

GAHC010212562015



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

Case No. : WP(C)/5093/2015

SMTI RUMI CHUTIA BURAGOHAIN
W/O SHRI DEVOLOCHAN BURAGOHAIN, R/O NA-ALI BOLIAPUKHURI, P.O.
and P.S. JORHAT, DIST- JORHAT

VERSUS

THE STATE OF ASSAM AND 8 ORS
REP. AND SERVED THROUGH THE COMMISSIONER AND SECY., HIGHER
EDUCATION DEPTT., GOVT. OF ASSAM, DISPUR, GHY-6

2:THE DIRECTOR OF PUBLIC INSTRUCTIONS
ASSAM
KAHILIPARA
GHY-19

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

4:THE GOVERNING BODY
JORHAT KENDRIYA MAHAVIDYALAYA
KENDUGURI
JORHAT
REP. BY ITS SECY.

5:THE PRINCIPAL
JORHAT KENDRIYA MAHAVIDYALAYA
KENDUGURI
JORHAT- 785010

6:AMARJYOTI BORDOLOI

LECTURER
ECONOMICS DEPTT.
JORHAT KENDRIYA MAHAVIDYALAYA
KENDUGURI
JORHAT- 785010

7:ARUP KUMAR MAHANTA
LECTURER
ECONOMICS DEPTT.
JORHAT KENDRIYA MAHAVIDYALAYA
KENDUGURI
JORHAT- 785010

8:ANANTA TAMULY
S/O SRI KANAK CH. TAMULY
R/O KAKOJAN BESAPATTY TINIALI
P.O. KAKOJAN
P.S. TEOK
DIST- JORHAT
ASSAM

9:MINATI KHOUND
LECTURER

ECONOMICS DEPTT.
JORHAT KENDRIYA MAHAVIDYALAYA
KENDUGURI
JORHAT- 78501

Advocate for the Petitioner : MR.A THAKUR, MS.J R THAKUR,MR.H MEDHI

Advocate for the Respondent : MS.M SARMAHR-8, SC, HIGHER EDUCATION(R1-3),MR.A PHUKAN(R- 6,7&9),MS.D BORGOHAIN(R- 4&5),MR.P GOHAIN(R-4&5),MR.A K GUPTA(R-8)

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

Judgment & Order(Oral)

Date : 22.04.2024

Heard Mr. A. Thakur, learned counsel appearing for the petitioner. Also heard Mr. K. Gogoi, learned Standing Counsel Higher Education Department appearing for the respondents no. 1, 2 & 3 and heard Ms. D. Buragohain, learned counsel representing the respondents no. 4 & 5. None has entered appearance on behalf of the respondents no. 6 to 9.

2. The petitioner by way of instituting the present proceeding has presented a challenge to the appointments as effected in case of the respondents no. 6 to 9 as Lecturers (now Assistant Professors) in the department of Economics of Jorhat Kendriya Mahavidhyalaya, Jorhat. The petitioner has also raised a grievance as regards the inaction on the part of the respondent authorities in acting in the matter in terms of the directions passed by this Court, vide Judgment and Order, dated 28.01.2003 in writ petition being No. Civil Rule No. 2587/1997.

3. The brief facts, requisite for adjudication of the issues arising in the present proceeding, are noticed as under:-

I. The petitioner herein, has projected in the writ petition that she was appointed as a whole time Lecturer in the department of Economics in Jorhat Kendriya Mahavidhyalaya, Jorhat; on temporary basis, subject to approval of the competent authorities by the Principal of the said college, vide a communication dated 01.08.1991. The petitioner contends to have joined her services on

the same date. The initial appointment of the petitioner was so effected for a period of 6(six) months. On conclusion of the said period of six months, it is contended by the petitioner that she was appointed as a regular member of the teaching staff in the Department of Economics in the college; however, no formal letter of appointment was given to her.

II. The petitioner contends that she possessed the requisite UGC norms as required for being appointed as a whole time Lecturer at the relevant point of time. On 16.03.1996, the Principal of the college had restrained the petitioner from attending her duties and, on enquiry, she came to learn that although her name was included in the list of Teaching and Non-Teaching Staff to be submitted to the Director of Higher Education, Government of Assam, for bringing the college under Deficit Grants in Aid system, however, it was subsequently removed, when the said list was actually submitted to the departmental authorities.

III. The said college was brought under the Deficit Grants in Aid system w.e.f. 11.01.1996 and the Director of Higher Education, Assam was approached for appointment of 13(thirteen) Lecturers in the Arts stream in the college out of the 22(twenty) sanctioned posts as was available in the college.

IV. It is the contention of the petitioner that the services of respondents no. 6 & 7 although junior to her, were brought under the Deficit Grants in Aid system and further, that although the petitioner had the qualification as per the UGC norms, she was not allowed to work in the college whereas, persons not having the UGC

norms were so permitted to continue to work as Lecturers.

V. The action on the part of the college authorities in not allowing her to perform her duties as a Lecturer in the college, lead the petitioner to approach this Court by instituting a writ petition being Civil Rule No. 2587/1997.

VI. During the pendency of the said writ petition, the petitioner submitted a representation to the President of the Special Body of the respondent college. The Special Body thereafter, constituted an Enquiry Committee in the matter. The Enquiry Committee, after carrying out a detailed enquiry, submitted its report on 21.01.2001; inter alia, projecting therein that the petitioner had served in the college up to the month of March, 1996 as Lecturer in the Economics department, along with her duties as a NCC officer. The Enquiry Committee further opined that the name of the petitioner should have been enlisted in the list of Lecturers, approved by the Director of Higher Education, Assam on the said college being brought under the Deficit in Grants in Aid system. Thereafter, the Special Body had deliberated on the matter in its meeting held on 23.01.2001 and adopted a resolution to the effect that the name of the petitioner be recommended to the Director of Higher Education, Assam for appointment as a Lecturer in the college.

VII. Although the said resolution was so adopted, the petitioner projects that the college authorities proceeded to appoint the respondent no. 8 in the Department of Economics without following the procedure mandated.

VIII. The above noted writ petition, being Civil Rule No. 2587/1997, was taken up for final consideration by this Court and vide Judgment and Order, dated 28.01.2023, this Court proceeded to dispose of the said writ petition. This Court, while proceeding to dispose of the writ petition, noticed the resolution as adopted by the Special Body and the consequential steps taken thereon. After noticing the facts available in the matter, this Court proceeded to direct the Director of Higher Education, Assam, to take final decision with regard to the appointment of the petitioner as Lecturer in the department of Economics in the college, on the basis of the materials available on record, more particularly, the report of the Enquiry Committee as well as the communication dated 01.02.2001. It was further directed that the respondents no. 7, 8 & 9 having been serving for quite some time in the college, the respondent no. 3 while passing appropriate orders relating to the petitioner, would endeavor to see that their services are not adversely effected.

IX. This Court further proceeded to provide that the official respondents would however, consider the necessity of creation of a post, if called for, to implement the order.

X. In pursuance to the directions passed by this Court, the Director of Higher Education, Assam, proceeded to pass an order dated 22.06.2004, wherein, it was contended that the he was not the competent authority for creation of a post in the college for accommodation of the petitioner herein. It was further mentioned therein that if there is any vacant post of Lecturer in any other department of the college, the college authorities was requested to

submit necessary proposal for diversion of the post to the Economics department for accommodating the petitioner as early as possible.

Thereafter, the directions as passed by this Court, not having been duly complied with; the petitioner has instituted the present proceeding.

4. Mr. A. Thakur, learned counsel for the petitioner, by referring to the Judgment and Order, dated 28.01.2003; passed by this Court in Civil Rule No. 2587/1977 has submitted that this Court, upon noticing the factual matrix as involved in the matter in the said order and also noticing the contentions raised by the respondents to effect that the appointment of the petitioner herein was only an "stop-gap arrangement", proceeded to consider the issue as to whether the petitioner could be considered as a whole time Lecturer in the Department of Economics in the said college. The Hon'ble Court thereafter, noticing the report as submitted by the Enquiry Committee, constituted by the Special Body of the college, proceeded to conclude that the official respondents in not considering the case of the petitioner for appointment as a Lecturer in the Department of Economics in the said college on permanent basis to be discriminatory. Accordingly, this Court directed the respondent no. 3, to take a final decision in the matter with regard to the petitioner as Lecturer in Economics on the basis of the available materials on record, more particularly, the report of the committee as well as the communication dated 01.02.2001.

5. Mr. A. Thakur, learned counsel for the petitioner, accordingly, submits that the above conclusions having been reached by this Court in the said

order, the issue as to whether the petitioner was a whole time Lecturer in the college when the college was brought under the Deficit Grants in Aid system stood concluded and the status of the petitioner having been so determined by this Court, the respondent authorities ought to have issued appropriate orders appointing the petitioner as a Lecturer in the Department of Economics of the said college.

6. Mr. A. Thakur, learned counsel for the petitioner, in the above premises, submits that this Court would be pleased to direct the respondent authorities to issue appropriate orders toward appointing the petitioner herein as a Lecturer in the Department of Economics, with retrospective effect along with all consequential benefits.

7. Per contra, Mr. K. Gogoi, learned Standing Counsel appearing for the Department of Higher Education, Assam, has contended that the petitioner herein was appointed in the said college for short intervals with definite breaks in her service. It was further contended that the petitioner was not being paid any salary by the college authorities, but, was being paid an honorarium of Rs. 4,000/- by the Commanding Officer, NCC, Jorhat. It was contended that the last appointment of the petitioner for a period of 6(six) months was w.e.f. 01.09.1995 to 29.02.1996 and thereafter, the petitioner was not rendering her services in the said college.

8. Mr. Gogoi, learned Standing Counsel by referring to the directions passed by this Court, vide the order dated 28.01.2003 in Civil Rule No. 2587/1977, has contended that in terms of the said order, the Director of Higher Education, Assam had vide communication dated 28.01.2003, requested the college authorities to submit necessary proposal for

diversion of a post of Lecturer to the Economics department for accommodating the petitioner. It was also specified in the said communication that the Director of Higher Education, Assam is not the competent authority to create any post in the service of the college and the same is necessarily to be done by the Government in the Higher Education Department. It is contended that thereafter, no communication was brought on record by the college authorities in this connection and, accordingly, no further steps in this matter was called upon to be taken by the departmental authorities.

9. Mr. Gogoi, learned Standing Counsel has further submitted that the petitioner not being appointed on regular basis, would not be entitled to her services regularized.

10. Mr. Gogoi, learned Standing Counsel by referring to the provisions of "The Assam College Employees (Provincialization) Act, 2005" and "The Assam College Employees (Provincialization) Rules, 2010, contends that the college having been so provincialized, the recruitment to the post of Lecturer in the college can now only be effected in terms of the provisions of the said Act and the Rules. It is contended that the regularization was not prescribed as mode of recruitment, under the said Act of 2005 and the Rules there under; and as such, the petitioner cannot be regularized in her services. It was further contended that the minimum qualification as prescribed under the UGC norms, mandates, possession by such candidates of a good academic degree with at least 55% marks in the Masters Course along with possession of NET/SLET/Ph.D.

11. It is contended that the petitioner herein does not possess the said

requisite qualifications and considering the fact that she was not rendering services since 1996, the services of the petitioner would not be called upon to be regularized in violation of the provisions of the said Act of 2005 and the Rules of 2010.

12. Mr. Gogoi, learned Standing Counsel, in support of his submissions has placed reliance on the following decisions of the Hon'ble Supreme Court:-

1. Chandra Kishore Jha Vs Mahavir Prasad & Ors., reported in (1999) 8 SCC 266.

2. Cherukuri Mani Vs Chief Secretary, Government of Andhra Pradesh, reported in (2015) 13 SCC 722.

3. Union of India Vs Mahendra Singh, reported in (2022) SCC Online SC 909.

4. State of Gujarat & Ors. Vs R. J. Pathan & Ors., reported in 2022 5 SCC 394.

13. Ms. D. Buragohain, learned counsel appearing for the College authorities has submitted that in the year 2018 a vacancy in the post of Assistant Professor, Department of Economics of the college having arisen, the Governing Body of the college, on adopting requisite resolutions for accommodating the services of the petitioner against the said post, had placed the matter before the Director of Higher Education, Assam. However, in terms of the directions of the departmental authorities, the said post was so filled up by way of direct recruitment.

14. I have heard the learned counsels appearing for the petitioners and

also perused the materials available on record.

15. It is not disputed that the petitioner herein was appointed as a whole time Lecturer for a period of 6(six) months. Thereafter, the petitioner has not brought on record any materials to demonstrate that she was appointed on a continuous basis in the said college as a Lecturer in the Department of Economics in the said college.

16. The Director of Higher Secondary Education, Assam by way of filing an affidavit in the matter had contended that the petitioner was appointed for short durations w.e.f. 1991 till February, 1996 and she was never issued with an order of appointment on regular basis. The said contention as made by the Director of Higher Secondary Education, Assam, was not disputed by the petitioner herein. The petitioner contends that she was also at the relevant point of time, working as an NCC officer in the said college and was paid an honorarium for the purpose.

17. The basis of the claim of the petitioner in the present proceeding, in addition to the order passed by this Court in the earlier round of litigation, happens to be the enquiry report as submitted by the Enquiry Committee constituted by the Special Body of the college on 21.01.2001. It is found that the said enquiry report was considered by this Court, vide its Judgment and order dated 28.01.2003 in Civil Rule No. 2587/1997 and thereafter, had required the respondent no. 3 to take a final decision in the matter with regard to the appointment of the petitioner as Lecturer in the Department of Economics of the said college. The said decision was taken by the Director of Higher Education, Assam vide order dated 22.06.2004. The Director of Higher Education, Assam, in the said order dated

22.06.2004, after noticing the facts as existing in the matter, had concluded that he is not the authority to create any posts and the government may be pleased to create a post of Lecturer to accommodate the petitioner in terms of the directions as passed by this Court. The Director, Higher Education, Assam further required the college authorities to submit necessary proposal for diversion of post of Lecturer to the Economics department to accommodate the petitioner.

18. After the passing of the said order dated 22.06.2004, it is seen that the petitioner have not initiated any steps in the matter for assailing the inaction on the part of the authorities in appointing the petitioner against the post of Lecturer, till 19.08.2015, when the present proceeding was so instituted. This Court, vide the order dated 28.01.2003, having required the Director, Higher Education, Assam to take a final decision in the matter and such decision having been taken by the Director, Higher Education, Assam; vide the order dated 22.06.2004, the matter had come to an conclusion at that point of time itself, i.e. on 22.06.2004.

19. The respondent State had in the year 2005 had enacted the "Assam College Employees (Provincialization) Act, 2005" and various colleges under the Deficit Grants in Aid system were provincialized under the provisions of the said Act of 2005.

20. After 2005, the recruitment to the post as figuring in a provincialized college being regulated by the provisions of the Act of 2005, the case of the petitioner for appointment as a Lecturer in the Department of Economics of the college in question has now to be so done, strictly, in accordance with the provisions of the said Act of 2005.

21. The Act of 2005, having not mandated the process of regularization of services to the one of the manner of recruitment, the respondent authorities herein could not have resorted to the said mode, which would have been in violation of the statutory provisions of the Act of 2005.

22. The provisions of Section 6 of the Act, being relevant is extracted herein below. Further, the provisions of Rule 5 and Rule 7 of the said Rules, being of relevance to the issue arising in the present proceeding is also extracted herein below:-

“The Assam College Employees (Provincialization) Act, 2005”.

“6. Selection and appointment of employees--Appointments of both teaching and non-teaching posts in the Colleges shall be made by the Director of Higher Education, Assam, on the basis of selection and recommendation of the Governing Body of the respective College in accordance with the Rules and Procedure of the Government in force.”

“The Assam College Employees (Provincialization) Rules, 2010”.

“5. Method of Recruitment—Recruitment shall be made in the manner prescribed hereinafter.

(1) Appointment to the post of Principal shall be by direct selection. For this the Governing Body shall constitute a Selection Committee, which shall select a person on the basis of an interview from amongst eligible candidates who apply in response to an open advertisement in newspapers. The Governing Body shall recommend this candidate to the Director, who shall issue orders of appointment.

(2) For the post of Lecturer/Librarian appointment shall be made by

direct recruitment with prescribed qualifications through open advertisement in two leading dailies at least in two consecutive issues. In respect of Grade III and Grade IV posts the list of candidates shall be collected from the local employment exchange/Advertisement in newspaper.

(3) Appointment to Head Assistant shall be made by promotion from the cadre of Upper Division Assistants on the basis of seniority cum merit.

4) Appointment to the post of Upper Division Assistant shall be made on promotion from Lower Division Assistants/Laboratory Assistant/Library Assistants on the basis of Seniority cum merit.

(5) The Post of Lower Division Assistant, Laboratory Assistant, Library Assistant shall be filled up by direct recruitment and from Laboratory Bearers/Library Bearers/Grade IV having qualification as prescribed in the ratio of 75:25.

(6) Placement of Lectures/Librarians in Selection Grade/ Senior Grade Scale of pay shall be done by the Governing Body as per Rules prescribed by the UGC and the State Government from time to time on the recommendations of the Departmental Promotion Committee.

(7) In all these cases, the Governing Body shall conduct the selection process and recommend to the Director, who shall issue orders of appointment.

7. Direct Recruitment.-

(a) All appointment either by direct recruitment or by promotion shall be made by the Director on the basis of recommendations of the Governing Body based on the recommendations of the Selection Committee/Departmental Promotion Committee duly constituted;

- (b) The Director shall communicate his orders within thirty days;*
- (c) The Selection Committee may hold such test of inter- view for all posts as may be considered necessary. For posts for which UGC has prescribed norms, no candidate shall be recruited without having the required norms;*
- (d) All fresh appointments shall be made on receipt of police verification report.”*

23. The Act of 2005 and the Rules of 2010 having laid down the manner in which the appointments to the post of Assistant Professor is to be made, the respondent authorities cannot deviate there from and has to confirm to the said procedure while effecting appointments against the post of Lecturer in a provincialized college. Accordingly, the petitioner not having possessed the UGC norms, mandated for appointment as a Lecturer in a provincialized college, her case cannot be directed to be so considered. Further the prayer of the petitioner for regularization being in violation of the prescriptions made in the said Act and Rule, the same would also be not permissible to be so considered.

24. This Court, in view of the above conclusion drawn, would draw support from the decision of the Hon'ble Supreme Court in the case of *Union of India Vs Mahendra Singh*, reported in (2022) SCC Online SC 909, wherein, the Court held that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. The conclusions as drawn by the Hon'ble Supreme Court in the matter, being relevant is extracted herein below:-

“14. The argument of Mr. Bhushan that use of different language is not

followed by any consequence and, therefore, cannot be said to be mandatory is not tenable. The language chosen is relevant to ensure that the candidate who has filled up the application form alone appears in the written examination to maintain probity. The answer sheets have to be in the language chosen by the candidate in the application form. It is well settled that if a particular procedure in filling up the application form is prescribed, the application form should be filled up following that procedure alone. This was enunciated by Privy Council in the Nazir Ahmad v. King-Emperor, wherein it was held that "that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden."

15. A three Judge Bench of this Court in a judgment reported as Chandra Kishore Jha v. Mahavir Prasad, held as under:

"17....It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. (See with advantage: Nazir Ahmad v. King Emperor [(1935- 36) 63 IA 372 AIR 1936 PC 253 (2)], Rao Shiv Bahadur Singh v. State of V.P. [AIR 1954 SC 322: 1954 SCR 1098], State of U.P. v. Singhara Singh (AIR 1964 SC 358 (1964) 1 SCWR 57].) An election petition under the rules could only have been presented in the open court up to 16-5-1995 till 4.15 p.m. (working hours of the Court) in the manner prescribed by Rule 6 (supra) either to the Judge or the Bench as the case may be to save the period of limitation. That, however, was not done....."

16. The said principle has been followed by this Court in Cherukuri Mani v. Chief Secretary, Government of Andhra Pradesh wherein this Court held as under:

14. Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the

same manner following the provisions of law, without deviating from the prescribed procedure.....

17. Similarly, this Court in Municipal Corporation of Greater Mumbai (MCGM) v. Abhilash Lal and OPTO Circuit India Limited v. Axis Bank has followed the said principle. Since the advertisement contemplated the manner of filling up of the application form and also the attempting of the answer sheets, it has to be done in the manner so prescribed. Therefore, the reasoning given by the Division Bench of the High Court that on account of lapse of time, the writ petitioner might have attempted the answer sheet in a different language is not justified as the use of different language itself disentitles the writ petitioner from any indulgence in exercise of the power of judicial review.”

25. This Court would also refer to a decision of the Hon’ble Supreme Court in the case of *State of Gujarat & Ors. Vs R. J. Pathan & Ors.*, reported in 2022 5 SCC 394, wherein, a direction of the High Court, for absorption and regularization of the services of the respondent therein, sympathetically and if necessary, by creating a supernumerary post was under consideration. The Hon’ble Supreme Court on consideration of the said issue proceeded to draw the following conclusions:-

“11. Therefore, when the respondents were appointed on a fixed term and on a fixed salary in a temporary unit which was created for a particular project, no such direction could have been issued by the Division Bench of the High Court to absorb them in Government service and to regularise their services. The High Court has observed that even while absorbing and/or regularising the services

of the respondents, the State Government may create supernumerary posts. Such a direction to create supernumerary posts is unsustainable. Such a direction is wholly without jurisdiction. No such direction can be issued by the High Court for absorption/regularisation of the employees who were appointed in a temporary unit which was created for a particular project and that too, by creating supernumerary posts.

12. From the impugned judgment and order passed by the Division Bench of the High Court, it appears that what has weighed with the High Court was that the respondents were continued in service for a long time i.e. seventeen years. However, the High Court has not considered that out of seventeen years, the respondents continued in service for ten years pursuant to the interim order passed by the High Court. Therefore, even considering the decision of this Court in Umadevi (3), the period for which the employees have continued in service pursuant to the interim order is to be excluded and not to be counted. The High Court has totally missed the aforesaid aspect.

13. Now, so far as the reliance placed upon the decision of this Court in Umadevi (3) and the subsequent decision of this Court in Narendra Kumar Tiwari, relied upon by the learned counsel appearing on behalf of the respondents is concerned, none of the aforesaid decisions shall be applicable to the facts of the case on hand. The purpose and intent of the decision in Umadevi (3) was, (1) to prevent irregular or illegal appointments in the future, and (2) to confer a benefit on those who had been irregularly appointed in the past and who have continued for a very long time. The decision of Umadevi (3) may be applicable in a case where the appointments are irregular on the sanctioned posts in regular establishment. The

same does not apply to temporary appointments made in a project/programme.

14. Even in Narendra Kumar Tiwari also, it was a case of irregularly appointed employees. Even otherwise, in view the facts and circumstances of Narendra Kumar Tiwari, the said decision shall not be applicable to the facts of the case on hand. The case before this Court was with respect to the employees working with the State of Jharkhand which was created only on 15-11-2000 and therefore it was contended on behalf of the irregularly appointed employees that no one could have completed ten years of service with the State of Jharkhand on the cut- off date of 10-4-2006, which was the cut-off date fixed under the relevant rules of the State of Jharkhand.

15. Even otherwise, it is to be noted that though not required, the State, instead of putting an end to the services of the respondents, graciously placed the respondents in the Indian Red Cross Society. No duty was cast upon the State to transfer them to another establishment in a case where it is found that the employees are appointed in a temporary unit and on a temporary contractual basis and on a fixed term salary and on closure of the temporary unit, their services are not required. However, the State Government was gracious enough to place the respondents in the Indian Red Cross Society, which the respondents did not accept.

16. From the impugned order passed by the Division Bench of the High Court it appears that the High Court has observed hereinabove that in the peculiar facts and circumstances of the case, it is directed that the order of absorption and regularisation and if necessary, by creating supernumerary posts, will not be treated as

a precedent in other cases. Even such a direction could not have been passed by the Division Bench of the High Court as there were no peculiar facts and circumstances which warranted the above observation. No such order of absorption and/or regularisation even if required for creating supernumerary posts and not to treat the same as precedent could have been passed by the High Court in exercise of powers under Article 226 of the Constitution of India.

26. Applying the decisions of the Hon'ble Supreme Court, noticed herein above, to the facts of the present matter, the petitioners service in the college, in question, not being of a permanent nature and given the express provisions as made in the said Act of 2005 and the Rules of 2010 towards regulating the manner and method of recruitment against the post of Lecturer (Assistant Professor), it would not be open to this Court to issue any directions to the respondent to proceed to regularize the services of the petitioner herein, even as a onetime measure.

27. At this stage, it would be required to consider the contentions of the petitioner that a vacancy of Assistant Professor, having arisen in the year 2018 in the department of Economics of the said college and the Governing Body having resolved to accommodate the petitioner against the said post, the filling up of the same by way of Direct Recruitment, under the directions of the departmental authorities had violated the directions passed by thjs Court vide order dated 28.01.2003 in Civil Rule No. 2587/1977, and also thereby deprived the petitioner of her valuable right to hold a post in the college on regular basis. It is also to be noticed that the petitioner had further contended that vacancies are available

against the post of Assistant Professor in other department and her case could be considered by transferring such post to the Economics department. The said contentions of the petitioner, on consideration, it is seen that the vacant posts as referred to had all arisen after the coming into force of the said Act of 2005 and the Rules of 2010. The said vacancies, accordingly, cannot be now directed to be filled up in a manner contrary to the procedure so mandated under the said statutory enactments. As such, the said contentions of the petitioner cannot be countenanced.

28. Having drawn the above conclusions, it is reiterated that the petitioner, not being in service since 1996 and the directions as passed by this Court in the earlier round of litigation, vide Judgment and Order, dated 28.01.2003 in Civil Rule No. 2587/1997, having been complied with by the Director of Higher Education, Assam; vide order dated 22.06.2004 and the same having not been challenged by the petitioner till the institution of the present proceedings, and in the meanwhile the Act of 2005 having been brought into force, provincializing the college and therein a particular mode having been prescribed for recruitment against the post of Lecturer (now Assistant Professor), this Court, would not be in a position to direct for regularization of the services, inasmuch as, the same would be in clear violation of the statutory mandate of the provisions of the said Act of 2005 and the Rules there under of 2010.

29. In view of the above conclusions, the directions as sought for by the petitioner in the present proceeding cannot be granted by this Court in view of the express provisions of "The Assam College Employees

(Provincialization) Act, 2005” and “The Assam College Employees (Provincialization) Rules, 2010. Accordingly, the writ petition is held to be devoid of any merit and the same stands dismissed. However, there would be no order as to costs.

JUDGE

Comparing Assistant