksha Mitras was

initially to impart education to students, who were deprived of education in the normal schools. The Government thereafter, under the Education Guarantee Scheme (EGS) provided funds for setting up of infrastructure for such EGS centers and the petitioners were also involved in teaching the students in such EGS centers. Most of the Siksha Mitras also donated lands for setting up such EGS centers. The Government of Assam thereafter, decided to convert/upgrade the EGS centers into regular Primary Schools vide a notification dated 31.12.2009 and accordingly, 1521 of such EGS centers were upgraded to regular Primary Schools under the Elementary Education Department in the first phase.

4. Thereafter in the second phase, further 3496 EGS centers were upgraded to L.P. Schools on 31.12.2010. As no arrangements were made for the teachers in the said schools, the Siksha Mitras were permitted to continue to teach the students therein and they were paid a honorarium. The services of the Siksha Mitras, having been now placed under the SSA on contractual basis and given the fact that there was no decision with regard to the permanency of their services, around 9000 Siksha Mitras of the State formed an association namely, "Sikshamitra Union, Asom" to ventilate their grievances. Accordingly, a meeting was held on 20.06.2012 with the Government authorities and the minutes thereof, reflects that the Government would hold three special TET examinations for Siksha Mitras in the year 2012, 2013 and 2014 and thereafter no TET examination would be so held and the Siksha Mitras could not claim any further relaxation in their services. The said minutes also provided that the upper age limit for appointment of such Siksa Mitras would be relaxed by giving special

consideration.

5. It is the contention of the petitioner that the first TET examination was notified by the authorities vide an examination dated 06.11.2012 and therein, no age limit was so prescribed. The TET examination in pursuance to the said advertisement was held on 24.03.2013 and the results thereof was declared on 16.08.2013. Out of the Siksha Mitras appearing in the first TET examination, 3835 had passed the TET examination and all of them barring around 6(six) candidates of the Dima Hasao district were appointed. It is contended that the teachers clearing the first TET examination were so appointed without any bar on the age of each of such candidates and even over aged candidates were so appointed. Thereafter, vide an advertisement dated 14.08.2014, a further TET examination was contemplated and therein it was mentioned that it would be the final TET examination for the Siksha Mitras. The petitioners contend that the said stipulation as made therein is contrary to the decision as arrived at in the meeting held on 20.06.2012. The TET exam was held on 19.10.2014 however, the results thereof were not declared. Finally, the said results were declared on 04.09.2017 and the petitioners herein, who were working as Siksha Mitras/Addl. Siksha Mitras had cleared the 2nd TET examination and accordingly, were qualified for being appointed as Assistant Teachers in L.P. Schools as per Government norms subject to condonation of their over ages. In pursuance to the declaration of the results of the said TET examination on 04.09.2017, it is contended that 1126 Siksha Mitras who had cleared the examination were appointed by the Government. However, 346 Siksha Mitras, including the petitioners herein were denied such appointment on the ground that they

had crossed the upper age limit prescribed in the advertisement in question. It is the contention of the petitioners that they were not in a position to apply in pursuance to an advertisement dated 07.09.2017 on account of crossing the upper age limit and accordingly, the petitioners along with similarly situated persons had approached this Court, by way of instituting WP(C)/6955/2017.

6. This Court, vide an order dated 20.03.2019, proceeded to give a final consideration to the writ petition being WP(C) No. 6955/2017 and therein, after noticing the decision of this Court in the case of *Rumi Gogoi Hazarika Vs. State of Assam & Ors.*, reported in (2012) 4 GLT 1001, this Court proceeded to conclude that the claim of the petitioners for being accommodated as Assistant Teachers in L.P. Schools in the schools so set up upon upgradation of the erstwhile EGS centers, wherein, they were working as Siksha Mitras being rejected by this Court in the case of *Rumi Gogoi Hazarika (supra)*, the claim of the petitioners for such appointment and the judicial rejection thereof by this Court having attained finality, the minutes of the meeting dated 20.06.2012 would have to be construed to be in a nature of enabling provisions so as to enable unsuccessful Siksha Mitras to avail the opportunities for being appointed as contractual teachers only. Accordingly, this Court directed that the case of the petitioner would now be considered for relaxation in terms of the notification dated 03.05.1951 and accordingly, the petitioners were required to submit their respective applications for consideration of their claim for relaxation of the upper age limit in terms of the said notification. This Court further observed that the petitioner would also have to satisfy that such relaxation of upper

age is necessary in the interest of fair dealing or, in the public interest.

7. In terms of the directions passed by this Court, the petitioners contend to have filed their individual applications claiming relaxation of their upper age limit for appointment as Contractual Teachers.

8. On receipt of the said application, the authorities of the SSA, Assam, vide a communication dated 11.10.2019, proceeded to reject the same by holding that there were no available posts under the State Pool Teachers, against which, the petitioners and other similarly situated persons could be appointed. Inasmuch as, the 353 vacant posts remaining after accommodation of 1126 nos. of TET qualified Siksha Mitras, were abolished as per the provisions of the notification dated 06.09.2017, the decisions as contained in the communication dated 11.10.2019 is presently under challenge in the present proceeding.

9. Mr. S. Dey, learned counsel for the petitioners, by reiterating the facts as noticed herein above, has submitted that the decisions as contained in the communication dated 11.10.2019 is clearly contrary to the promise as held out to the petitioners by the authorities and the consideration therein, is also contrary to the spirit of the directions passed by this Court, vide the said order dated 20.03.2019.

10. It is the specific contention of the petitioners that there are number of

vacant posts available for Assistant Teachers in L.P. School, wherein, the cases of the petitioners could have been considered upon condoning the over age in respect of each one of them for being eligible for such appointment. It is the specific contention of the petitioner that vide the communication dated 11.10.2019, the respondent authorities have not even ventured to consider as to whether the over age as existing in each aspect of the petitioners mandated a condonation. Accordingly, it is submitted that the order dated 11.10.2019 being in clear violation of the directions of the order dated 20.03.2019 in WP(C)/6955/2017; the same requires to be interfered with.

11. Mr. S. Bora, learned counsel for the respondents no. 4 & 5 by referring to the affidavits filed in the matter has contended that the upper age limit in the advertisement in question dated 07.09.2017 was so incorporated in terms of the Government notification in the matter. It was contended that in the minutes of meeting dated 21.06.2012, with regard to condonation of over age, in respect of the Siksha Mitras for appointment on Contractual basis was so required to be condoned as per the applicable Government norms. It was further contended that vide the advertisement dated 07.09.2017, 1479 numbers of vacant posts of Contractual Assistant Teachers in L.P. Schools were put up for recruitment and in terms of Clause-IV of the conditions as mandated in the said advertisement, the posts were initially allowed to be operated for 11 months or, as and when any post gets vacated by the incumbent or whichever is earlier. In other words, it was held that these posts as created in SSA would automatically lapse the moment when the incumbent vacates the same. Accordingly, it was

contended that in terms of the provisions of Clause-IV of the conditions in the said advertisement dated 07.09.2017, the posts automatically stood vacated on completion of 11 months thereof, and there being no available vacant posts, the case of the petitioners for appointment against the posts so advertised vide advertisement dated 07.09.2017, could not be considered and accordingly, there arose no occasion for consideration of the case of the petitioners for condonation of their over ages.

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

13. The grievance of the petitioners in the present proceedings after the decision of this Court rendered vide Judgment dated 20.03.2019 in WP(C)/6955/2017, pertains to the recruitment against the posts so advertised vide the advertisement dated 07.09.2017. The advertisement dated 07.09.2017 was so issued specifically for Siksha Mitras and Additional Siksha Mitras, who had cleared the special TET Examination as held in the matter for such category of employees. The number of posts so advertised was 1479 in L.P. Schools. The said advertisement, when viewed in connection with the notification dated 07.09.2017, issued by the Government of Assam in the Elementary Education Department, wherein the modalities for implementation of the scheme involved was laid down, more particularly, Clause-IV thereof, is seen that the posts so advertised were allowed to be operated for a period of 11 months or till, when the post gets vacated by the incumbents therein in any manner whatsoever,

whichever is earlier. It was further stipulated that the posts so created with SSA will automatically lapse the moment the incumbent vacates the same due to his recruitment against any other post. The petitioners having applied for the said posts and their cases having not been considered, persons being appointed against the vacant posts so advertised vide the advertisement dated 07.09.2017, the petitioners along with other similarly situated persons had approached this Court by way of instituting WP(C)/6955/2017.

14. This Court, vide the said Judgment dated 20.03.2019 had recorded the following conclusions:-

"52. When we examine the contents of the minutes of the meeting dated 20.06.2012, no such unequivocal promise or representation by word or by conduct is noticeable except that three special TET's would be conducted for the Shiksha Mitras and that the Shiksha Mitras who qualify in the TET would be accommodated as contractual teachers under the SSA and that age bar would be relaxed for the Shiksha Mitras for contractual engagement as teachers as per Government norms and further that special consideration would be made for further relaxation up to 2014.

53. Although instead of three TETs to be held in 2012, 2013 and 2014, two TETs were held in 2012 and 2014 respectively, but no such grievance has been expressed by the petitioners against such nonholding of the TET in the year 2013. The provision that the

successful Shiksha Mitras will be accommodated as contractual teachers would definitely have to be construed that after successful completion of the TET, such Shiksha Mitras would be subjected to the procedural requirement for being appointed as contractual teachers and it cannot be understood that merely by successfully qualifying the TET, such Shiksha Mitras would automatically be appointed as contractual teachers.

54. Any such understanding that the minutes of the meeting dated 20.06.2012 had provided that upon successful completion of the TET, the Shiksha Mitras would automatically be appointed as contractual teachers would have to be rejected as the same would be in conflict with the provisions laid down by the Supreme Court rendered in Vikas Sankhala (supra) wherein it was held that passing of the TET examination is a condition of eligibility for being appointed as a teacher, without which a candidate would not be so eligible. Therefore, the provisions in the minutes of the meeting dated 20.06.2012 that upon successful completion of the TET, the Shiksha Mitras would be accommodated as contractual teachers would have to be understood that they would be so appointed only upon being subjected to a further procedural requirement for such appointment. In the facts and circumstance of the present case as narrated above, the petitioners who were earlier engaged as Siksha Mitras in the EGS had made a claim that they be absorbed as Assistant Teachers in the lower primary schools upon the EGS centers being controverted to lower primary schools and such claim was rejected in the judicial pronouncement in Rumi Gogoi Hazarika (supra). Upon such rejection, the minutes of the meeting dated 20.06.2012 had taken resolutions

that they would be given another opportunity to be engaged as contractual teachers by subjecting themselves to the special TET and upon successful completion of the special TET they would be absorbed as contractual teachers as per procedure and the relaxation of their age bar would be considered as per government norms. Having availed the opportunities of the special TETs in the circumstance, as provided in the minutes of the meeting dated 20.06.2012, the petitioners have not altered their position in any manner and they have merely availed an opportunity that was offered. As there was no alteration in the position of the petitioners, we are of the view that neither the principles of promissory estoppel nor that of the legitimate expectation is applicable in the present case.

55. But be that as it may, the meeting dated 20.06.2012 was held in the background where the claim of the Shiksha Mitras for being appointed as Assistant Teachers in lower primary schools after the EGS Centers where they were earlier working as Shiksha Mitras had been rejected by the judicial pronouncement dated 07.02.2012 in Rumi Gogoi Hazarika (supra). As the claim for being appointed as Assistant Teacher had been judicially rejected and such rejection had attained its finality, the provisions of the minutes of the meeting dated 20.06.2012 would have to be construed to be in the nature of an enabling provision so as to enable the unsuccessful Shiksha Mitras to avail the opportunity for being appointed as contractual teachers. The provisions of the minutes of the meeting dated 20.06.2012 being in the nature of an enabling provision, the Shiksha Mitras who seek to take advantage of the benefits of such provisions would also have to confine themselves to the requirement provided therein for availing

such benefits.

56. In any view of the matter, all that the minutes of the meeting dated 20.06.2012 provides is that the Shiksha Mitras are given another opportunity to participate in a process for being appointed as contractual teachers which otherwise they are not entitled after the rejection of their claim in the judicial pronouncement in Rumi Gogoi Hazarika (supra).

57. It was absolutely a discretion vested on the Shiksha Mitras to either avail the opportunity or to forego and there was no compulsion nor any requirement in the minutes requiring them to alter their position in any manner to their detriment or otherwise in availing such opportunity. As has been culled out, one of the core requirements of invoking the doctrine of promissory estoppels is that the promisee must establish that he had suffered any detriment or had altered his position by relying on the promise. In the instant case, even if the provisions of the minutes of the meeting dated 20.06.2012 is not only considered to be an opportunity given, but also a promise, still we have not come across any material on record, which would help us in arriving at a conclusion that the petitioner Shiksha Mitras had suffered any detriment or had altered their position by relying on the promise.

58. Accordingly, the claim of the petitioners that by invoking the doctrine of promissory estoppels, they are entitled for a relaxation of the upper age limit is found to be unacceptable.”

15. Having recorded the said conclusions, the Court proceeded to issue the following directions:-

“69. Further as it is the stand of the Government authorities in the Education Department that the relaxation of age would now be governed by the provisions of the Notification dated 03.05.1951 and the Notification dated 03.05.1951 being equally applicable for all classes of recruitments, the petitioners can still avail the benefits of such relaxation provided in the said Notification and for the purpose they do not need any resolution through the minutes of the meeting dated 20.06.2012. In the resultant circumstances, although we are not inclined to accept the claim of any legal rights of the petitioners for a relaxation of the upper age limit as per the resolutions taken in the minutes of the meeting dated 20.06.2012, but still as the Notification dated 03.05.1951 is equally applicable to all the petitioners may submit their respective applications for a consideration of their claim for relaxation of the upper age limit in terms of the said Notification. In doing so, the petitioners would also have to satisfy that such relaxation of the upper age limit is necessary in the interest of fair dealing or in the public interest.

70. The requirement of satisfying the necessity in the interest of fair dealing would be that because of the conduct of the respondent authorities, the petitioners had lost certain entitlements which otherwise they would have had the benefit, had the conduct of the authorities not been adverse to them. A consideration of the aspect of being necessary in the interest of fair dealing would definitely not

include the personal hardship that a prospective candidate may suffer because of being over age, as there would be many in the open market who would also like to have a Government employment, but for being overage and as because the Government employment was not available they are facing a personal hardship. In consideration of the necessity in the interest of fair dealing based upon a personal hardship or desire of a candidate, in our view would be a violation of Article 14 as it would be discriminatory against any such other prospective candidates who also seek a Government employment, but unable to get it for being overage, in the meantime.”

16. The directions as passed by this Court vide the said Judgment dated 20.03.2019, reflects that the petitioners were required to submit their respective applications for consideration of their claims for relaxation of the upper age limit in terms of the notification dated 03.05.1951 and therein, they were required to satisfy the authorities that the relaxation of such upper age limit is necessary in the interest of fair dealing or in public interest.

17. A perusal of one such application dated 03.07.2019, brought on record by the petitioner, would bring to the forefront therein that there was no averment made as to the stipulation made in the said Judgment dated 20.03.2019 by this Court of requiring the petitioners to satisfy the authorities basing on materials brought on record in such application that the relaxation of upper age limit is necessary in the interest of fair dealing or in the public interest. Rather, it was contended in the said application as

follows:-

“As a result we filed a writ petition before the Hon’ble Gauhati High Court and Hon’ble Gauhati High Court after prolonged hearing passed an order dated 20.03.2019 that there is no objection if the Govt. of Assam appoints us.”

The said projection as made in the application dated 03.07.2019 of the directions passed by this Court, vide the order dated 20.03.2019 in WP(C)/6955/2017 is clearly perverse.

18. The application as submitted by the petitioners having been considered, this Court would now examines the contentions made in the communication dated 11.10.2019, impugned in the present proceedings.

19. The SSA authorities, vide the said communication dated 11.10.2019 had held that the remaining 354 posts out of the posts created in the State Pool Teachers, vide the notification dated 06.09.2017 not being available and being deemed to have been abolished in terms of the stipulations made in the notification dated 06.09.2017 itself, the cases of the petitioners cannot be considered for absorption against the said posts and accordingly, held that the petitioners cannot be so engaged against the posts so advertised vide the advertisement dated 07.09.2017. The said prescription as made in the communication 11.10.2019 being in tune with the notification dated 06.09.2017, leading to the advertisement dated

07.09.2017, this Court does not find any error in the conclusions as drawn by the SSA authorities in the communication dated 11.10.2019, inasmuch as, the case of the petitioners for appointment as Contractual Teachers would be mandated only in the event the posts as put up for recruitment vide the advertisement dated 07.09.2017 were in existence on the date when such consideration was made in pursuance to the directions passed by this Court vide the order dated 20.03.2019 in WP(C)/6955/2017. The posts in question not being in existence, there would arise no question requiring consideration of the cases of the petitioners herein for such absorption against the said posts and accordingly, there would arise no question for condonation of their over age in these circumstances.

20. The directions as passed by this Court vide the order dated 20.03.2019 having limited the consideration to be made in respect of the petitioners against the posts so advertised vide the advertisement dated 07.09.2017, and the said advertisement when read in conjunction with the notification of the Govt. of Assam, Department of Elementary Education dated 06.09.2017 and admittedly, in terms thereof, the posts put up for advertisement not being in existence after the period of 11 months lapsing thereof, the non-consideration of the cases of the petitioner herein for their absorption against the posts so advertised vide the advertisement dated 07.09.2017 cannot be said to be an erroneous one and accordingly, the petitioners herein cannot claim to be appointed against such nonexistent posts.

21. In view of the conclusions reached herein above, it is held that the contentions as made by the petitioners in the matter does not deserve acceptance and accordingly, the writ petition is held to be devoid of any merit. Consequently, the writ petition stands dismissed, however, there would be no order as to costs.

JUDGE

Comparing Assistant