THE GAUHATI HIGH COURT AT GUWAHATI

(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

WP(C) No. 4030/2025

Rinti Baishya and 97 Others

……*Petitioners*

-Versus-

The State of Assam and Others

……*Respondents*.

For the Petitioner(s) : Mr. R. Singha, Adv.

……Advocate(s)

For the Respondent(s) : Mr. D.P. Bora, SC, F & H Dept. Assam

……Advocate(s)

BEFORE

HON'BLE MR. JUSTICE ANJAN MONI KALITA

Date(s) of Hearing :- 28.04.2026, 18.05.2026

Date on which judgment is reserved :- 25.05.2026

Date of pronouncement of judgment :- 19.08.2026

Whether the pronouncement is of the:- N/A
operative part of the judgment?

Whether the full judgment has been:- Yes
pronounced?

JUDGMENT AND ORDER (CAV)

(A.M. Kalita, J)

Heard Mr. R. Singha, learned counsel appearing for the Petitioners. Also heard Mr. D.P. Bora, learned Standing Counsel for the Family and Health Department, Assam, the Respondents.

2. The instant writ petition under Article 226 of the Constitution of India has been filed by the Petitioners assailing the action on the part of the Director of Health Services, Assam in not issuing the promotion order to the Petitioners for the post of Sister Tutor/PHN in spite of being recommended by the Departmental Promotion Committee (DPC) in its meeting dated 16.12.2024.

3. The brief facts of the case as enumerated in the writ petition are summarized herein below: -

3.1. In the instant writ petition, 98 numbers of Petitioners who all are B.Sc./Graduate Nurses, appointed in the year 2015 & 2017–18 in terms of Rule 11 of the Assam Nursing Service Rules, 1991 (herein after referred to as "the Rules, 1991"), being eligible for promotion to the post of Sister Tutor/PHN, being considered for promotion and were recommended for promotion by the DPC, vide minutes of the meeting dated 16.12.2024, have challenged the inaction on the part of the Respondent Authorities for not promoting them to the post of Sister Tutor/PHN, under the Directorate of Health Services, Assam.

3.2. Admittedly, there are two streams in the Nursing Services, the Clinical and Academic. The GNM nurses who are diploma holders in Nursing are eligible to be promoted as Ward-In-Charge, i.e., Clinical side and not in the Academic, but the Graduate Nurses are eligible to be promoted both to the Clinical side as well as Academic. Both of these posts are equal in rank and having same scale of pay and grade pay. When the posts of Ward-in-Charge and Sister Tutor/PHN, both being of the same rank fell vacant, the same are being filled up by way of promotion by the GNM nurses for the Clinical posts, i.e., Ward-In-Charge and the posts of Sister Tutor/PHN are being filled up by promotion from the Staff Nurses who are the B.Sc./Graduate Nursing.

3.3. The process of promotion had been followed by issuance of a letter bearing No. NS/05/Promotion/SN/2024/592 dated 11.11.2024 by the Director of Health Services, whereby the Joint Directors of all the districts and other officials of all hospitals as well as the Head of all hospitals throughout the State of Assam were intimated that the Director of Health Services would undertake the promotional exercise for the post of Ward Sister/Ward-In-Charge/Nursing Sister/OT Nurse/Sister Tutor/PHN or equivalent posts, who were working in different health institutions under Government of Assam and hence, had sought for vacancy positions of the aforementioned posts within 7 days along with last 5 years ACRs of the Staff Nurses who have joined in service on or before 2011. It had also specifically sought for the last 5 years ACRs of Staff Nurses having M.Sc. (N)/B.Sc. (N)/Post Basic B.Sc. (N) degree who have joined in the Government service on or before 2018.

3.4. There were 101 numbers of vacancies of the post of Ward Sister/Ward-In-Charge etc. and 83 numbers of vacancies in the post of Sister Tutor/PHN in the year 2024. And since the Petitioners were eligible for promotion, their ACRs for the last 5 years were submitted at the Directorate as sought for.

3.5. A Departmental Promotion Committee was constituted to consider promotion of the aforesaid vacant posts of Sister Tutor, Ward-In-Charge, etc. as mentioned therein. The DPC was constituted under the Chairmanship of the DHS, Assam. The DPC in the minutes of meeting dated 16.12.2024 had recommended 96 numbers of Staff Nurse (GNM) for promotion to the vacant posts of Ward-In-Charge/Ward Sister/Nursing Sister/OT Sister in order of seniority and had also recommended Graduate Nurses for promotion to the post of Sister Tutor/PHN.

3.6. The DHS, Assam, who happens to be the Chairman of the DPC dated 16.12.2024, had issued a promotional order of 96 numbers of Staff Nurse (GNM), vide order bearing No. NS/05/Promotion/SN/2024/665 dated 31st December, 2024 as per the recommendation of the DPC. But the recommendation with respect to the promotion of Petitioners has not been given effect to.

3.7. The DHS, Assam, vide letter bearing No. NS/05/Promotion/SN/2024/05 dated 02.01.2025 had communicated to the Commissioner & Secretary to the Government of Assam, Health & Family Welfare Department, the minutes of Departmental Promotion Committee wherein it has been mentioned that as per the seniority list of Staff Nurses (GNM and B.Sc Nursing), B.Sc (N), only 2 numbers of candidates were found eligible for promotion to the post of Sister Tutor/PHN, remaining 81 numbers of post of Sister Tutor/PHN could not be filled up due to non-availability of candidates with requisite qualification under zone of consideration as per seniority. It was also mentioned that total 81 numbers of post of Sister Tutor/PHN were not yet filled up, but there is essentiality of the post to run GNM training school smoothly.

3.8. In view of the aforesaid position, vide that letter, a request was made for advice of the respondent No. 2, i.e., the Commissioner & Secretary to the Government of Assam, Health & Family Welfare Department on the issue.

3.9. Staff Nurses having M.Sc./B.Sc./Post Basic B.Sc. who were also known as Graduate Nurses, having an association named as All Assam Graduate Nurses Association, duly recognized by the Government of Assam, had submitted a representation with their grievances before the DHS, Assam and requested to promote the Staff Nurses having M.Sc./B.Sc./Post Basic B.Sc. to the 81 numbers of posts of Sister Tutor/PHN which were lying vacant, since the said post could be filled up only by Graduate Nurses and not by GNM Nurses.

3.10. The Respondent Authorities had constituted another DPC on 17.05.2025 for promotion to the cadre of Matron/Nursing Superintendent, Principal Tutor and also for newly vacant posts of Ward Sister/Ward-In-Charge which fell vacant after the DPC dated 16.12.2024. Although the DPC was not constituted for consideration of promotion to the cadre of Sister Tutor/PHN, however, for the vacant posts of Sister Tutor/PHN for which the B.Sc Nurses were considered and recommended for promotion earlier, the posts were once again considered in the DPC dated 17.05.2025, and the DPC observed that at that time, 70 numbers of posts of Sister Tutor/PHN were lying vacant in different GNM training schools as well as in districts, but no eligible candidates found for promotion for the post of Sister Tutor/PHN within the zone of consideration. It was mentioned that, therefore, the DPC unanimously suggested to DHS, Assam to depute Staff Nurses (having B.Sc (N)/M.Sc (N)/Post Basic B.Sc (N) degree) in the GNM training schools for smooth functioning of the institutions in consultation with respective Joint Directors of Health Services of districts/Superintendents of Civil Hospitals and Principal Tutors of the institutions as and when required. It was mentioned that the DPC suggested to DHS, Assam to send the matter to Government for approval. Subsequently, on 11.06.2025, the DHS, Assam vide letter bearing No. NS/EMP/25/PT-111/2000/269 once again sought the approval of the Commissioner & Secretary, Health & Family Welfare Department, if promotion to the cadre of nursing personnel on the

Academic side to be made as per INC norms.

3.11. In reply to the aforesaid letter, the Government of Assam in the Department of Health & Family Welfare Department, vide letter bearing No. E.666492/8 dated 21.06.2025, replied that the INC norms were required to be followed for promotion of the nursing personnel in the Academic side. Thereafter, the Government of Assam in the Department of Health & Family Welfare Department, vide letter bearing No. 620956/4 dated 27.06.2025, once again reiterated that promotion of the nursing personnel in the Academic side, were to be carried out in terms of INC norms.

3.12. The Government of Assam in the Department of Health and Family Welfare Department, vide letter bearing no. 620956/5 dated 27.06.2025 stayed the aforesaid two letters bearing nos. E.666492/8 dated 21.06.2025 and no. 620956/4 dated 27.06.2025 and sought the views of the DHS as to whether the norms of INC are mandatory or advisory. The DHS Assam, vide reply bearing no. NS/EMP/25 PT-111/2000/294 dated 04.07.2025 mentioned that INC norms are advisory.

3.13. The Petitioners in spite of submitting the aforesaid representation through its association, namely All Assam Graduate Nurses Association, to the Commissioner & Secretary, Health & Family Welfare Department, Government of Assam and not getting any response thereto, being aggrieved, have filed the instant writ petition.

4. The Respondent Department through the Respondent no. 6, i.e., the Director of Health Services, Assam, has filed an Affidavit-in-Opposition in the instant writ petition. In their Affidavit-in-Opposition, the primary stand taken is that the seniority list of staff nurses is prepared considering the first date of joining in service at the rate 1:4 ratio of zone of consideration. So, if any staff nurse does not fall within the zone of consideration as per seniority-cum-merit of the seniority list,

the promotion of the incumbent will not be considered though there are existing vacant posts to be filled.

4.1. It is contended by the Respondent Department that promotion to the next higher cadre is Sister Tutor and Ward Sister/Ward-in-Charge/Nursing Sister/OT Nurse and both are equivalent posts, the pay scale and grade pay is same and equal. The Sister Tutors are required to impart education in nursing schools and the Ward Sister/Ward-in-Charge/Nursing Sister/OT Nurses are required to discharge their duties in clinical side, i.e., in the hospitals. It is stated that both the staff nurse, i.e., the entry cadre as well as the promotional cadre of Sister Tutor and Ward Sister/Ward-in-Charge/Nursing Sister/OT Nurse falls in the Class-III category. It is stated that the Respondent Authority has not deviated or violated the provisions for award of promotions incorporated in Rule 11 and Rule 11(2) of Assam Nursing Service Rules, 1991.

4.2. It is contended that despite having existing vacant posts of Sister Tutor in different GNM training schools, the Respondent Authority is not in a position to award promotion to the posts of Staff Nurse having B.Sc. Nursing/M.Sc. Nursing degree to Sister Tutor/PHN considering the zone of consideration contained in the service rules as 1:4. Therefore, the promotions were awarded to staff nurses having B.Sc. Nursing/M.Sc. Nursing degrees, who came within the zone of consideration at the rate 1:4 ratio.

4.3. It is contended that mere fulfilling of the eligibility criteria does not confer for award of promotion. The seniority list of Staff Nurse is prepared considering the first date of joining in service at the rate 1:4 ratio of the zone of consideration. Therefore, if any staff nurse does not fall within the seniority list of the zone of consideration, then the promotion of the incumbent will not be considered though there are existing vacant posts to be filled.

4.4. It is contended that due to requirement of Sister Tutors in Academic side to run Government GNM Training Schools, the remaining vacant posts of 81 nos. of Sister Tutors, was proposed to the Government under Health and Family Welfare Department for filling up the same by way of promotion as the incumbents have fulfilled the minimum eligibility criteria for award of promotion, though they were not under the ambit of zone of consideration for approval. It was contended that, however, the Government approval is still awaited.

4.5. It is contended that the Respondent no. 6, being the appointing authority and Chairperson of the Departmental Promotion Committee had requested approval of the Government for the aforesaid proposal as there should not be any dispute and contradiction to the Assam Nursing Service Rules, 1991. Accordingly, the proposal letter bearing number NS/05/Promotion/SN/2024/05 dated 02.01.2025 was sent to the Government for necessary recommendation/approval.

4.6. An Affidavit-in-Reply to the aforesaid Affidavit-in-Opposition has been filed by the Petitioners wherein the Petitioners have, more or less, stated and contended the same facts as stated in the instant writ petition by reiterating the same.

4.7. The Petitioners have filed one Additional Affidavit wherein they have stated that the graduate staff nurses even if they ranked below at the bottom of the gradation list, were brought in the zone of consideration for the post of Sister Tutor/PHN (academic side) and thereafter, promoted to the cadre of Sister Tutor, i.e., in the Academic side, in the past by the Respondent Authorities. It is contended that two separate zones of consideration were prepared each for Clinical and Academic side from the same gradation list of Staff Nurses with respective requisite qualifications.

4.8. It is contended that the practice was being followed, in view of the fact that Indian Nursing Council Act, 1947 mandates the Academic side of nursing to be

manned by the Graduate Nurses and the schools do not suffer due to lack of teachers. The Petitioners have tried to justify the aforesaid by citing the instances of the year 2017 and 2021. It is contended that in 2017 and 2021 though there was one selection list, separate zones of consideration were prepared for the aforesaid two categories of posts, i.e., Sister Tutor/PHN and Ward Sister/Ward-in-Charge, etc.

5. Notice in the instant writ petition has been issued on 23.07.2025, wherein, in the interim, it was directed that as the DPC minutes recommended promotion to the post of Sister Tutors, the post of Staff Nurses available for promotion as Sister Tutors, which are stated to be vacant, will not be filled up contrary to the DPC recommendation dated 16.12.2024.

6. Mr. R. Singha, the learned counsel appearing for the Petitioners, submits that the Petitioners are B.Sc./Graduate Nurses who were appointed in the year, 2015, 2017 and 2018 in terms of Rule 11 of the Rules, 1991, and they are eligible for the post of Sister Tutor/PHN, which is an equivalent post of Ward-in-Charge/Ward Sister/Nursing Sister/OT Nurse in the Clinical side, as both are equivalent posts. He submits that GNM nurses who are Diploma holders in Nursing are eligible to be promoted as Ward-in-Charge/Ward Sister/Nursing Sister/OT Nurse, i.e., Clinical side, and not in the Academic side. However, the Graduate Nurses are eligible to be promoted both on the Clinical side as well as Academic side. He submits that as and when the post of Ward-in-Charge/Ward Sister/Nursing Sister/OT Nurse and Sister Tutor/PHN fell vacant, the same are being filled up by way of promotion by the GNM nurses for the Clinical post, i.e., Ward-in-Charge/Ward Sister/ Nursing Sister/OT Nurse and the post of Sister Tutor/PHN are being filled up by promotion from the staff nurses who are B.Sc./Graduate Nursing. He submits that the process has been followed by preparing two zones of consideration for the two sets of posts, although in the same cadre, as the qualifications for both the posts are different and, therefore, the B.Sc./Graduate Nurses, in spite of being lower in rank

in the gradation list, are considered for promotion, provided they satisfy the qualifying service of 5 years in the feeder cadre of Staff Nurse, and therefore, they were considered and recommended for promotions. He submits that the practice of two zones of consideration for two posts is because of different qualifications which have necessitated the department to follow the preparation of two zones of consideration for different posts since inception and has become a long-standing practice in the department.

7. The learned counsel for the Petitioners submits that the Respondent no. 6 (the DHS, Assam), being aware of the aforesaid practice of preparation of two zones of consideration, vide letter dated 11.11.2024, requested for submission of ACRs of the staff nurses who have joined in service on or before 2011. He submits that the aforesaid letter further requested ACRs of last 5 years of the Staff Nurses having M.Sc.(N)/B.Sc.(N)/Post Basic B.Sc.(N) degrees, who have joined in service on or before the year 2018. He submits that the purpose of seeking ACRs of the Petitioners was for the object to place the same before the DPC to consider the Petitioners for promotion to 83 nos. of vacant posts of Sister Tutor/PHN. He submits that the action was taken by the DHS due to the admitted fact that the vacant posts of Sister Tutor/PHN could be filled up only by the B.Sc. Nurses having the aforesaid qualifications.

8. The learned counsel for the Petitioners submits that the DPC in its meeting dated 16.12.2024 duly considered the Petitioners and recommended them for promotion to the vacant post of Sister Tutor/PHN. He submits that such intention is clear from a bare perusal of the minutes of DPC that the vacant posts of 83 nos. were, in fact, intended to be filled by the Petitioners. He submits that the GNM Nurses/Diploma nurses were also recommended for promotion to 101 nos. of vacant posts in the same DPC. He submits that to the utter surprise and shock of the Petitioners, it was found that in terms of the recommendation of the DPC in its

minutes dated 16.12.2024, only the GNM nurses were promoted vide order bearing no. NS /05 /Promotion /SN/2024 /665 dated 31st December, 2024 and in spite of having been recommended by the DPC, the Petitioners were not issued any promotional orders for the post of Sister Tutor/PHN.

9. The learned counsel for the Petitioners submits that the Petitioners, having been recommended by the DPC in the minutes of its meeting dated 16.12.2024, the Director of Health Services, (Respondent No. 6) could not have unilaterally on his own taken a decision to deny the promotions to the Petitioners, having suitably recommended and therefore, the impugned action of the Director in not issuing the promotional order to the Petitioners is bad in law. He submits that the recommendation of DPC is ordinarily not to be called for any interference in absence of any challenge and unless held to be illegally prepared. He submits that in the instant case, there is no such allegation and, more so, based on the same recommendation of the DPC, 96 GNM Nurses have already been promoted to the post of Ward-in-Charge/Ward Sister/Nursing Sister/OT Nurse. He submits that preparation of two zones of consideration has been consistently followed by the department since 2017 till 2021, which is evident from the minutes of the 2021 DPC. He submits that in view of the aforesaid practice, coupled with the recommendation of the DPC, the rights of the Petitioners have been crystallized in the instant case, and they have legitimate expectations to be promoted based on the expressed promise and representation and/or by the established past action and settled conduct. He submits that an incumbent has to be eligible for a post to be considered and subsequently recommended for promotion. The Petitioners were eligible both in terms of qualifications and experiences as per the Assam Nursing Service Rules, 1991 and the Nursing Council Act, 1947, which had also been admitted by DHS in his Affidavit-in-Opposition. And therefore, the ACRs of the Petitioners were called for and placed before the DPC. He submits that after being

considered and found suitable, the Petitioners were recommended for promotion to the posts of Sister Tutor/PHN. He submits that seniority cannot be substituted for eligibility and therefore, although there were many GNM Nurses who were above the Petitioners, they cannot be recommended for the post of Sister Tutor/PHN as they were not eligible, unlike the Petitioners in the instant case. He submits that Rule 11(2) of the Assam Nursing Service Rules, 1991 lays down that a person has to be suitable for a post and suitability is related to prescribed qualifications and required experiences. He submits that the post of Sister Tutor/PHN could be filled up by Graduate Nurses only, and the Petitioners, being eligible for the same, were recommended by the DPC. Therefore, he submits that the Petitioners deserved to be promoted to the posts of Sister Tutor/PHN as recommended by the DPC, which found them to be suitable and eligible for the posts. He submits that the Petitioners, having been recommended by the DPC in the minutes of meeting dated 16.12.2024, the Respondents cannot deny them on fresh grounds which did not exist at the time of the recommendation.

10. The learned counsel for the Petitioners submits that legitimate expectation and vested rights accrued in favour of the Petitioners to be issued with the promotional orders for the posts of Sister Tutor/PHN due to the fact that last 5 years' ACRs of Staff Nurses, i.e., the Petitioners, having M.Sc.(N)/B.Sc.(N)/Post Basic B.Sc.(N) degrees were sought, along with the ACRs of the GNM nurses who had joined prior to 2011 and the same were presented before the DPC; accordingly, having been considered by the DPC and found to be fit, they have been recommended for promotion. Therefore, he submits that the rights of the Petitioners had crystallized and thus they have acquired vested rights in their favour on the basis of the factual matrix which had finally culminated into the recommendation for promotion and therefore, the Petitioners rightfully had legitimate expectations to be promoted. He submits that the respondents in the

instant case had deviated from the past practice of preparing two zones of consideration for promotion to the post of Sister Tutor/PHN and Ward-in-Charge/Ward Sister/Nursing Sister/OT Nurse in the Academic and Clinical side respectively. Once the Petitioners have been recommended by the legitimately constituted DPC, the legitimate expectations so created cannot be taken away by the whimsical action of the DHS (Respondent No. 6).

11. The counsel appearing for the Petitioners, in support of his arguments, have referred to the following cases: -

1. ***Union of India and another vs. S.K. Goel and others***, reported in ***(2007) 14 SCC 641.***

2. ***J.B. Bansal vs. State of Rajasthan and another***, reported in ***(2003) 5 SCC 134***.

3. ***Sailendra Dania and others vs. S.P. Dubey and others***, reported in ***(2007) 5 SCC 535***.

4. ***R. Prabha Devi and others vs. Government of India***, reported in ***(1988) 2 SCC 233***.

5. ***Valsala Kumari Devi M.***, reported in ***(2007) 8 SCC 533***.

6. ***Gordhan Das Bhanji***, reported in ***AIR 1952 SC 16***.

7. ***Mohinder Singh Gill vs. Union of India***, reported in ***(1978) 1 SCC 405***.

8. ***Ravi Kumar Dhansukh Lal Mehta***, reported in ***(2024) 11 SCC 424.***

12. On the other hand, Mr. D.P. Bora, the learned Standing Counsel appearing for the Respondent Department, submits that the Respondent Authorities have duly followed and have not deviated from any provisions of the Assam Nursing Service Rules, 1991 and the Assam Nursing (Amendment) Service Rules, 1998, as well as the Indian Nursing Council Act, 1947 while issuing the promotion orders for the

post of Ward-in-Charge/Ward Sister/Nursing Sister/OT Nurse as per the recommendations of the DPC dated 16.12.2024. He submits that for the purpose of promotion of the in-service nursing personnel, the procedure of promotion as contained in Rule 12 of the Assam Nursing Service Rules, 1991 is required to be followed. Accordingly, in every calendar year, before commencement of the year, promotion of the in-service nursing personnels were awarded cadre-wise, incorporating the general procedure for promotion by following the provisions of the aforesaid Rules, 1991, Service Rules, 1998, as well as the Council Act, 1947. He submits that mere fulfilling of the eligibility criteria does not confer a right for award of promotion. He submits that the seniority list of Staff Nurses was prepared considering the first date of joining in service and thereafter, the zone of consideration was prepared on the basis of available vacancies at the rate of 1:4 ratio in terms of the aforesaid Service Rules, 1991. He submits that if any Staff Nurse does not fall within the zone of consideration as per seniority-cum-merit of the seniority list, the promotion of the incumbent shall not be considered though there exist vacant posts to be filled up. He submits that there was no recommendation at all in the DPC minutes dated 16.12.2024 recommending the Petitioners for promotion to the post of Sister Tutor/PHN. He submits that the DPC recommended that in the Academic side, the posts of Sister Tutor/PHN may be filled up from the posts of Staff Nurses having B.Sc. Nursing/Post Basic B.Sc. Nursing in order of seniority-cum-merit. He submits that the aforesaid recommendation does not confer any right to the Petitioners for promotion to the posts of Sister Tutor/PHN in violation of the provisions of the aforesaid Service Rules, 1991, Service Rules, 1998, and the Indian Nursing Council Act, 1947.

13. The learned standing counsel for the Respondent Department further submits that recommendation of a Departmental Promotion Committee is generally not binding on the appointing authority. He submits that DPC only recommends

suitable candidates for promotion, selection and final decision rests with the appointing authority/ Government unless service rules specifically provide otherwise. He submits that the appointing authority may accept the recommendation or disagree with it or remit the matter for reconsideration or withhold promotion for valid reasons. He submits that in the instant case, there is no question of making two gradation lists. He submits that the ***Hon'ble Gauhati High Court***, vide its judgment and order dated ***16.11.2020*** in ***WP(C) No. 3069/2018 (All Assam Graduate Nurses Association and another vs. State of Assam and others)*** had clarified that there shall not be two gradation lists for the same cadre as per the provisions of Rule 22 of the Assam Nursing Service Rules, 1991. He submits that a common gradation list of Staff Nurses has been prepared in the instant case, which includes Staff Nurses having GNM Diplomas and B.Sc. Degrees respectively. Accordingly, while preparing the zone of consideration at the rate 1:4 ratio, only two B.Sc. Nurses were found within the zone of consideration and accordingly, they have been promoted to the post of Sister Tutor. He submits that since the Petitioners, although qualified in terms of their qualifications, were not found within the zone of consideration, as such, they could not have been promoted to the posts of Sister Tutor/PHN. He submits that if any promotion is granted from outside the zone of consideration, then the same would have been in violation of the provisions of Rule 12 of the Assam Nursing Rules, 1991. He further submits that, though the Petitioners have contended that on earlier occasion, i.e., in the year 2021, the DPC decided to prepare two zones of consideration and extended the zone of consideration from the common gradation list, the same had been done in violation of the provisions of Rule 21 of the Assam Nursing Service Rules, 1991 and therefore, he submits that the said violation cannot be repeated again in the instant case. He submits that Government in the Health and Family Welfare Department, vide letter No. HLA.620/956/7 dated 18.08.2025 directed the

Director of Health Services, Assam to strictly adhere to the provisions of Assam Nursing Service Rules in the matters related to promotion, etc. of nursing personnel. Therefore, he submits, it is not possible to promote the Petitioners to the posts of Sister Tutor/PHN in violation of the provisions of Assam Nursing Service Rules, 1991.

14. In view of the aforesaid submissions, the learned Standing Counsel submits that the promotion to the posts of Ward Sister/Sister-in-Charge have been done by duly following the relevant Rules of 1991, Service Rules, 1998, as well as the Indian Nursing Council Act, 1947, and the Petitioners were not issued with any promotional orders due to the fact that they could not be considered as they were not in the zone of consideration for promotion to the posts of Sister Tutor/PHN. However, two incumbents who were eligible, being in the zone of consideration, have already been promoted. Therefore, he prays for dismissal of the instant writ petition for being bereft of any merit.

15. Having heard the learned counsel appearing for the respective parties, I am of the opinion that at the very outset, a reference and consideration should be made to the relevant Rules of 1991. The Assam Nursing Services Rules, 1991 came into existence for regulating the recruitment and condition of service of the persons appointed to the Assam Nursing Service. **Rule 11** of the Assam Nursing Service Rules, 1991, which deals with promotion of the incumbents to the various cadres, being relevant, is quoted herein below: -

> "**Recruitment by Promotion**
>
> ***11. Appointment to the cadres of Matron, Asstt. Matron, Sister, Lady Health Visitor and their corresponding equivalent posts as shown in Schedule I shall be made in the manner provided herein after: -***
>
> ***(1) The appointing authority shall prepare a list indicating the number of vacancies in the Cadre, which have occurred or are likely to occur in the year.***

(2) Subject to suitability as may be decided by the Board or by the appointing authority an officer belonging to the Grade III post in the Assam Nursing Services and Possessing the qualifications as set forth herein below shall be promoted to the next higher post in the manner provided in Rules 12 and 13.

(3) A member of the Cadre of Grade III Nursing personnel in Assam Nursing Service shall be eligible for promotion to the next higher cadre subject to the following conditions.

(a) He/she shall have passed the qualifying examination/training as laid down from time to time.

(b) He/she shall have rendered service as a staff Nurse for a minimum period of 5 years on the 1st January of the year of promotion in case of promotion of General Nurse Midwife/ B.Sc. Nurse.

(c) He/she rendered service as Auxiliary Nurse Midwife for minimum period of 7 years as on the 1st January of year of promotion in case of promotion of Auxiliary Nurse Midwife."

Rule 12 provides for general procedure of promotion and the same is also quoted hereinbelow: -

"<u>General procedure of promotion</u>

12. (1) Before the end to each year, the appointing authority shall make an assessment of the likely number of vacancies to be filled up by promotion in the next year in each cadre.

(2) The appointing authority shall then furnish to the Board the following documents and information with regard to the Officers equal to 4 times of the number of vacancies in order of seniority eligible for promotion of vacancies.

(a) Information about the number of vacancies.

(b) List of officers in order of seniority, eligible for Promotion (separate list for promotion to different cadre shall be furnished) indicating the cadre to which the case of promotion is to be considered.

(c) Details of the reservations of the vacancies for Schedule Caste, Schedule Tribes and other communities as laid down, by the Govt. under the rule enforce for the time being.

(d) Any other documents and Information as may be considered necessary by the appointing authority or required by the Board.

(3) The appointing Authority shall request the Board to recommend list of Officers found suitable for promotion in order of preference, in respect of promotion to each of the

cadres.

(4) The selection shall be made on the basis of merit with due regard to seniority.

(5) The Board after examination of the documents and information furnished by the appointing authority shall recommended to the Appointing Authority a list of officers about double the probable number of vacancies in order of preference found suitable for promotion.

(6) The appointing authority on receipt of the list recommended by the Board shall consider the list prepared by the Board for promotion and if the appointing authority considered it necessary to make any change in the list received from the Board, he shall inform the Board of the changes proposed and after taking into account the comments, if any of the Board may approve the list finally with such modification, if any, as in his opinion be just and proper.

(7) The inclusion of a candidate's name in a select list shall confer no right to promotion unless the appointing authority is satisfied after such enquiry as may be considered necessary that a candidate is suitable for promotion.

(8) The list finally approved by the appointing authority shall be published by the appointing authority In the Assam Gazette or in other manner as it may consider proper within fifteen days of the date of final approval.

(9) The select lists shall remain valid for 12 (Calendar months) months from the date of approval by the appointing authority as the case may be.

(10) The promotion shall be in accordance with the list finally approved".

16. A conjoint reading of the aforesaid two rules reveals the following: -

Rule 11(2) provides that subject to suitability as may be decided by the Board or by the Appointing Authority, an officer belonging to Grade III post in the Assam Nursing Services and possessing the qualifications as set forth under sub-rule (3) of Rule 11 shall be promoted to the next higher post in the manner provided in Rules 12 and 13. As per sub-rule (3) of Rule 11, the officer is required to have passed the qualifying examination/training as laid down from time to time and he/she must have rendered service as a Staff Nurse for a minimum period of 5 years on 1st January of the year of promotion in case of promotion of General Nurse Midwife/B.Sc. Nursing. Therefore, in case of B.Sc. Nursing, the promotion to the next higher cadre, a person must have rendered service as a Staff Nurse for a minimum period of 5 years on the 1st January of the year of promotion.

It is also seen that as far as the qualifying examination/training are concerned, nothing has been specifically mentioned in Rule 11, but the minimum qualification and experience for promotional post have been mentioned under Rule 8 read with Schedule III of the Assam Nursing Service Rules, 1991. It is seen that the required qualification for Sister Tutor has not been provided, though the qualification for direct recruitment of Staff Nurse has been provided.

Rule 12 provides for general procedure for promotion. Rule 12(1) lays down that before the end of each year, the appointing authority shall make an assessment of the likely number of vacancies to be filled up by promotion in the next year in each cadre. Rule 12(2) provides that the appointing authority shall furnish to the Board the documents and information with regard to the officers equal to four times the number of vacancies in order of seniority eligible for promotion of vacancies. It is also provided that list of officers in order of seniority, eligible for promotion (separate lists for promotion to different cadres shall be furnished), indicating the cadre to which the case of promotion is to be considered. Rule 12(3) provides that the appointing authority shall request the Board to recommend list of officers found suitable for promotion in order of preference in respect of promotion to each cadre. Rule 12(4) stipulates that the selection shall be made on the basis of merit with due regard to seniority. Rule 12(6) provides that the appointing authority on receipt of the list recommended by the Board shall consider the list prepared by the Board for promotion and if the appointing authority considers it necessary to make any change in the list received from the Board, he shall inform the Board of the changes proposed and after taking into account the comments, if any, the Board may approve the list finally with such modification, if any, as in his opinion to be just and proper. Rule 12(7) provides that the inclusion of a candidate's name in a select list shall confer no promotion unless the appointing authority is satisfied after such enquiry as may be

considered necessary that a candidate is suitable for promotion. Rule 12(10) provides that a promotion shall be in accordance with the list finally approved.

17. It is not in dispute that the qualifications for various cadres of nursing personnel for academic curriculum of the nursing schools and colleges are governed by the norms and the guidelines framed by the Indian Nursing Council in exercise of the powers conferred by the Nursing Council Act, 1947. It is seen that as per the norms/guidelines set by the Indian Nursing Council (Annexure 3 to the writ petition) provides that a Tutor is required to have M.Sc. Nursing or B.Sc. Nursing (Basic/Post Basic) or Diploma in Nursing Education and Administration with 2 years of professional experience. As far as this requirement of qualification has not been in dispute as the respondent authorities in their Affidavit-in-Opposition has admitted that this is the qualification which is required to be appointed as Sister Tutor/PHN.

18. On perusal of the Rules, 1991, it is seen that under Rule 26, there is a provision of relaxation of the rules by the State Government. In the considered opinion of this Court, the same being relevant to the issue under consideration, the same is extracted hereinbelow: -

"**26. <u>Relaxation</u> –** ***Where the Government is satisfied that the operation of any of these Rules cause/causes undue hardship in any particular case, it may dispense with or relax the requirement of that rule to such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner:***

Provided that the case of any person shall not be dealt with in any manner less favorable to him than that provided in these rules."

19. The aforesaid Rule giving power of relaxation to the State Government is for the purpose of doing away with any hardship in certain cases by relaxing the requirement of compliance with certain rule or rules under the Rules, 1991.

20. Coming back to the facts of the instant case in hand, there is no dispute

about the fact that the Petitioners are eligible to be promoted to the next cadre, i.e., Sister Tutor/PHN. Accordingly, after the request from the Director of Health Services, Assam, vide his letter No. NHS/05/Promotion/SN/2024/592 dated 11.11.2024 calling for furnishing of the vacancy position of respective vacant positions of Ward Sister/Ward In-charge/Nursing Sister/OT Nurse/ Sister Tutor/PHN or its equivalent posts, the ACRs of 5 years of the Staff Nurses who have joined in service on or before 2011, as well as the ACRs of Staff Nurses having M.Sc. (N)/B.Sc. (N)/Post Basic B.Sc. (N) degree who have joined Government service on or before the year 2018 were called for.

21. It is seen that after such submission of required documents along with the ACRs requested for, the DPC consisting of the DHS, Assam as the Chairman and other 6 officials of the Respondent Department sat for a meeting on 16th December, 2024 for the purpose of awarding promotion to various posts of nursing personnel. The minutes of the meeting (Annexure-5) shows the following vacancy position of different cadre of nursing personnel under DHS, Assam and DME, Assam;

Sl. No.	**Name of Post**	**No. of Sanctioned Posts**	**Present Staff Strength**	**Vacancy Position**
1	Matron/Nursing Supdt	63	31	32
	Principal Tutor	10	5	5
2	Asstt. Matron/Asstt. Nursing Supdt./Dy. Nursing Supdt.	288	223	65

	Vice Principal	8	6	2
3	Ward Sister/Ward In-charge/Nursing Sister/OT Nurse	728	627	101
	Sister Tutor	105	53	52
	PHN	47	16	31

22. It is seen that after having the required discussions amongst themselves, the following important decisions were adopted during the meeting: -

A. Seniority list of post of "Staff Nurse" which was published on 20.11.2024 in the DHS office website was finalized and approved by the DPC.

B. The DPC unanimously suggested to DHS, Assam to fill up the vacant post of Ward Sister/Ward In-Charge/Nursing Sister/ OT Sister/Sister Tutor/PHN/Assistant Matron/Assistant Nursing Superintendent/Deputy Nursing Superintendent/ Vice Principal/Matron/Nursing Superintendent/Principal Tutor of different health institutions including medical colleges of Assam by way of promotion.

C. The DPC decided to award promotion in two ways process for the post of Ward Sister/Ward In-Charge/Nursing Sister/ OT Sister/PHN, i.e., Clinical side and Academic side from the seniority list of Staff Nurse published on 20.11.2024.

D. In the Clinical side, for the post of Ward Sister/Ward In-Charge/Nursing Sister/OT Sister may be filled up from the post of Staff Nurses (having GNM Diploma holder) and in the Academic side, for the post of Sister Tutor/PHN may be filled up from the post of Staff Nurses (having B.Sc Nursing/Post Basic B.Sc Nursing) respectively in order of seniority-cum-merit.

23. From the above minutes of meeting, it is discernible that the DPC has

recommended for filling up of the aforesaid vacancies as shown in the chart from the respective seniority list. As far as the Staff Nurses are concerned, the seniority list of 20.11.2024 mentioned above has been approved by the DPC. Therefore, whatever promotions are required to be made, the same shall be made from the seniority list as prepared for the Staff Nurse. It is seen that the seniority list of Staff Nurses of different health institutions in the State of Assam for the year 2024 was published, vide a notice dated 20.11.2024, which consists of GNM as well as B.Sc Degree holders.

24. It is the specific case of the Petitioners that the Petitioners have been recommended for promotion by the DPC, vide its minutes dated 16.12.2024 and therefore, after such recommendation has been made by the duly constituted DPC, the Director of Health Services (Respondent No. 6) could not have promoted only two numbers of Staff Nurses having B.Sc degree to the post of Sister Tutor, whereas there were as many as 83 vacancies of Sister Tutor/ PHN. This contention of the learned counsel for the Petitioners cannot be accepted due to the fact that the DPC did not specify the names of incumbents who were recommended for promotion to the next higher posts. DPC simply recommended that the seniority list has to be taken into account and the promotions have to be made in terms of the Rules, 1991. Rule 12(2) of the Rules, 1991, specifically provides for appointing authority to furnish to the Board documents and information with regard to officers equal to four times of the number of vacancies in order of seniority eligible for promotion of vacancies. Therefore, it is a specific criterion laid down under the Rule that for number of vacancies to be filled up, the documents and information of the officers shall be called for in the ratio 1:4, i.e., four times the number of vacancies shall be considered for promotion. Therefore, in the instant case in hand, though the information and documents of the Petitioners were also called for, since Ward Sister/ Ward In-

Charge/Nursing Sister/OT Nurse and Sister Tutor/PHN falls under the same cadre, i.e., Cadre No. III, having one seniority list, the Petitioners did not come within the zone of consideration.

25. It is seen from the records that it is not disputed that only two Staff Nurses having B.Sc Nursing/ Post Basic B.Sc Nursing came within the zone of consideration and after finding them qualified, they were promoted by issuance of a promotion order dated 31st December, 2024.

26. The contention of the Petitioners that Petitioners having recommended by the DPC in the minutes of meeting dated 16/12/2024, the Director cannot on its own unilaterally take a decision to deny the promotion to the Petitioners, having suitably recommended them, cannot be accepted. The learned counsel appearing for the Petitioners contended that recommendation of DPC will ordinarily not be called for any interference in absence of any challenge and unless held to be illegally prepared. He has referred to the case of ***S.K. Goel (supra)*** will not help the cause of the Petitioners, as in the instant case, as mentioned above, there was no specific recommendation of the DPC for promotion of the Petitioners.

27. To support his argument that the Petitioners having recommended by the DPC in the minutes of meeting dated 16/12/2024, the respondents could not have been denied on some fresh grounds which did not exist at the time of recommendation, he has referred to the case of ***Gordhan Das Bhanji (supra)*** and ***Mahendra Singh Gill (supra)***. The ratios laid down in both the cases are not found to be applicable to the instant facts of the case due to the finding of this Court that there was no such specific recommendation of the Petitioners by the DPC in the instant case. The DPC had recommended promotions to those officers who are in the seniority list dated 20/11/2024 who came within the zone of consideration.

28. It is not in dispute that to be eligible for promotion to the post of Sister Tutor/PHN, the minimum qualification is B.Sc. Nursing Degree /Post Basic B.Sc. Nursing degree. It is also not disputed that GNM Nurses are not eligible to be promoted to the aforesaid posts of Sister Tutor and PHN. It is contended by the Petitioners that taking into account the vacancy positions of Sister Tutor/PHN, the information and documentation of officers in requisite numbers were called for, wherein the Petitioners were also requested to submit their ACRs of five years and other documents. The Petitioners further contended that since their credentials in terms of ACRs and other documents had been called for and they had been recommended by the DPC, there is a legitimate expectation and vested rights have been created in their favor to be promoted to the posts of Sister Tutor/PHN. This argument of the Petitioners cannot be accepted due to the settled law that only because the credentials were called for, for considering them for promotion, the same does not create any vested rights to the Petitioners.

29. The learned counsel appearing for the Petitioners has submitted that the Petitioners being eligible both in terms of qualification and experience as per the Assam Nursing Service Rules, 1991 and the Nursing Council Act, 1947, their ACRs were called for and placed before the DPC and they were recommended for promotion to the post of Sister Tutor/PHN. He has submitted that the Apex Court in the case of ***Prabha Devi (supra)*** has held that a person must be eligible for promotion having regard to the qualification prescribed for the post before he can be considered for promotion. It was held that seniority will be relevant only amongst the person eligible and seniority cannot be substituted for eligibility nor it can override it in the matter of promotion to the next higher post. He has submitted that although there are many GNM Nurses who are above the Petitioners in the seniority list, since they cannot be recommended for the post

of Sister Tutor/PHN, they are not eligible unlike the Petitioners. Therefore, he has submitted that the respondent authorities have committed a mistake by not extending the zone of consideration for the 83 nos. of vacancies for Sister Tutor/PHN so that the positions can be filled up with eligible candidates. He has further submitted that Rule 11(2) of the Assam Nursing Rules, 1991, lays down that a person has to be suitable for a post and suitability is related to prescribed qualification and requisite experience. He has submitted that since the Petitioners are being legally eligible, the Petitioners could not have been denied promotion to the post of Sister Tutor/PHN with the excuse that the Petitioners did not came in the zone of consideration. In support of his case, he has referred to the case of ***Valsala Kumari Devi (supra)***.

30. As far as contentions of the Petitioners regarding the eligibility is concerned, there is no doubt that that the Petitioners are eligible to be promoted to the post of Sister Tutor/PHN whereas the GNM Nurses are not eligible. It is also seen from the records which has been brought before this Court that in a zone of consideration which was made in terms of the Rule 12 of the Rules, 1991, 1:4 ratio was followed. It is seen that 1:4 ratio was made on the basis of total number of vacancies of the Cadre III, i.e., Ward Sister/Ward In-charge /Nursing Sister/OT Nurse/Sister Tutor/PHN totaling to 184 vacancies. It is also seen that in the zone of consideration, only two Staff Nurses having the requisite qualifications, came within the zone of consideration for promotion to the post of Sister Tutor/PHN. So, it is apparent that though there were 83 nos. of vacancies existed on the date of the DPC in the year 2024, the Respondent Authorities did not consider the candidature of many of the eligible candidates including the Petitioners as they did not come in the zone of consideration in the seniority list, by such action, the Respondent Authorities were unable to fill up the remaining 81 nos. of vacancies of Sister Tutor/ PHN. It is also cannot be denied that that in

terms of Rule 12 of the Rules of 1991, from one seniority list the Respondent Authorities are mandated only to call for candidates at 1:4 ratio for the zone of consideration. However, the problem occurred due to the fact that since the GNM Nurses and B.Sc. Nurses are put in the same cadre and GNM Nurses are not eligible to be promoted to Sister Tutor/PHN, the posts had to be kept vacant as sufficient nos. of B.Sc. Nursing were not there in the zone of consideration. It is seen that in 2017 and 2021, the Respondent Authorities, after facing similar situation, had extended the zone of consideration, thereby filled up the requisite number of posts of Sister Tutor and PHN. This issue was highlighted by the counsel appearing for the Petitioners referring to the Minutes of the Meeting of 2021, wherein it can be seen that the promotion committee, the DPC at that time prepared two zones of consideration at the rate of 1:4 ratios from the common gradation list of Staff Nurses for promotion considering the Clinical and Academic sides of the incumbents. It is seen that in the year 2021, considering the 260 vacant posts of Ward Sister/Ward In-charge/ Sister Tutor/PHN, a total number of 1040 candidates were considered following 1:4 ratio. However, in the aforesaid zone of consideration, the DPC found only one candidate suitable for promotion to the post of Sister Tutor/PHN. Faced with such situation, the DPC unanimously decided to extend the zone of consideration from the common gradation list up to the number 236 only with requisite qualification for filling up the rest 51 nos. of vacant posts of Sister Tutor/PHN. Therefore, it is seen that the issue which has arisen in the instant writ petition was also an issue in earlier times including the year 2021. The issue was resolved by the DPC in the year 2021 by taking into consideration further eligible candidates in the ratio of 1:4 and thereafter, they were duly promoted after the consideration.

31. The learned counsel appearing for the Petitioners has submitted that since the aforesaid practice has been followed by the Department since 2017, which is

evident from the minutes of DPC 2021, which is coupled with the recommendation of the DPC in the instant case, the rights of the Petitioners had crystallized and they have legitimate expectation to be promoted based on the expressed promise or representation and/or by the established past action and settled conduct. In this connection, the learned counsel has referred to the case of ***J.B. Bansal (supra)***. He has further submitted that since the Department has followed the practice for a long time since 2017,that had practically acquired the status of a rule in the Department. In this connection, he has referred to the case of ***Sailendra Dania (supra)***. Both the cases as referred by the counsel appearing for the Petitioners have been duly considered.

32. The learned Standing Counsel of the Respondent Department, however, has denied the contention raised by the counsel appearing for the Petitioners by stating that the DPC in 2021 had, in violation of the Rules 1991, exceeded the zone of consideration for promotion to the post of Sister Tutor/PHN, and therefore, the same cannot be repeated again in the instant case.

33. This Court has considered the aforesaid issue with due importance.

34. It is seen that there is no dispute that the Petitioners, including some other Staff Nurses having B.Sc. Nursing degree, were requested to submit their ACRs of 5 years and other credentials for consideration. Though nothing has been brought on record to show as to how many Staff Nurses with B.Sc. Nursing were called for to submit their credentials and documents, it can be discernible that having considered the vacancies totaling to 83 nos. of Sister Tutor/PHN, the Staff Nurses with B.Sc. Nursing were called to submit their credentials and other documents.

35. It is also seen that the ratios laid down in the cases of ***R. Prabha Devi (supra)*** and ***Valsala Kumari Devi (supra)*** that a person must be eligible for

promotion, meaning thereby, a person has to have the requisite qualification prescribed for the post to be considered for promotion. Though seniority is a relevant factor for such promotions, the same will be relevant only amongst the persons eligible. It is also seen that a person is required to be suitable for a post, and the suitability is related to prescribed qualification and requisite experience.

36. In the instant case in hand, it is seen that out of 184 nos. of vacancies in the post of Ward Sister/Ward-In-charge/Nursing Sister/OT Sister/Sister Tutor/PHN, in the zone of consideration at the ratio of 1:4, only 2 eligible or suitable candidates featured with B.Sc Nursing and both of them have been accordingly promoted and 81 nos. of vacancies had to be kept unfilled. Therefore, it is seen that sufficient number of eligible candidates suitable for promotion to the post of Sister Tutor/PHN were not brought under the zone of consideration and therefore, the posts had to be kept unfilled. Most of the Staff Nurses who were in the zone of consideration are GNM Nurses who were not eligible to the post of Sister Tutor/PHN. This Court is concerned about the unfilled vacancies due to the fact that Sister Tutor/PHN are specially for teaching in Nursing Schools and Colleges. As per the Nursing Council Act, 1947 and the Guidelines issued thereunder, only candidates having B.Sc. Nursing with requisite experience as prescribed can be appointed as Sister Tutor and PHN. It can be well visualized that due to such vacancies in Nursing Schools and Colleges in the State of Assam, the problems the students as well as administration are having due to lack of teaching staff. This issue is a public issue and the same is required to be addressed with utmost urgency. The same issue had occurred earlier in 2021 and the issue was resolved by the Respondent Department by creating two zones of consideration at that point of time. However, there was no mention in the minutes of the DPC of 2021 as to how the same has been done on the face of the Rules of 1991, as the Rules, 1991 provides for a zone of consideration with the

ratio @ 1:4.

37. In the Affidavit-in-Opposition filed by the Respondent No. 6, it is stated that due to requirement of Sister Tutors in Academic side to run Government GNM Training Schools, remaining vacant posts of 81 nos. of Sister Tutors were proposed for filling up by way of promotions as incumbents have fulfilled the minimum eligible criteria for award of promotions, though they were not under the ambit of zone of consideration and a proposal has already sent to the Government under Health and Family Welfare Department. It was stated that the Government approval is still awaited (para 20 of the Affidavit).

38. At this point of time, it may be relevant to refer to Rule 26 of Rules 1991, which provides for relaxation. Rule 26 provides for dispensing with or relaxing the requirement of a particular rule if the same causes hardship in any particular case. Therefore, it cannot be said that the Government does not have any power to relax any rule of Rules 1991. Therefore, in right cases when the situation demands, and taking into account the overall welfare of the public, the Government can explore the provision under Rule 26 to overcome the difficulties faced by it.

39. During the course of hearing of the matter, the learned Standing Counsel has also mentioned that a process is being undertaken by the concerned Department to bring in certain changes/modification of the Rules 1991.

40. Considering the aforesaid facts and the difficulties faced by the Respondent Department in filling up the posts of Sister Tutor/PHN in spite of having requisite number of eligible candidates with requisite experience, this Court is of the view that the Government should seriously explore possibilities of relaxing the mandates of Rule 12(2) of the Rules 1991, which provides for considering candidates for promotion in the ratio @ 1:4.

41. In fact, in the instant case, there is already two classes of Staff Nurses are in existence, i.e., one the B.Sc Nursing Degree holders and the other one is the GNM Diploma holders. The posts of Sister Tutor/PHN in the Academic Side, can be filled up only with B.Sc Nursing Degree holders, however, the posts on the Clinical Side, can be filled up from both the B.Sc Nursing Degree holders and the GNM Diploma holders. Therefore, two classes have already been made on the basis of qualification. But the two classes have been merged in the same cadre, i.e., class III. Now the question comes as to whether for promotion to two different classes, i.e., Academic Side and Clinical Side could be made on the basis of two categories based upon educational qualifications or not. In this connection, the observations of the Hon'ble Supreme Court in the case of ***Chandan Banerjee and others -Vs- Krishna Prosad Ghosh and others***, reported in **(2022) 15 SCC 453** being relevant are extracted herein below:

"*18. The locus classicus on the question whether educational qualifications can be used as a criteria for classification between persons integrated into one class for the purpose of promotion is the decision of a Constitution Bench of this Court in* ***State of Jammu & Kashmir v. Trilokinath Khosa****. In this case, the post of an Assistant Engineer in the Engineering Service branch of the appellants was filled by way of direct recruitment or through promotion from the cadre of Sub- ordinate Engineering Service. A rule was introduced in 1970 restricting the promotion to the next higher post of an Executive Engineer only to those Assistant Engineers who possessed a degree in engineering or held the qualification of AMIE and had put in seven years of service. The respondents, who were diploma holders and serving as Assistant Engineers, challenged the rule on grounds of discrimination. The Constitution Bench dealt with the question of whether persons recruited from different sources, that are integrated into one class, can then be classified to permit preferential treatment to some persons on the basis of their educational qualifications.*

19. Justice YV Chandrachud (as the learned Chief Justice then was), speaking for the Bench elaborated on the extent of judicial review in matters of classification in public employment

and observed that : (Triloki Nath Khosa case, SCC pp. 33-34, paras 32-34)

> "*32. Judicial scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis and whether it bears nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification, for were such an inquiry permissible it would be open to the Courts to substitute their own judgment for that of the legislature or the Rule-making authority on the need to classify or the desirability of achieving a particular object.*
>
> *33. Judged from this point of view, it seems to us impossible to accept the respondents' submission that the classification of Assistant Engineers into degree-holders and diploma- holders rests on any unreal or unreasonable basis. The classification, according to the appellants, was made with a view to achieving administrative efficiency in the Engineering services. If this be the object, the classification is clearly co-related to it, for higher educational qualifications are at least presumptive evidence of a higher mental equipment. This is not to suggest that administrative efficiency can be achieved only through the medium of those possessing comparatively higher educational qualifications but that is beside the point. What is relevant is that the object to be achieved here is not a mere pretence for an indiscriminate imposition of inequalities and the classification cannot be characterized as arbitrary or absurd. That is the farthest that judicial scrutiny can extend.*
>
> *34. On the fact of the case, classification on the basis of educational qualifications made with a view to achieving administrative efficiency cannot be said to rest on any fortuitous circumstance and one has always to bear in mind the facts and circumstances of the case in order to judge the validity of a classification.*"

28. The principles which emerge from the above line of precedents can be summarised as follows:

28.1. Classification between persons must not produce artificial inequalities. The classification must be founded on a reasonable basis and must bear nexus to the object and purpose sought to be achieved to pass the muster of Articles 14 and 16.

28.2. Judicial review in matters of classification is limited to a determination of whether the classification is reasonable and bears a nexus to the object sought to be achieved. Courts cannot indulge in a mathematical evaluation of the basis of classification or replace the wisdom of the legislature or its delegate with their own.

28.3. Generally speaking, educational qualification is a valid ground for classification between persons of the same class in matters of promotion and is not violative of Articles 14 and 16 of the Constitution.

28.4. Persons drawn from different sources and integrated into a common class can be differentiated on grounds of educational qualification for the purpose of promotion, where this bears a nexus with the efficiency required in the promotional post.

28.5. Educational qualification may be used for introducing quotas for promotion for a certain class of persons; or may even be used to restrict promotion entirely to one class, to the exclusion of others.

28.6. Educational qualification may be used as a criterion for classification for promotion to increase administrative efficiency at the higher posts.

28.7. However, a classification made on grounds of educational qualification should bear nexus to the purpose of the classification or the extent of differences in qualifications."

From the above observations, it is clear that separate classification within a class is possible on the basis of educational qualifications if such classification bears nexus to the purpose of the classification. It has also been seen that persons drawn from different sources and integrated into a common class can be differentiated on grounds of educational qualifications for the purpose of promotion, where this bears a nexus with the efficiency required in the

promotional post.

42. This Court, after considering the various aspects of the matter and after giving a thoughtful hearing to the counsel appearing for the respective parties, is of the considered opinion that the Petitioners, in the instant case, do not have any vested right to be promoted to the post of Sister Tutor/PHN. The issue has already been discussed above with a finding that there was no clear recommendation on the part of the DPC by its minutes dated 16.12.2024 for promotion of the Petitioners to the post of Sister Tutor/PHN. In fact, from the aforesaid Minutes of the Meeting, it is seen that the recommendation was only for promotion to the next higher post, as per the seniority list, following the Rules 1991, which clearly indicates that Rule 12(2) has to be also complied with while promoting the Staff Nurses to the next higher cadre. However, taking into account the fact that a large number of vacancies, i.e., 81 vacancies at the time of the DPC remained vacant and due to such vacancies, the students are definitely suffering due to lack of teaching staff, this Court directs the Government, specifically Respondent No. 1 and Respondent No. 2, i.e., the Principal Secretary to the Government of Assam, Health and Family Welfare Department and the Commissioner & Secretary to the Government of Assam, Health and Family Welfare Department to consider the cases of the Petitioners by taking into account Rule No. 26, i.e., Relaxation, and thereafter, pass a detailed speaking order about its decision.

43. Accordingly, the Petitioners are directed to submit a representation detailing the issues involved before the Respondent No. 1 and 2 within a period of 15 days of passing of the instant Judgment and Order. Thereafter, the Respondent No. 1 and 2, after giving an opportunity of hearing to the Petitioners,

within a period of 45 days from the date of receipt of such representation, shall pass its speaking order.

44. Until such speaking order is passed by the Respondent Authorities, the interim order passed on 23-07-2025 shall stand extended.

45. In terms of the aforesaid directions, the instant writ petition is disposed of.

JUDGE

Comparing Assistant