

GAHC020007122022



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

Case No. : WP(C)/279/2022

MR E NZANTHUNG JAMI AND 57 ORS
GRADUATE TEACHER (2013 SSA AND RMSA BATCH) UNDER THE
DEPARTMENT OF SCHOOL EDUCATION

2: CHENITHUNG Z. KITHAN
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

3: B NZANO HUMTSOE
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

4: M RENBENI HUMTSOE
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

5: RENCHAMO NGULLIE
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

6: TUMBEMO W KIKON
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

7: THUNGRENI Y. TSOPOE
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

8: ARHOMO E YANTHAN
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

9: N APANTHUNG ODYUO
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

10: CATHERINE M LOTHIA
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

11: ACHAMO R HUMTSOE
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

12: T JOHN HUMTSOE
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

13: K LUCY
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

14: R THUNGCHIBENI HUNTSOE
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

15: AVANI C
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

16: LICHONTHUNG JAMI
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

17: T THUNGDEMO KITHAN
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

18: N ZAYIO NGULLIE
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

19: L VUNTHUNGO EZUNG
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

20: Z. MHABENO NGULLIE
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

21: Y ELITHUNG MURRY
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

22: WONCHIBENI EZUNG
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

23: Y WONCHIBENI LOTHAN
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

24: Y IRENA NGULLIE
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

25: C RENTHUNGLO KITHAN
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

26: TIMOTHY J KIKON
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

27: ETHUNGBENI NGULLIE
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

- 28: N LIRENTHUNG TUNGOE
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)
- 29: RENBONTHUNG OVUNG
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)
- 30: P MHAYANI JAMI
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)
- 31: P NZANMONGI NGULLIE
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)
- 32: P. EPIBENI JAMI
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)
- 33: MHATHUNG ODYUO
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)
- 34: Z RHONDENO KIKON
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)
- 35: BENATHUNG P KITHAN
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)
- 36: ABEMO EZUNG
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)
- 37: M LICHANTHUNG LOTH A
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)
- 38: RENCHUMI M TSOPOE LOTH A
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)
- 39: M YANSATHUNG ODYUO
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)
- 40: MYANTHUNG N ODYUO
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)
- 41: MHATHUNG LOTH A
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)
- 42: JOEL AMONGSHAN KINGHEN
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)
- 43: MHONYANI LOTH A
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

44: ACHILO Y HUMTSOE
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

45: PHYOBEMO W KITHAN
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

46: RENBENTHUNG MURRY
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

47: N BENTHUNGO TSOPOE
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

48: N LIBENTHUNG NGULLIE
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

49: Y ZUCHILO LOTHAN
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

50: L CHUMREMO EZUNG
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

51: NCHUMTHUNG PATTON
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

52: EUNICE A OVUNG
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

53: Y SENKATHUNG MURRY
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

54: LOCHUMBENI PATTON
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

55: ERENBENI N ODYUO
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

56: LICHUMBENI N ODYUO
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

57: ALBERT SHITIRI
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

58: MERENJUNGSHI
GRADUATE TEACHER (2013 SSA AND RMSA BATCH)

VERSUS

THE STATE OF NAGALAND AND 3 ORS

REPRESENTED BY THE CHIEF SECRETARY , GOVT. OF NAGALAND

2:THE COMMISSIONER AND SECRETARY
P AND AR DEPARTMENT

3:THE COMMISSIONER AND SECRETARY
DEPARTMENT OF SCHOOL EDUCATION NAGALAND

4:THE PRINCIPAL DIRECTOR
DIRECTORATE OF SCHOOL EDUCATIO

Linked Case : WP(C)/278/2022

MR. N NCHUMTHUNG AND 25 ORS
GRADUATE TEACHER (2010 SSA BATCH) UNDER THE DEPARTMENT
OF SCHOOL EDUCATION

2: MHONBENI MURRY
GRADUATE TEACHER (2010 SSA BATCH) UNDER THE DEPARTMENT
OF SCHOOL EDUCATION

3: N ABENTHUNG KITHAN
GRADUATE TEACHER (2010 SSA BATCH) UNDER THE DEPARTMENT
OF SCHOOL EDUCATION

4: ACHUMLO N. HUMSTOE
GRADUATE TEACHER (2010 SSA BATCH) UNDER THE DEPARTMENT
OF SCHOOL EDUCATION

5: KHYOPENTHUNG JAMES Y KIKON
GRADUATE TEACHER (2010 SSA BATCH) UNDER THE DEPARTMENT
OF SCHOOL EDUCATION

6: M BENCHUMLO HUMTSOE
GRADUATE TEACHER (2010 SSA BATCH) UNDER THE DEPARTMENT
OF SCHOOL EDUCATION

7: T YILOBENI EZUNG
GRADUATE TEACHER (2010 SSA BATCH) UNDER THE DEPARTMENT
OF SCHOOL EDUCATION

8: RENPONTUNG ODYUO
GRADUATE TEACHER (2010 SSA BATCH) UNDER THE DEPARTMENT
OF SCHOOL EDUCATION

9: MOAINLA MURRY
GRADUATE TEACHER (2010 SSA BATCH) UNDER THE DEPARTMENT

OF SCHOOL EDUCATION

10: Y LIBENTHUNG MURRY
GRADUATE TEACHER (2010 SSA BATCH) UNDER THE DEPARTMENT
OF SCHOOL EDUCATION

11: L YANBEMO ENYIO
GRADUATE TEACHER (2010 SSA BATCH) UNDER THE DEPARTMENT
OF SCHOOL EDUCATION

12: RENPENTHUNG W PATTON
GRADUATE TEACHER (2010 SSA BATCH) UNDER THE DEPARTMENT
OF SCHOOL EDUCATION

13: A STEPHEN PATTON
GRADUATE TEACHER (2010 SSA BATCH) UNDER THE DEPARTMENT
OF SCHOOL EDUCATION

14: R YIBEN HUMTSOE
GRADUATE TEACHER (2010 SSA BATCH) UNDER THE DEPARTMENT
OF SCHOOL EDUCATION

15: ALENO NGUKHA
GRADUATE TEACHER (2010 SSA BATCH) UNDER THE DEPARTMENT
OF SCHOOL EDUCATION

16: RAMPAUNA THRU
GRADUATE TEACHER (2010 SSA BATCH) UNDER THE DEPARTMENT
OF SCHOOL EDUCATION

17: IMKONGWABANG
GRADUATE TEACHER (2010 SSA BATCH) UNDER THE DEPARTMENT
OF SCHOOL EDUCATION

18: DINA
GRADUATE TEACHER (2010 SSA BATCH) UNDER THE DEPARTMENT
OF SCHOOL EDUCATION

19: T ASANGLA
GRADUATE TEACHER (2010 SSA BATCH) UNDER THE DEPARTMENT
OF SCHOOL EDUCATION

20: CHUBAYANGLA
GRADUATE TEACHER (2010 SSA BATCH) UNDER THE DEPARTMENT
OF SCHOOL EDUCATION

21: LIANARO
GRADUATE TEACHER (2010 SSA BATCH) UNDER THE DEPARTMENT

OF SCHOOL EDUCATION

22: N W AYANGLA
GRADUATE TEACHER (2010 SSA BATCH) UNDER THE DEPARTMENT
OF SCHOOL EDUCATION

23: ODIKUMLA
GRADUATE TEACHER (2010 SSA BATCH) UNDER THE DEPARTMENT
OF SCHOOL EDUCATION

24: IMODANGBA
GRADUATE TEACHER (2010 SSA BATCH) UNDER THE DEPARTMENT
OF SCHOOL EDUCATION

25: L MAYANGER
GRADUATE TEACHER (2010 SSA BATCH) UNDER THE DEPARTMENT
OF SCHOOL EDUCATION

26: L KIKATULA
GRADUATE TEACHER (2010 SSA BATCH) UNDER THE DEPARTMENT
OF SCHOOL EDUCATION
VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY
GOVT. OF NAGALAND
NAGALAND KOHIMA

2:THE COMMISSIONER AND SECRETARY
P AND AR DEPARTMENT NAGALAND KOHIMA

3:THE COMMISSIONER AND SECRETARY
DEPARTMENT OF SCHOOL EDUCATION
NAGALAND KOHIMA

4:THE PRINCIPAL DIRECTOR
DIRECTORATE OF SCHOOL EDUCATION
NAGALAND KOHIMA

For the Petitioner(s) : Mr. N. Mozhui, Advocate

For the Respondent(s) : Ms. V. Suokhrie, Addl. Advocate General

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 10.06.2024

Date of Judgment : 10.06.2024

JUDGEMENT AND ORDER (ORAL)

Heard Mr. N. Mozhui, the learned counsel appearing on behalf of the Petitioners in the instant two writ petitions and Ms. V. Suokhrie, the learned Additional Advocate General, Nagaland appearing on behalf of the State respondents.

2. The instant two writ petitions are taken up for disposal by this common judgment and order taking into account the similarity of the facts involved.

3. In the instant two writ petitions, the Petitioners herein had assailed the notification dated 02.09.2022 to the limited extent whereby the seniority of the Petitioners who were recruited in the year 2010 and 2013 have been placed below the teachers appointed on regular basis or whose services have been regularized. The inter-seniority list prepared pursuant thereto and the notification dated 27.09.2022 is also assailed as the Petitioners' seniority position have been put below the teachers who were appointed on regular basis much after their appointment orders pursuant to the recruitment done in the year 2010 and 2013.

4. From the record, it reveals that vide notification dated

20.10.2009, 210 (two hundred and ten) temporary posts of Graduate Teachers (Non-Gazetted) for 70 (seventy) Government Middle Schools under the School Education Department @3 teachers i.e. one teacher each for English, Science and Maths for each School as indicated in the enclosure attached in the pay scale of Rs. 5000-150-8000/- per month along with other allowances as admissible under the rules in force in Nagaland from time to time were created. From the said notification, it further reveals that the expenditure was debitable to the Head of Accounts 2202-01-101(2) under the plan Centrally Sponsored Scheme expenditure. Clause 3 of the said notification further stipulates that the post of teachers would continue to function even if the Sarva Shiksha Abhiyan (SSA) Program is wound-up and the procedure to be followed for payment of the salaries. It was stipulated in Clause No. 4 of the said notification that the said creation of the posts was issued with the clearance of the P&AR Department, approval of the Cabinet, concurrence of the Finance Department and clearance by the Planning Department. Taking into account the relevance of the said notification dated 20.10.2009, the same is reproduced herein under:-

“GOVERNMENT OF NAGALAND
SCHOOL EDUCATION DEPARTMENT
NOTIFICATION

Dated Kohima the 20th Oct, 2009

No.RDS/SSA-CPA/009-2008(I) : The governor is pleased to accord sanction for creation of two hundred ten (210) temporary posts of Graduate Teacher (Non-Gazetted) for seventy (70) Government Middle Schools under School Education Department at the rate of three (3) teachers i.e. one teacher each for English, Science and Maths for each school as indicated in the annexure attached in the

pay scale of Rs.5000-150-8000/- per month plus all other allowances as are admissible under rules in force in Nagaland from time to time.

2. The expenditure is debitable to the Head of Account 2202-01-101(1) under Plan (CSS) expenditure.

3. The posts of teachers will continue to function even if the Sarva Shiksha Abhiyan (SSA) programme is wound-up and the following procedures will be followed for payment of salaries.

(i) The State Mission Authority (SMA) shall deposit the requirement of salaries for these teachers to the State Government Account through Treasury Challan quarterly on the basis of the availability of fund till such time the SSA continues.

(ii) The teachers appointed against this creation shall have to draw their pay and allowances at par with other teachers and by following the normal procedures of the State Government in all respect.

(iii) After winding up of SSA Mission, the salary and other benefits of these teachers shall have to be borne by the State Government.

4. This issues with the clearance of P&AR Department vide their U.O. No.185 dated 11th August, 2009, approval of the Cabinet vide their Office Memorandum No.CAB-2/2008 dated 18th August, 2009 concurrence of Finance Department vide their FRC No.31/112 dated 22nd September, 2009 and clearance of Planning Department vide their U.O. No.2068 dated 22nd September, 2009.

SD/Banuo Z. Jamir

Additional Chief Secretary to the Government of Nagaland"

5. On the same date, another notification was issued, bearing

No.EDS/SSA-CPA/009-2008(II) containing similar conditions but was in respect to creation of 268 temporary posts of Under Graduate Teacher (Non-Gazetted).

6. The record further reveals that on 21.03.2011, the Governor of Nagaland further created 2,606 temporary posts of teachers under the Sarva Shiksha Abhiyan (SSA) under the Department of School Education, Nagaland. In terms with the said Notification dated 21.03.2011, 1271 number of posts of teachers created against 1007 Primary Schools and 1335 posts of teachers created against 449 Middle Schools. The said notification dated 21.03.2011 being relevant is reproduced herein under:-

“GOVERNMENT OF NAGALAND
SCHOOL EDUCATION DEPARTMENT
NOTIFICATION

Dated Kohima the 21st March, 2011

No.DSE/RS/2011 : The Governor is pleased to accord sanction for creation of 2606 (Two Thousand Six Hundred Six) only Temporary posts of Teachers created under Sarva Shiksha Abhiyan (SSA) under the Department of School Education, Nagaland, in the revised Pay Band PB-1 5200-20200 with Grade Pay of Rs.2400 PM for Primary Teachers and for Graduate Teacher Pay Band PB-2 9300-34800 with Grade Pay of Rs.4200 PM including all other allowances as are admissible under rules in force in Nagaland from time to time with effect from the date of issue of this order.

1. Statement showing 1271 number of posts of teachers against 1007 Primary Schools and 1335 number of posts of teachers against 449 Middle Schools under the SSA programme. Department of School Education,

Nagaland as on 01.03.2011 as per Annexure I & II.

2. *This is a Plan Expenditure under Sarva Shiksha Abhiyan (CSS).*
3. *The pay and allowance will be drawn from the Department of School Education Demand No.31, and the expenditure is debitable to the Head of Account 2202-General Education 2201-01, Elementary Education-101 2202-01-101 (1) (2) Primary Schools, Middle Schols, against Sarva Shiksha Abhiyan SSA Plan (CSS).*
4. *The State Mission Authority SSA shall deposit the requirement of Salaries for the Officers appointed against the above Post creation into the State Government Account through Treasury Challan against the Head of Account mentioned above, on the basis of which the salaries will be released on issue of necessary instruction by the Finance Department, Nagaland.*
5. *The Director of School Education, Nagaland shall maintain separate Head of Account for Booking the Salary Expenditure for the Post created.*
6. *The Department of School Education shall clearly specify the Terms and Conditions of appointment in the appointment order indicating that the appointments are through funding under SSA programme.*
7. *The Director of School Education, Nagaland and State Mission Director SSA must immediately process for recruitment of teachers against the post sanctioned with the approval of the Government.*
8. *This issue with the approval of the Cabinet vide Office Memorandum No.CAB-2/2008 dated 18.02.2011.*
9. *Meanwhile the Department of School Education is taking up for Ex-facto clearance of the P&AR Department and Finance concurrence.*

Sd/- (IMKONGLEMBBA AO) IAS

Commissioner & Secretary to the

Government"

7. Subsequent thereto, vide another notification dated 15.06.2011 bearing notification No. DSE/RS/2011 another 482 posts were created by the Governor of Nagaland under the Department of School Education (RMSA). The said notification categorically mentions that the planned expenditure under the Rashtriya Madhyamik Shiksha Abhiyan (RMSA) the pay and allowances would be drawn from the Department of School Education under the Rashtriya Madhyamik Shiksha Abhiyan under the Centrally Sponsored Scheme expenditure. The said notification being also relevant is reproduced herein under:-

“GOVERNMENT OF NAGALAND
SCHOOL EDUCATION DEPARTMENT
NOTIFICATION

Dated Kohima the 15th June, 2011

No.DSE/RS/2011 :: The Governor of Nagaland is pleased to accord sanction for creation of 482 (Four hundred eighty two) Temporary posts of various categories under the Department of School Education (RMSA) in the revise scale of pay plus all other allowances as are admissible under rules in force in Nagaland from time to time with effect from the date of issue of this order as per details indicated below.

(ix) 35 (Thirty five) post of headmaster in the newly upgraded High Schools in the scale of pay of PB-3 15600-39100 Grade Pay 5400/- PM.

(x) 35 (Thirty five) post of Mathematics in the newly upgraded High Schools in the scale of pay of PB-2 9300-34800 Grade Pay 4200/- PM.

(xi) 35 (Thirty five) post of Science in the newly upgraded High Schools in the scale of pay of PB-2 9300-34800 Grade Pay 4200/- PM.

(xii) 35 (Thirty five) post of English in the newly upgraded High Schools

in the scale of pay of PB-2 9300-34800 Grade Pay 4200/- PM.

(xiii) 105 (One hundred five) post of other subjects in the newly upgraded High Schools and 05 (five) for existing schools in Nagaland in the scale of pay of PB-2 9300-34800 Grade Pay 4200/- PM.

(xiv) 35 (Thirty five) post of Physical Instructors in the newly upgraded High Schools in the scale of pay of PB-1 5200-20200 Grade Pay 2400/- PM.

(xv) 35 (Thirty five) post of Laboratory Assistant in the newly upgraded High Schools and 127 (One hundred twenty seven) for existing Schools in Nagaland in the scale of pay of PB-1 5200-20200 Grade Pay 2400/- PM.

(xvi) 35 (Thirty five) post of Duftry in the newly upgraded High Schools in the scale of pay of PB-2 5200-20200 Grade Pay 1800/- PM.

2. Detail number of post of Teachers against 482 (Four hundred eighty two) Temporary posts of various categories under Rastriya Madhyamik Shiksha Abhiyan (RMSA) Department of School Education.

3. This is a Plan expenditure under Rastriya Madhyamik Shiksha Abhiyan (RMSA).

4. The pay and allowances will be drawn from the Department of School Education Demand No.31, 2202 General Education 2202-01 Secondary Education 2202-01 (Illegible) Secondary Education under Rastriya Madhyamik Shiksha Abhiyan (RMSA) under Plan (CSS) expenditure.

Sd/-

(T. IMKONGLEMB A O) IAS

Commissioner & Secretary to the Government"

8. From the aforementioned notifications, it would be seen that

these posts were created and sanctioned by the Governor of Nagaland in respect to the Central Government Sponsored Schemes being the Sarva Shiksha Abhiyan (SSA) and the Rashtriya Madhyamik Shiksha Abhiyan (RMSA). Be that as it may, on the basis of the creation of posts vide the aforesaid notifications, advertisements were issued by the Director of School Education on various dates and on the basis of the said advertisements, recruitments were carried out wherein the Petitioners along with others were duly appointed as Graduate Teachers and Primary Teachers. Thereupon, the Petitioners after their appointments alleged that they were allowed to subscribe to the New Pension Scheme of the Government of Nagaland and they continued to render their duties. It has also been alleged that Service Books were also maintained for the Petitioners as required for the teachers working in the regular cadre of the Government of Nagaland. Thereupon on 02.09.2022, on the basis of a decision taken in the Cabinet on 21.04.2022, a total of 2290 Teachers appointed under the Sarva Shiksha Abhiyan (SSA) and Rashtriya Madhyamik Shiksha Abhiyan (RMSA) of 2010 and 2013 were brought within the fold of the State Education Cadre w.e.f. 21.04.2022 and in that regard a notification was issued on 02.09.2022 wherein it was mentioned that the Seniority of the 2010 Sarva Shiksha Abhiyan batch and the 2013 Sarva Shiksha Abhiyan and Rashtriya Madhyamik Shiksha Abhiyan batches shall be marked immediately below that of teachers already appointed on regular basis or whose services have been regularized. On the basis of the said notification dated 02.09.2022, the inter-se-Seniority list was also prepared for the Graduate Teachers of the Elementary and

Secondary Cadre of the School Education Department and notified vide the notification dated 27.09.2022. The Petitioners herein being aggrieved by their seniority position in view of the notification dated 02.09.2022 have approached this Court by filing the instant batch of writ petitions.

9. The record reveals that this Court pursuant to filing of the batch of writ petitions had issued notice and the Respondents have filed their affidavit-in-opposition stating inter alia that the appointments so made to the Petitioners were under the Centrally Sponsored Scheme i.e. Sarva Shiksha Abhiyan (SSA) and Rashtriya Madhyamik Shiksha Abhiyan (RMSA) and as such it was on account of Cabinet decision taken on 21.04.2022, the Petitioners were brought within the fold of the regular cadre of the State of Nagaland. Under such circumstances, their seniority has to be taken into account on the basis of as and when the Petitioners were brought within the fold of the general cadre of the State of Nagaland and in that case, taking into account the Cabinet decision, the Petitioners were brought within the ambit of State cadre w.e.f. 21.04.2022.

10. In the backdrop of the above facts, let this Court take note of the respective submissions made on behalf of the Petitioners as well as the Respondents.

11. Mr. N. Mozhui, the learned counsel appearing on behalf of the Petitioners submitted that the Governor of Nagaland created posts and on the basis of creation of those posts, the Petitioners were duly appointed. The learned counsel therefore submitted that as the posts

were created by the State of Nagaland, the appointments made thereupon has to be construed as appointments made to the regular cadre of the Government of Nagaland. He further submitted that the Respondent Authorities all along had treated the Petitioners as belonging to the regular cadre of the Government of Nagaland taking into account that the Petitioners were allowed to subscribe to the pension and also some of the Petitioners have been granted the Modified Assured Career Progression Scheme. He therefore submitted that in the instant cases, the Petitioners, therefore could not now be again brought within the regular cadre of the State of Nagaland taking into account that the Petitioners all along from the date of appointment have been within the regular cadre of the Government of Nagaland. The learned counsel for the Petitioners further submitted that not only the Offices of the State Government have treated the Petitioners in the regular cadre of the Government of Nagaland but also it is their specific case in the earlier rounds of litigations that the appointees in the 2010 and 2013 batches belonged to the regular State cadre of the State of Nagaland. The learned counsel further submitted that as a consequence of the said notification dated 02.09.2022 whereby the petitioners now have been brought within the State Education Cadre w.e.f. 21.04.2022 would affect the Petitioners' inter-se-seniority and may result in depriving the Petitioners' of their rights which already accrued upon the Petitioners. In that regard, the learned counsel for the Petitioners referred to the following judgments:

- (i) ***Amarendra Kumar Mohapatra and Others Vs. State of Orissa and Others reported in (2014) 4 SCC 583*** (para 17)

- (ii) ***Siraj Ahmad Vs. State of Uttar Pradesh and Others*** reported in ***(2020) 19 SCC 480*** (para 19 and 20)
- (iii) ***Union of India and Another Vs. Manpreet Singh Poonam and Others*** reported in ***(2022) 6 SCC 105*** (para 21)
- (iv) ***Joint Action Committee of Airlines Pilots Associations of India (ALPAI) and Others Vs. Director General of Civil Aviation and Others*** reported in ***(2011) 5 SCC 435*** (para 11 and 12)
- (v) ***Bhagwat Sharan (dead through Legal Representatives) Vs. Purushottam and Others*** reported in ***(2020) 6 SCC 387*** (para 26 and 27)
- (vi) ***ABCD Vs. Union of India and Others*** reported in ***(2020) 2 SCC 52*** (para 16 and 18)
- (vii) ***Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra and Others*** reported in ***(1990) 2 SCC 715*** (para 47)

12. On the other hand, Ms. V. Suokhrie, the learned Additional Advocate General on the basis of the affidavit-in-opposition submitted that from the notifications on the basis of which the posts were created, it would be seen that the posts were created in respect to Centrally Sponsored Scheme. The payments were to be made by the Central Government in relation with Sarva Shiksha Abhiyan (SSA) and Rashtriya Madhyamik Shiksha Abhiyan (RMSA) and as such the posts which were created could not have been the post within the State Education Cadre until the Cabinet had taken a decision on 21.04.2022 to bring this 2290 teachers appointed under the Sarva Shiksha Abhiyan (SSA) and Rashtriya Madhyamik Shiksha Abhiyan (RMSA) of 2010 and

2013 batches to the State Education Cadre. The learned Additional Advocate General further drew the attention of this Court to the judgment of the Supreme Court in the case of ***Dhyan Singh and Others Vs. State of Haryana and Others reported in (2002) 10 SCC 656*** as well as the judgment of the Supreme Court in the case of ***Parmeshwar Nanda and Others Vs. State of Jharkhand through Chief Secretary and Others reported in (2020) 12 SCC 131***.

13. This Court had also made a query upon the learned Additional Advocate General for the State Respondents as to what would be the fate of the Petitioners herein who have already subscribed to the pension scheme in view of the notification dated 02.09.2022 whereby the Petitioners herein were brought within the fold of the State Education Cadre only w.e.f. 21.04.2022. Further to that, this Court also put a specific query upon the learned Additional Advocate General for the State Respondents as to whether the Petitioners herein and more particularly the batch of 2010 who have been already granted the Modified Assured Career Progression Scheme would be deprived of their benefits and recovery proceedings would be initiated against them.

14. To the aforementioned two specific pointed queries, Ms. V. Suokhrie, the learned Additional Advocate General submitted upon instructions that the Petitioners who have subscribed to the Pension scheme, the benefits which have already been accrued to the Petitioners on the basis of the said subscription would not be disturbed. On the question of grant of Modified Assured Career

Progression Scheme, the learned Additional Advocate General submitted that none of the Petitioners ought to have been granted the benefits of Modified Assured Career Progression Scheme taking into account that they were not Government servants under the State Education Cadre till 21.04.2022 and if in the meantime, some of the Petitioners were granted, the same was granted by way of a mistake committed by the officials which however would not bring them with the General Cadre of the Government of Nagaland.

15. In the backdrop of the above submissions, let this Court analyze the facts. From a perusal of the notifications by which the posts were created and the reference of which have already been made supra, it would clearly show that the creation and the sanction of the post by the Governor of Nagaland were in respect to posts which were Centrally Sponsored Scheme under the Sarva Shiksha Abhiyan and Rashtriya Madhyamik Shiksha Abhiyan. The said notifications categorically shows that the funds on the basis of which the salaries would be disbursed would be on the basis of the said Schemes.

16. Before further proceedings, this Court finds it relevant to take note of that the Sarva Shiksha Abhiyan is a Government of India's Flagship Programme for achievement of Universalization of Elementary Education (UEE) in a time bound manner as mandated by the 86th Amendment of the Constitution of India making free and compulsory education to the children of 6 to 14 years age group. The said Sarva Shiksha Abhiyan programme is being implemented in partnership with the State Governments to cover the entire country and address the

needs of millions of children.

17. The Rashtriya Madhyamik Shiksha Abhiyan is also a Government of India's Flagship Programme envisaged for establishment of new Secondary Schools, upgradation and strengthening of existing Upper Primary/Secondary Schools, improvement in quality of education by providing libraries, laboratories, furniture etc. The said Scheme has also to be implemented under the aegis of the Ministry of Human Resource Development of the Government of India and implemented by State Governments.

18. In the State of Nagaland, Sarva Shiksha Abhiyan Scheme was implemented sometime in the year 2009 and in respect to the Rashtriya Madhyamik Shiksha Abhiyan, it was implemented in the year 2010. It is on the basis of the implementation which was taken up by the State of Nagaland, these posts were created by the various notifications referred to in the earlier segments of the instant judgment. Under such circumstances, as the creation of those posts were on the basis of the Schemes of the Central Government, the question arises as to whether the said posts which were created could have been treated as posts falling within the State Education Cadre. To decide the said question, this Court now finds it relevant to take into account the judgments which were submitted by the learned counsels on behalf of both the parties.

19. The judgment in the case of ***Dhyan Singh (supra)***, is a case wherein the Petitioner therein was recruited to the regular post under the State Government and thereupon the Petitioner claimed that his

service for a number of years rendered under the Rural Education Literacy Project/State Adult Education Programme should also be taken into account as his qualifying service. The Supreme Court in the said judgment categorically observed that the Petitioner therein though rendered service as Supervisor in the Adult Education Scheme, but the said service rendered under the said Scheme could not be taken into account for deciding the pensionary benefit or even for fixation of salary in the scale of pay once he was regularly absorbed. It was categorically observed by the Supreme Court that such Schemes are taken up for continuance/engagement under specific schemes cannot be held to be an employment under the establishment of the Government inasmuch as such Schemes are taken up for contingencies when money for the same is provided either by the Central Government or at times by foreign countries. It was also observed that the employment under such scheme not being a part of the formal cadre of the State Government, it would be difficult to hold that the period for which an employee render service under the said Scheme can be counted either for the purpose of deciding their pensionary benefits or even for fixing of their salary in the scale of pay once they are regularly absorbed. The relevant portion of the judgment of the Supreme Court in the case of ***Dhyan Singh (supra)*** is reproduced herein below:

“.....The continuance/engagement of the appellants under the specific scheme cannot be held to an employment under any establishment of the Government. Such schemes are taken up for certain contingencies when money for the same is provided either by the Central Government or at

times by some foreign countries. But the employment under such scheme not being a part of the formal cadre of the State Government, it is difficult to hold that the period for which an employee rendered service under such scheme can be counted either for the purposes of deciding their pensionary benefits or even for fixing of their salary in the scale of pay once they are regularly absorbed. The judgment of this Court pursuant to which the appellants were absorbed as against regular post in the Government itself would indicate that the Court had taken a compassionate view, and not on any rights which flowed from the past services rendered by the appellants under the scheme in question, and that also under the concession of the counsel appearing for the State Government. We have not been shown any rules or regulations of the State, which even confers pensionary benefits to such services rendered by the appellants. In this view of the matter, it is difficult for us to find any infirmity with the impugned judgment of the High Court. We therefore, see no merits in these appeals and the writ petition, which are accordingly dismissed, but in the circumstances there will be no order as to costs."

20. Moving forward, this Court further finds it relevant to take note of another judgment of the Supreme Court in the case of ***Parmeshwar Nanda (supra)***. The facts involved in the said case are that the Appellants therein were appointed under the Project, co-sponsored by the Central Government and the State Government in the erstwhile undivided State of Bihar between the period 1978 to 1990. Some of the Appellants therein were appointed as Adult Education Supervisors whereas the other Appellants were appointed in the Ministerial Cadre such as Stenographer, Clerk-cum-Accountant, Clerk-cum-Typist, Peon as well as Drivers. The Appellants therein were working under the Project during the bifurcation of the erstwhile State of Bihar and their

services fell in the successor State of Jharkhand which was formed on 15.11.2000. The Government of India vide policy decision dated 01.04.2001 closed the said project. The Government of Jharkhand, consequent to the bifurcation of the State of Bihar declared the employees to be surplus w.e.f. 16.05.2001. Thereupon, a notification was issued on 30.05.2007 for absorption of the employees engaged in the project in the Department of Food, Public Distribution and Consumer Affairs, Finance, Social Welfare, Women and Child Development, Urban Development etc. on different posts in their respective prescribed scale of pay. In the said notification, it revealed that 756 employees who were declared as surplus were absorbed by the State and later, all appointment letters were issued starting from 24.07.2007 except those who have attained the age of superannuation or had died prior to such absorption. It was also mentioned in the said notification dated 30.05.2007 that the surplus employees absorbed were to be treated as new appointments and the services rendered by them prior to their declaration as surplus i.e. prior to 15.05.2001 would not be counted for the purpose of their seniority and pay protection. Thereupon, 59 writ petitions were filed claiming pensionary benefits and seniority before the High Court. The Full Bench of Jharkhand High Court held that the services rendered by the Appellants therein under the Adult Education and Non-Formal Education Project cannot be counted under the Government service for the purpose of pensionary benefits after the Appellants therein were appointed by the State. It is on those facts that the Supreme Court rendered its judgment in the case of ***Parmeshwar Nanda (supra)***.

21. The Supreme Court in the said judgment observed that the Appellants therein were appointed under a specific scheme i.e. the Project and the said Project was not a permanent establishment of the Government as it was meant for a specific purpose funded by the Central Government for a specified period. It was categorically held that the appointments of the appellants therein under the Project is not a part of the Cadre of the State Government. Consequently, the first condition of Rule 58 of the Bihar Pension Rules which was applicable to the State of Jharkhand that the service rendered must be under the State Government was not satisfied as the Appellants therein were appointed under the Project. It was also held that the second condition that the employment must be substantive and permanent was also not satisfied as the appellants therein were appointed under the Project. Paragraph Nos. 21 and 22 of the said judgment i.e. in the case of ***Parmeshwar Nanda (supra)*** being relevant are reproduced herein under:

“21. The appellants were appointed under a specific Scheme i.e. the Project. Such project was not a permanent establishment of the Government as it was meant for a specific purpose funded by the Central Government for a specified period. The appointment of the appellants under the Project is not a part of any cadre of the State Government. Therefore, the first condition of Rule 58 that the service rendered must be under the State Government is not satisfied by the appellants having been appointed under the Project. The second condition that employment must be substantive and permanent is again not satisfied by the appellants as the employment of the appellants was under the Project. A permanent post in terms of Rule 31 of the Rules means a post carrying a definite rate of pay

and that is sanctioned without a time limit. The appointment of the appellants under the project was not in a pay scale nor was it sanctioned without a time limit. Further, substantive pay is defined in Rule 38 of the Rules as a person who is appointed in a cadre. At best, the appellants satisfied only the third condition i.e. that they were paid by the Government.

22. *If the first and second conditions mentioned in Rule 58 of the Rules are not satisfied, the State Government can declare any specified kind of service rendered in a non-gazetted capacity to qualify for pension. The Circular dated 12-8-1969 deals with pensionary benefits to a temporary Government servant. The appellants were never appointed by the Government either on a temporary or on permanent basis. The appellants were engaged under the Project i.e. a scheme, therefore, the benefit of such a Circular cannot be claimed by the appellants. Still further, sub-rule (1) of Rule 59 of the Rules empowers the State to declare any specific kind of service to qualify for pension. The notification for absorption circulated on 30-5-2007 and the subsequent letter of appointments do not contain any condition that the services rendered by the appellants under the Project shall qualify for pension. The policy decision contemplates that it is a fresh appointment and no benefit either of seniority or pay protection shall be given. The appellants have not disputed such condition of appointment having been appointed under such policy decision vide the notification dated 30-5-2007. The Circular has not granted pensionary benefits. In the absence of any specific condition in the Circular to grant pensionary benefits, it is not possible to read that pensionary benefits are to be granted to the erstwhile employees of the Project. The appellants cannot turn around to say that the services rendered by them under the Project shall be counted for pension. The Circular dated 12-8-1969 is not even remotely applicable to the employees appointed under the Project as the very nature of the appointment was for a specific purpose and not for an*

unlimited period of time.”

22. From the judgments referred to hereinabove i.e. in the case of ***Dhyan Singh (supra)*** and ***Parmeshwar Nanda (supra)***, one aspect is very clear that the engagement of an employee under a specific scheme cannot be held to be an employment under any establishment of the Government inasmuch as employment under such schemes cannot be treated to be a part of the formal cadre of the Government.

23. In the backdrop of the above, let this Court further consider the judgments which have been referred by the learned counsel appearing on behalf of the Petitioners. In the case of ***Amarendra Kumar Mohapatra (supra)***, the question involved therein was as regards the validity of the Orissa Service of Engineers (Validation of Appointment) Act, 2002 (for short “the Act of 2002”) by which appointment of 881 Ad-hoc Assistant Engineers belonging to Civil Mechanical and Electrical Engineering wings of the State Engineering Department was validated though all such appointments were in breach of the Orissa Service of Engineers Rules, 1941. The said Legislation i.e. Act of 2002 was struck down by the High Court of Orissa on the ground that it violated the rights under Article 14 and 16 of the Constitution. The Supreme Court dealt with the legality and validity of the said Act of 2002 which permitted granting of regularization to those appointees on ad-hoc basis and set aside the judgment of the High Court of Orissa holding that the impugned Act of 2002 was not in violation of Article 14 and 16 of the Constitution. The said judgment has no relevance with the present case.

24. The judgments in the case of ***Siraj Ahmad (supra)*** and ***Direct Recruit Class II Engineering Officers' Association (supra)*** are for the proposition that once an incumbent is appointed to a post according to Rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. However, in the instant case, as the Petitioners herein were appointed against the Scheme which did not belong to the formal cadre of the Government of Nagaland, the said proposition set out in both the judgments cannot be applied to the facts of the instant case. The judgment in the case of ***Manpreet Singh Poonam (supra)*** is also in the line with the proposition laid down in the case of ***Siraj Ahmad (supra)*** for which the said judgment is also not applicable.

25. This Court has also perused the judgments in the cases of ***Joint Action Committee of Airlines Pilots Associations of India (ALPAI) (supra)***, ***Bhagwat Sharan (supra)*** as well as ***ABCD (supra)*** and in the opinion of this Court, the said judgments are not at all applicable and do not address to the issues involved in the instant proceedings.

26. Now coming back to the facts involved, it would be apparent from the various notifications by which the posts were created that these posts were created in respect to the Sarva Shiksha Abhiyan (SSA) and Rashtriya Madhyamik Shiksha Abhiyan (RMSA) which are Centrally Sponsored Schemes. The salaries as could be seen from a perusal of those notifications which were quoted hereinabove were to be paid out of the funds of the Central Government and it was only if the said Schemes were discontinued, the Government of Nagaland

would have paid it from its coffers. Under such circumstances, applying the ratio laid down in the case of ***Dhyan Singh (supra)*** and ***Parmeshwar Nanda (supra)***, it is the opinion of this Court that the Petitioners herein cannot be regarded as having entered into the State Education Cadre of the Government of Nagaland till the notification was issued on 02.09.2022 wherein they were brought within the service of the State Education Cadre of the Government of Nagaland w.e.f. 21.04.2022. The consequential affect of the said opinion is that the Petitioners' inter-se-seniority have to be taken into account on the basis of the said notification dated 02.09.2022 and for which the impugned notification dated 27.09.2022 cannot be interfered with.

27. This Court have also taken note of the submission made by the learned counsel appearing on behalf of the Petitioners that financial upgradation under the Modified Assured Career Progression Scheme have been granted to some of the Petitioners which the Respondent denies and further stated that if anything has been done, the same was done mistakenly. This Court is of the opinion that as the Petitioners only entered into the State Education Cadre of the Government of Nagaland by virtue of the notification dated 02.09.2022 that too w.e.f 21.04.2022, the mere granting of the financial upgradation in terms with the Modified Assured Career Progression Scheme would not amount to bringing the Petitioners who were granted the financial upgradation (if any) within the fold of the State Education Cadre of the Government of Nagaland.

28. Accordingly, this Court does not find any merits in any of these

writ petitions for which the instant batch of writ petitions stands dismissed. However, no costs are imposed in the peculiar facts of the cases.

29. Before parting with the records, this Court however finds it relevant to clarify and observe that as the Respondent State if under mistaken belief had permitted the Petitioners to subscribe to the Pension Scheme and taking into account the submission of the learned Additional Advocate General of Nagaland that the benefits which had accrued by subscribing to the Pension Scheme would not be disturbed, this Court leaves it to the wisdom of the State Respondents being the welfare State.

J U D G E

Comparing Assistant