

GAHC010238012024



2026:GAU-AS:4154

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

Case No. : WP(C)/5861/2024

AINUL ALI AND 7 ORS
S/O- ALAUDDIN AHMED,
R/O- VILLAGE- MANDAKATA, P.O- MANDAKATA, DIST- KAMRUP , ASSAM

2: JAHANGIR HUSSAIN HAZARI
S/O- ABDUL MUKIM HAZARI

R/O- VILLAGE- APPIN PART I
P.O- APPIN

DIST- HAILAKANDI
ASSAM

3: ABIDA SULTANA LASKAR
D/O-BODAR UDDIN LASKAR

R/O- WARD NO-11
HASHIM CHOUDHURY LANE

P.O-R.P ROAD HAILAKANDI
DIST- HAILAKANDI
ASSAM

4: ANAMUL HASSAN LASKAR
S/O-MOYNUL ISLAM LASKAR

R/O- BHAJANTI PUR PART II

P.O-RATANPUR
DIST- HAILAKANDI
ASSAM

5: MUSTQUE AHMED MAZARBHUIYA
S/O-JAWAD ALI MAZARBHUIYA

R/O- VILLAGE BHATIRKUPA PART II

P.O-BHATIRKUPA
DIST- HAILAKANDI
ASSAM

6: SABIR AHMOD CHOUDHURY
S/O-AFTAB UDDIN CHOUDHURY

R/O- VILLAGE SAHABAD PART II

P.O-SAHABAD
DIST- HAILAKANDI
ASSAM

7: FORIDA KHANOM LASKAR
D/O-MOTIBUR RAHMAN LASKAR

R/O- VILLAGE UJANKUPA PART I

P.O-UJANKUPA PART I

DIST- HAILAKANDI
ASSAM

8: SAMIM AHMED LASKAR
S/O-ABDUL RAKIB LASKAR

R/O- VILLAGE MOHAMMEDPUR PART I

R.O-RONGPUR SOUTH

DIST- HAILAKANDI
ASSA

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EDUCATION (SECONDARY) DEPARTMENT, DISPUR,
GUWAHATI-06.

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM KAHILIPARA GUWAHATI-1

Advocate for the Petitioner : MR S BORTHAKUR, MS. P BORAH

Advocate for the Respondent : SC, SEC. EDU.,

Linked Case : WP(C)/5852/2024

MOKLESUR RAHMAN AND 4 ORS
S/O- IDRIS ALI

R/O- BORTALOWA

P.O.- DHALIGAON

DIST.- CHIRANG
ASSAM.

2: NAZRUL ISLAM
S/O- MAKBUL HUSSAIN

R/O- BALAGAON

P.O.- BALAGAON

DIST.- BARPETA
ASSAM.

3: MD. EBARAT ALI
S/O- AZIM UDDIN

R/O- PORABHARAL

P.O.- SUKMANAH

DIST.- BARPETA
ASSAM.

4: MIRZA OSMAN GANI
S/O- MIRZA NURUL AMIN

R/O- AIKHARI BILOR PATHER

P.O.- BILASHIPARA BAZAR

DIST.- BAKSA
ASSAM.

5: ARIFUR RAHMAN
S/O- MD. QURBAN ALI

R/O- ALITANGONI

P.O.- JURIRPAR

DIST.- NAGAON
ASSAM.
VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE COMMISSIONER AND SECRETARY

DEPARTMENT OF EDUCATION (SECONDARY)

GOVT. OF ASSAM

DISPUR
GUWAHATI- 781006.

2:THE DIRECTOR OF SECONDARY EDUCATION
GOVERNMENT OF ASSAM
KAHILIPARA
GUWAHATI- 781019.

Advocate for : MR S BORTHAKUR
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND ANR

Linked Case : WP(C)/5713/2024

DR. HASHMAT ALI AND 4 ORS
S/O- NAWSHAD ALI

R/O- KHATARTARY

P.O.- BONGHUGI

DIST.- BARPETA
ASSAM.

2: FARUK ABDULLAH
S/O- ABDUL AWAL

R/O- RANGIA

P.O.- BAGODI

DIST.- BARPETA
ASSAM.

3: HABIBUR RAHMAN
S/O- ABUL HASAN

R/O- PUB-KARDOIGURI

P.O.- KARDOIGURI

DIST.- BAJALI
ASSAM.

4: OMAR FARUQUE AHMED
S/O- MOFIZ UDDIN AHMED

R/O- DHUPAGURI PATHER

P.O.- DHUPAGURI

DIST.- NAGAON
ASSAM.

5: JURAN ALI
S/O- BADSHA SHEIKH

R/O- NOLONGA PAHAR TOLL

P.O. RAMHARIR CHAR

DIST.- GOALPARA
ASSAM.
VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE COMMISSIONER AND SECRETARY

DEPARTMENT OF EDUCATION (SECONDARY)

GOVT. OF ASSAM
DISPUR
GUWAHATI- 781006.

2:THE DIRECTOR OF SECONDARY EDUCATION
GOVERNMENT OF ASSAM

KAHILIPARA
GUWAHATI- 781019.

Advocate for : MR S BORTHAKUR
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND ANR.

Linked Case : WP(C)/5855/2024

SYEDA ZINNA AKHATARA AHMED AND 6 ORS
D/O- MD. ANOWARUL ISLAM

R/O- HOUSE NO. 97

SAMANNAY PATH

P.O.- DEVKOTA NAGAR

DIST.- KAMRUP(METRO)
ASSAM.

2: JAKARIA AHMED CHOUDHURY
S/O- AFTAB UDDIN CHOUDHURY

R/O- TOWN W/NO. 11

P.O.- RATANPUR ROAD

DIST.- HAILAKANDI
ASSAM.

3: MUNIM RASUL MAZUMDER
S/O- AZIR UDDIN MAZUMDER

R/O- VILL.- RONGPUR PART-4

PO- KATLICHERRA

DIST.- HAILAKANDI
ASSAM.

4: ALTAF HUSSAIN BARBHUIYA
S/O- NASIR UDDIN BARBHUIYA

R/O- VILL.- SHYAMPUR

P.O.- KARICHERRA

DIST.- HAILAKANDI
ASSAM.

5: AZMOL HUSSAIN MAZUMDER
S/O- AZIR UDDIN MAZUMDER

R/O- VILL.- BHAJANTIPUR-1

P.O.- RATANPUR

DIST.- HAILAKANDI
ASSAM.

6: HAMIDA BEGUM CHOUDHURY
D/O- FAIZUL HUSSAIN CHOUDHURY

R/O- VILL. MATIJURI DAKHIN SHUNAPUR

P.O.- MATIJURI

DIST.- HAILAKANDI
ASSAM.

7: THOUHIDUR RAHMAN LASKAR
S/O- LATE AZIZUR RAHMAN LASKAR

R/O- VILL.- SAHABAD PART-I

P.O.- SAHABAD

DISTRICT- HAILAKANDI
ASSAM.
VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE COMMISSIONER AND SECRETARY

DEPARTMENT OF EDUCATION (SECONDARY)

GOVT. OF ASSAM

DISPUR
GUWAHATI- 781006.

2: THE DIRECTOR OF SECONDARY EDUCATION
GOVERNMENT OF ASSAM

KAHILIPARA
GUWAHATI- 781019.

Advocate for : MR S BORTHAKUR
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND ANR

**BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 23.03.2026

Heard Mr. S. Borthakur, learned counsel for the petitioners. Also heard Mr. B. Kausik, learned Standing Counsel, Secondary Education Department, for all the respondents.

2. Challenge made in these writ petitions is to the advertisements dated 26.12.2023 and 07.09.2021 and the Addendum dated 16.10.2024, issued by the Directorate of Secondary Education, Assam, whereby applications are invited from the eligible candidates for filling up of various vacant posts of Graduate Teacher (Arts), (Science), (Hindi), (Sanskrit) and Post Graduate Teachers in different Provincialised Secondary/ Higher Secondary Schools under the Directorate of Secondary Education, Assam.

3. Having considered that these writ petitions involve similar issues on fact and law, same are taken up analogously and disposed of by this common order.

4. The petitioners are Graduate and Post Graduate in Arabic and Persian subjects having B.Ed qualification and are eligible for appointment to the post of

Graduate Teachers and Post Graduate Teachers.

5. The Directorate of Secondary Education, Assam, vide advertisement dated 26.12.2023 and 07.09.2021, has invited applicants from eligible candidates for filling up of various vacant posts of Graduate Teachers (Arts), (Science), (Hindi) and (Sanskrit) and Post Graduate Teachers of the different Provincialised Secondary/Higher Secondary Schools under the Directorate of Secondary Education, Assam. By an Addendum dated 16.10.2024, the Directorate of Secondary Education has notified the breakup of the number of posts in terms of the said advertisement dated 26.12.2023.

6. It is the contention of the petitioners that despite availability of sufficient vacancies in the posts of Graduate Teachers and Post Graduate Teachers in Arabic and Persian subjects, the respondent authorities have not advertised the said posts, which has deprived the petitioners from participating in the selection process. Therefore, the respondent authorities are duty bound to advertise the vacant posts of Graduate Teachers and Post Graduate Teachers in Arabic and Persian subjects.

7. Mr. S. Borthakur, learned counsel for the petitioners, while referring to the provisions of Rule 8 of Assam Secondary Education (Provincialised Schools) Service Rules, 2018, submits that the authorities are obligated to ascertain the vacancy position in the cadre of Graduate Teachers and Post Graduate Teachers, including subject teacher in Vocational Subjects in Provincialised Schools, along with sanction number, allotment and retention order of those posts before the end of every year and to invite applications through an advertisement.

Therefore, the failure of the respondent authorities to advertise the posts in Arabic and Persian subjects, despite availability of vacancies and without following the mandate of the said Rules, is illegal. Therefore, he submits that the respondent authorities be directed to advertise the vacant posts of Graduate Teachers and Post Graduate Teachers in Arabic and Persian subjects in the Provincialised Schools so as to enable the petitioners to participate and compete in the selection process.

8. Mr. B. Kaushik, learned Standing Counsel, Secondary Education Department, on the other hand, submits that filling up of the vacant posts of Graduate Teacher and Post Graduate Teacher in Government and Provincialised Secondary Schools is a continuous process. After assessment of the need-based vacancies, advertisements dated 26.12.2023 and 07.09.2021 were issued for filling up of the vacant posts of Graduate Teachers and Post Graduate Teachers of different Government and Provincialised Schools, followed by an Addendum showing the breakup of the posts. The total numbers of vacant post of Graduate Teacher and Post Graduate Teacher has already been shown in the said advertisement and the Addendum. However, it is also mentioned in the advertisement that the number of vacancies may vary due to administrative reasons and the Director of Secondary Education reserves the right to make changes in sequence of the recruitment process after publication of the advertisement. He submits that the ongoing recruitment process is essentially based on vacant posts of Graduate and Post Graduate Teachers in the Science, Commerce, Arts, Hindi and Sanskrit, which has been prioritized and advertised accordingly. In order to mitigate the shortfall of Graduate and Post Graduate Teachers in Arabic and Persian, the process of rationalization is going on and

after completion of the rationalization process, the assessment of actual requirement of Graduate and Post Graduate Teachers will be made. He further submits that no prejudice has been caused to the petitioners by non-inclusion of posts in Arabic and Persian subjects in the present advertisements, inasmuch as the petitioners, being Graduates and Post Graduates, are otherwise eligible to participate in the selection process pursuant to the said advertisement.

9. I have considered the submissions of learned counsel for the parties and also perused the materials available on record.

10. The recruitment to the post of Graduate Teachers and Post Graduate Teachers in the Provincialised Schools is regulated by the Assam Secondary Education (Provincialised Schools) Service Rules, 2018. Rule 8 provides for recruitment to the post of Graduate Teacher, Post Graduate Teacher and selection procedure thereof, which is reproduced hereinbelow:-

"8. (1) The Recruitment to the post in the cadre of Graduate Teachers, Post Graduate Teacher including Subject Teacher in Vocational Subjects in provincialised High School/High Madrasa, Higher Secondary Schools and Senior Secondary School shall be made by direct recruitment in the manner prescribed under sub-rule(2).

(2) (i) Before the end of the year the Member-secretary of the District Selection Committee constituted under rule 16(2), shall ascertain the vacancy position of the posts in the cadre of Graduate Teacher, Post Graduate Teacher including Subject Teacher in Vocational Subjects in provincialised High School/High Madrasa, Higher Secondary Schools and Senior Secondary School with sanction number, allotment and retention order of those posts and invite applications through an advertisement to be published in two local newspapers.

(ii) The Member-secretary shall prepare a list of eligible candidates and submit to the District Selection Committee after scrutiny of the applications. The District Selection Committee shall verify documents in respect of academic qualification

and marks sheet of the respective examination and calculate the marks secured by a candidate in respect of the respective examination in the manner as specified in schedule-II and on the basis of total marks secured by a candidate in respect of the academic marks secured in the respective examinations under schedule II, prepare a select list in respect of as many candidates equal to the number of vacancies.

(iii) The select list so prepared by the District Selection Committee shall be submitted to the Director who shall after necessary verification as may be required, approve the select list and publish the same in the official notice Board or in such other places as the Director may consider fit and proper.

(iv) After approval and publication of the select list the Appointing Authority shall appoint the candidates in order of preference in the select list by observing all formalities.

(v) No appointment in any manner shall be made by any authority except in accordance with the procedure prescribed above.

(vi) The validity of the select list shall not exceed beyond one year from the date of its approval by the Director."

11. A bare reading of the above Rules shows that the recruitment to the post and the cadre of Graduate Teachers and Post Graduate Teachers, including Subject Teachers in the Provincialised High Schools/High Madrasa, Higher Secondary Schools and Senior Secondary Schools, are to be made by direct recruitment. Sub-Rule 2 (i) of Rule 8 lays down that the Member Secretary to the District Selection Committee shall ascertain the vacancy position of the posts in the cadre of Graduate Teacher, Post Graduate Teacher including Subject Teacher in Vocational Subjects in Provincialised Schools with sanction number, allotment and retention order of those posts before the end of every year and applications are to be invited through advertisement to be published in 2 (two) local newspapers.

12. The respondent authorities, through the Director, Secondary Education, issued advertisements for filling up of various vacant posts of Graduate Teachers and Post Graduate Teachers in Arts, Science, Hindi and Sanskrit of different Provincialised Schools under the Directorate of Secondary Education. No posts were advertised for Graduate Teachers and Post Graduate Teachers for Arabic and Persian subjects, as the respondent authorities are in the process of rationalization of the said subjects, essentially based on the requirements, which the respondent authority would fill up on completion of rationalization.

13. Upon consideration, it appears that there are vacant posts of Graduate and Post Graduate Teachers in Arabic and Persian as the respondent authorities has categorically stated that the rationalization is under process. As noted herein above, as per Rule 8 of the Assam Secondary Education (Provincialised Schools) Service Rules, 2018, it is mandated that the vacant posts of Graduate Teachers and Post Graduate Teachers in all subjects is required to be ascertain before the end of every year and the same is required to be filled up by an advertisement. Thus, it is obligated on the part of the respondent authorities to ascertain the vacant position in respect of the posts of Graduate and Post Graduate Teachers of all the subjects, including the Arabic and Persian subjects. However, it is also settled principle of law that the Court cannot issue a mandamus to fill up a particular post unless it is mandated under the law.

14. Having considered above and taking note of the mandate of the Assam Secondary Education (Provincialised Schools) Service Rules, 2018, which requires the authorities to ascertain the vacant posts of Graduate Teachers and Post Graduate Teachers in all subjects and to fill up by inviting applications

through advertisement, this Court is of the view that the respondent authorities are required to abide by the mandate of the said Rule. As the respondents have categorically stated that the rationalization process is on for the post of Graduate Teachers and Post Graduate Teachers in Arabic and Persian subjects and the same shall be filled up essentially based on requirements, I deem it appropriate to dispose of these writ petitions with the hope and expectation that the respondent authorities shall follow the mandate of the Assam Secondary Education (Provincialised Schools) Service Rules, 2018. Needless to observe that the respondent authorities shall make an endeavour to complete the process of rationalization expeditiously.

15. Writ petitions stand disposed of in terms above.

JUDGE

Comparing Assistant