
(2022) 06 GAU CK 0004

Gauhati High Court

Case No: Writ Petition (Civil) No. 2168 Of 2019

Meenakshi Singha

APPELLANT

Vs

State Of Assam And 5
Ors

RESPONDENT

Date of Decision: June 3, 2022

Acts Referred:

- Constitution Of India, 1950 - Article 226, 309
- Assam Secondary Education (Provincialised Schools) Service Rules, 2018 - Rule 10, 10A, 10(5), 35
- General Clauses Act, 1897 - Section 3(51), 6
- Assam General Clauses Act, 1915 - Section 6

Citation: (2022) 06 GAU CK 0004

Hon'ble Judges: Kalyan Rai Surana, J

Bench: Single Bench

Advocate: M Khan

Final Decision: Dismissed

Judgement

1. Heard Mr. M. Khan, learned counsel for the petitioner. Also heard Mr. U. Sarma, learned standing counsel for the Secondary Education

Department, representing respondent nos. 1 to 3, Mr. P. Saikia, learned Government Advocate, representing respondent no. 4 and Mr. S.D.

Purkayastha, learned counsel representing respondent no. 6. None appears on call for the respondent no.5, upon whom vide order dated 26.09.2019,

notice has been deemed to be duly served.

2. The pleaded case of the petitioner is that she is having educational qualification of M.Sc. (Chemistry), B.Ed., and had also cleared Teacher

Eligibility Test Examination (TET for short). Accordingly, it is claimed that the petitioner has the requisite eligibility to be appointed as Post Graduate

Teacher (PGT for short). By an OM dated 19.02.2014, issued by the Secondary Education Department, it was provided, amongst others, in Clause 7

(vii) that "No candidate is allowed to apply in the Bengali / Hindi medium schools if the candidate does not have MIL in Bengali and Hindi in the

HSLC examination as the case may be. Only candidates having Bengali and Hindi are allowed for applying in the schools in Bengali and Hindi

medium schools which are imparting teaching in Bengali or Hindi exclusively. To assail the said clause of the OM dated 19.02.2014, the petitioner

and others had preferred a writ petition, which was registered and numbered as W.P.(C) 3403/2014, and this Court, by order dated 23.07.2014, in the

interim, provided that "Irrespective of pendency of the writ petition, the petitioners may be allowed to offer their candidatures in response to the

impugned advertisement. Thereafter, by order dated 30.07.2014, passed in M.C. 2123/2014 [in W.P.(C) 3403/2014], clarified as follows

"Irrespective of pendency of the writ petition and the impugned office memorandum dated 19.02.2014, Annexure-5 to the writ petition, the

petitioners may be permitted to offer their candidature in response to the impugned advertisement, which might be issued in due course.

Consequently, in view of the said orders of this Court, the respondent authorities, by way of a WT message dated 08.08.2014, directed the Inspector

of Schools, CDC, Silchar as well as the Deputy Commissioner, Cachar and Chairman, District Level Approval Authority to allow all the 10 (ten)

petitioners in W.P.(C) 3403/2014, including the petitioner of this case, to participate in the interview. Pursuant to the selection process, one out of the

ten petitioners in W.P.(C) 3403/2014 was appointed as PGT by the Director of Secondary Education, Assam vide order dated 17.11.2014 and one

more out of ten petitioners was appointed as PGT by the same authority vide order dated 01.12.2014 respectively.

3. It is the projected case of the petitioners that during the pendency of W.P.(C) 3403/2014, another Office Memorandum dated 14.07.2016 was

issued by the Principal Secretary to the Government of Assam, Secondary Education Department, amongst others, which contained Clause no. 7(vii),

containing provisions that was similar to OM dated 19.02.2014, which was under challenge in W.P.(C) 4609/2016. In the said clause, it was provided

that "No candidate is allowed to apply in the Bengali/ Hindi/ Assamese medium schools if the candidate does not have MIL in Bengali, Hindi and

Assamese respectively in the HSLC Examination as the case may be. Only candidates having Bengali, Hindi and Assamese as MIL in HSLC

Examination are allowed for applying in the schools which are imparting education in Bengali, Hindi and Assamese medium exclusively." Aggrieved

by the said OM dated 14.07.2016, the petitioner along with six other persons had assailed the same by filing a writ petition, which was registered and

numbered as W.P.(C) 4609/2016 and this Court by order dated 05.08.2016, provided that "Having regard to the previous office memorandum

dated 19.02.2014 and the order passed by this Court on 23.07.2014 in W.P.(C) 3403/2014, it is hereby directed that notwithstanding pendency of the

writ petition, petitioner would be entitled to participate in the selection for the post of Post-Graduate Teacher in Higher Secondary Schools. It may

be mentioned that the said writ petition, i.e. W.P.(C) 4609/2016, wherein the petitioner was arrayed as petitioner no.3, was disposed of by directing the

respondent authorities to declare the results of the petitioners and depending on the same to take appropriate consequential steps for their appointment

as per law, further directing that such exercise should be done within a period of 3 (three) months.

4. It was submitted by the learned counsel for the petitioner that several writ petitions were filed by various candidates to challenge the OM dated

14.07.2016, which were registered and numbered as W.P.(C) nos. 350/2017, 440/2017, and 1830/2017, and this Court, by judgment and order dated

30.05.2017, allowed the writ petitions and struck down Clause (4) of the OM dated 14.07.2016. Consequently, some of the petitioners in the said writ

petitions were appointed as PGTs. In the meanwhile, the State Government had preferred an intra-Court appeal against the said judgment and order

dated 30.05.2017, which was registered and numbered as W.A. 179/2017. However, the said appeal was dismissed as withdrawn, however, by

granting liberty to file review petitions. Thereafter, three review petitions were filed, being Rev. Pet. Nos. 117/2017, 147/2017 and 148/2017. The said

three review petitions were dismissed by order dated 29.01.2018. It may be mentioned that during the pendency of the review petitions, vide order

dated 22.05.2018, the State Government had cancelled the appointments which were made pursuant to the herein before referred judgment and order

dated 30.05.2017. However, after dismissal of the said three review petitions, the Government had cancelled its said order dated 22.05.2018.

5. Thereafter, on 29.03.2018, the School Selection Committee (respondent no. 5) had issued an advertisement by which applications were invited for

filling up certain vacant posts of PGT, inclusive of the post of PGT (Chemistry) under OBC/MOBC reserved quota. The petitioner herein had applied

for the said post of PGT (Chemistry) under OBC quota. Awaiting the declaration of result, the petitioner had submitted application dated 04.06.2018

under the Right to Information Act (RTI Act for short) for certain information, which was allegedly not provided. In course of time, the petitioner

came to know in the month of December, 2018 that the respondent no. 6 was appointed to the said post. Therefore, the petitioner had submitted an

application dated 04.01.2019 under RTI Act for certain information. In course of time, allegedly incomplete documents were forwarded to the

petitioner. From those documents, the petitioner came to know that she was the topper in the merit position, but with a remark that the petitioner had

no MIL (i.e. Modern Indian Language) as per norms and the respondent no. 6 was in the second position in the merit list. On enquiry, the petitioner

came to know that the candidature of petitioner was not considered for appointment as in HSSLC, she did not have MIL in Bengali. It was projected

that neither in the advertisement, nor by any means the petitioner was informed about the requirement to have Bengali as MIL in HSSLC examination,

for which it was not open to the respondent authorities to take such a plea. The petitioner has pleaded that in view of the judgment rendered by this

Court in W.P.(C) Nos. 3403/2014, 4609/2016, and 350/2017, the rejection of the candidature of the petitioner, owing to not having Bengali as MIL in

HSSLC was arbitrary, illegal and tainted by vested interest. Thus, by filing this writ petition under Article 226 of the Constitution of India, the petitioner

has prayed for setting aside and quashing the appointment order dated 28.12.2018, in so far it relates to the appointment of respondent no. 6 as Post

Graduate Teacher in Chemistry in Narsing Higher Secondary School, Silchar; and for directing the respondent authorities to appoint the petitioner in

the said post pursuant to selection process made in terms of the advertisement dated 29.03.2018.

6. The learned counsel for the petitioner has elaborately referred to the pleadings made in the writ petition. It was also stated that out of the

recruitment process that was initiated after issuance of OM dated 19.02.2014, some of the petitioners in W.P.(C) 3403/2014 were appointed as PGT

without Bengali/ Hindi as MIL in HSLC. Hence, it was submitted that as because by judgment and order dated 30.05.2017, passed by this Court in

W.P.(C) nos. 350/2017, 440/2017, and 1830/2017, Clause (4) of the OM dated 14.07.2016 was struck down and that by acting upon the said judgment,

3 (three) out of 10 (ten) petitioners in W.P.(C) 3403/2014 who did not have Bengali and Hindi as MIL, were appointed as PGT in Higher Secondary

Schools in the Barak Valley Districts, the denial of appointment to the petitioner is illegal, arbitrary, whimsical and mala fide because when the

Government could appoint similarly situated persons, there was no justifiable reason to deny fair consideration for such appointments to the petitioners.

It was also submitted that as the petitioner had stood first on merit and the respondent no. 6 had stood second in the merit list, this was a fit and proper

case to set aside and quash the impugned select list and impugned appointment order dated 28.12.2018, by which the respondent no. 6 was appointed

to the post of Post Graduate Teacher in Chemistry in Nursing Higher Secondary School, Silchar and to issue a direction to the respondent authorities

to appoint the petitioner to the said post.

7. In support of his submissions, the learned counsel for the petitioner has placed reliance on the case of Madan Mohan Sharma v. State of Rajasthan,

(2008) 3 SCC 724.

8. Per contra, the learned counsel for the learned standing counsel for the Secondary Education Department had made his submissions to oppose the

prayers made in the writ petition.

9. The learned counsel for the respondent no. 6 has submitted that in the proceedings of W.P.(C) 3403/2014 and W.P.(C) 4609/2016, this Court had

not made any appointments pursuant to the advertisement dated 29.03.2018, subject to outcome of the said two writ petitions. It is also submitted that

the requirement of teachers to have MIL subjects of Bengali and Hindi in HSLC, if they are to impart education in Bengali and Hindi medium schools

is in greater public interest, i.e. in the interest of the students studying in such schools. It had been submitted that the OM dated 14.07.2016, was very

much in force, when the process of filling up the post of PGT in schools in Cachar District was being undertaken. Hence, it is submitted that the

appointment of the respondent no. 6, having been made in accordance with the law, ought not to be interfered with. It was also submitted that the

respondent no. 6 had all the requisite qualification and moreover, there was no bar for the respondent no. 6 to apply for being appointed to the post of

PGT and therefore, as the respondent no. 6 had left his previous service in the Department of Health, Government of Assam to take up the post of

PGT in Narsing Higher Secondary School, his appointment ought not to be interfered with.

10. It was submitted that the present writ petition was filed on 27.03.2019, and that during the pendency of this writ petition, the Assam Secondary

Education (Provincialised Schools) Service Rules, 2018 (hereinafter referred to as the 2018 Rules), was framed in exercise of power conferred by

proviso to Article 309 of the Constitution of India for regulating the recruitment and conditions of service of teaching and non-teaching employees

appointed in the provincialised Senior Secondary Schools, Higher Secondary Schools, etc. The said Rules had come into force with its publication in

the Assam Gazette on 10.10.2019. It is submitted that the provisions of Rule 10(5) of the 2018 Rules is similar to the clause 7(vii) of the OM dated

14.07.2016. Hence, it was submitted that the 2018 Rules had taken away the benefit that had accrued to the petitioner by the judgment and order

dated 30.05.2017, passed by this Court in W.P.(C) nos. 350/2017, 440/2017, and 1830/2017. In this regard, the learned counsel for respondent no. 6

has submitted that the sub judice matters were not protected under Rule 35 of the 2018 Rules, relating to repeal and savings clause and therefore, it

was submitted that the petitioner would not get the benefit of the provisions of Section 6 of the General Clauses Act, 1897.

11. It was submitted that the petitioner was not similarly situated as other two appointees, namely, Suman Nandy and Kalpana Sen, because while

Suman Nandy was appointed on 17.11.2014, Kalpana Sen was appointed on 01.12.2014, which was prior to the issuance of the OM date 14.07.2016.

12. In support of his submissions, the learned counsel for the respondent no. 6 had placed reliance on the following cases, viz., (i) Fibre Boards Pvt.

Ltd. v. Commissioner of Income Tax, Bangalore, (2015) 10 SCC 333; (ii) Gammon India Ltd. v. Special Chief Secretary & Ors., (2006) 3 SCC 354;

(iii) Government of India & Ors. v. Indian Tobacco Association, (2005) 7 SCC 396; (iv) Harsh Dhingra v. State of Haryana & Ors., (2001) 9 SCC

550; (v) Ramkanali Colliery of BCCL v. Workmen, by Secretary, Rashtriya Colliery Mazdoor Sangh & Anr., (2001) 4 SCC 236; (vi) Kolhapur

Canesugar Works Ltd. v. Union of India & Ors., (2000) 2 SCC 536; (vii) Kanaya Ram & Ors. v. Rajender Kumar & Ors., (1985) 1 SCC 436; (viii)

Gajraj Singh & Ors. v. State Transport Appellate Tribunal & Ors., (1997) 1 SCC 650; (ix) Bhubaneshwar Singh & Anr. v. Union of India & Ors.,

(1994) 6 SCC 77; (x) M/s. Rayala Corporation (P) Ltd. & Anr. v. Director of Enforcement, New Delhi, (1969) 2 SCC 412; (xi) Shri Ram Ashish

Singh No. II & Anr. v. Union of India & Ors., (1977) 0 Supreme(Pat) 45; (xii) Prabuda v. The State of Rajasthan, (1954) 0 Supreme (Raj) 106.

13. The submissions made by the learned counsel for the petitioner and the respondent no. 6 has been given due consideration.

14. The sequence of events in this case is reiterated below. The OM dated 19.02.2014 was challenged by the petitioner along with others by filing

W.P.(C) 3403/2014. The relevant clause 7(vii) of the said OM dated 19.02.2014, issued by the Secondary Education Department provided as follows:-

“No candidate is allowed to apply in the Bengali/ Hindi medium schools if the candidate does not have MIL in Bengali and Hindi in the

HSLC examination as the case may be. Only candidates having Bengali and Hindi are allowed for applying in the schools in Bengali and

Hindi medium schools which are imparting teaching in Bengali of Hindi exclusively.”

15. In the said writ petition, this Court had passed an interim order dated 23.07.2014. The said order dated 23.07.2014, was clarified by order dated

30.07.2014, passed in M.C. 2123/2014 [in W.P.(C) 3403/2014]. Accordingly, the interim order was to the following effect:—

“Irrespective of pendency of the writ petition and the impugned office memorandum dated 19.02.2014, Annexure-5 to the writ petition,

the petitioners may be permitted to offer their candidatures in response to the impugned advertisement, which might be issued in due

course.”

16. Pursuant to the selection process, one out of the ten petitioners in W.P.(C) 3403/2014 was appointed as PGT by the Director of Secondary

Education, Assam vide order dated 17.11.2014, and one more out of ten petitioners was appointed as PGT by the same authority vide order dated

01.12.2014 respectively.

17. During the pendency of W.P.(C) 3403/2014, OM dated 14.07.2016 was issued by the Principal Secretary to the Government of Assam,

Secondary Education Department. The Clause no. 4 and Clause 7(vii) of the said OM provided as follows:-

“(4) Age- Upper age limit 38 years as on 01.01.2016. Candidates belonging to Scheduled Caste and Scheduled Tribes (Reservation of

Vacancies in Services and Posts) (Amendment) Act, 2012.

* * *

“(7)(vii) No candidate is allowed to apply in the Bengali/ Hindi/ Assamese medium schools if the candidate does not have MIL in Bengali,

Hindi and Assamese respectively in the HSLC Examination as the case may be. Only candidates having Bengali, Hindi and Assamese as MIL

in HSLC Examination are allowed for applying in the schools which are imparting education in Bengali, Hindi and Assamese medium

exclusively.

18. The said OM dated 14.07.2016, was challenged by the petitioner with 6 (six) others by filing W.P.(C) 4609/2016. By an interim order dated

05.08.2016, this Court had provided as follows:-

“Having regard to the previous office memorandum dated 19.02.2014 and the order passed by this Court on 23.07.2014 in W.P.(C)

3403/2014, it is hereby directed that notwithstanding pendency of the writ petition, petitioner would be entitled to participate in the selection

for the post of Post- Graduate Teacher in Higher Secondary Schools.

19. Later on, the said W.P.(C) 4609/2016, was disposed of by directing the respondent authorities to declare the results of the petitioner and others,

and it was also provided that depending on the same, to take appropriate consequential steps for their appointment as per law, further directing that

such exercise should be done within a period of 3 (three) months.

20. It appears that the OM dated 14.07.2016 was challenged in three writ petitions, viz., W.P.(C) 350/2017, W.P.(C) 440/2017, and W.P.(C)

1830/2017. Para-16 of the judgment and order dated 30.05.2017 is quoted below:-

“16. In view of the above discussion, Clause (4) of the Office Memorandum dated 14.07.2016, being in transgression of and in conflict

with Rule 10 read with Schedule-II of the 2003 Rules, cannot be sustained and, therefore, Clause (4) of the Office Memorandum dated

14.07.2016 is struck down. It is immaterial that subsequently, by issuing notifications, the eligibility conditions prescribed in Clause (4) of

the Office Memorandum dated 14.07.2016 were watered down. Even after the rigour of Clause (4) is relaxed, the conditions regarding the

eligibility prescribed therein are beyond the ambit of Rule 10 read with Schedule-II of the 2003 Rules.”

It would be appropriate to mention herein that in paragraph-5 of the said judgment and order dated 30.05.2017, while mention has been made of

Clause (4) of the OM dated 14.07.2016, but it prima-facie appears that the text was that of Clause 7(vii) of the said OM. Nonetheless, in para-16 of

the said judgment, Clause (4) of the OM dated 14.07.2016 was set aside. No material has been brought on record to show that this Court had set

aside Clause 7(vii) of the said OM. Therefore, the said judgment and order dated 30.05.2017, in WP(C) Nos.350/2017, 440/2017 and 1830/2017 helps

the petitioner in any manner whatsoever.

21. Thus, it is clear from the perusal of the judgment and order dated 30.05.2017, passed in the said three writ petitions that in the aforesaid three writ

petitions, either there was no challenge to Clause 7(vii) of OM dated 14.07.2016, or even if there was any challenge, the said challenge was not

adjudicated upon.

22. It may be mentioned that nothing is brought on record to show that the previously filed W.P.(C) 3403/2014 has been disposed of.

23. Thus, during the pendency of the said W.P.(C) 3403/2014, the present writ petition was filed on 27.03.2019 to challenge the order dated

28.12.2018 by which the respondent no. 6 was appointed as PGT. During the pendency of W.P.(C) 3403/2014, the 2018 Rules had come into force

w.e.f. 10.10.2019. The relevant rule 10(5) thereof is quoted below:-

“10. Academic and professional qualification:-

(5) In addition to the academic and professional qualification as per sub-rule (1), the candidate must satisfy the following criteria:

(i) In case of Assamese Medium School , the candidate must have passed HSLC or equivalent Examination with Assamese language as one

of the subjects or having Diploma in Assamese language issued by the Axom Sahitya Sabha or read up to HSLC level in Assamese medium

School;

(ii) In case of Bengali Medium School , the candidate must have passed HSLC or equivalent Examination with Bengali language as one of

the subjects or having Diploma in Bengali language issued by the Barak Upatyaka Bangya Sahitya Sanskriti Sammelan or read up to HSLC

level in Bengali medium school;

(iii) In case of Hindi Medium School, the candidate must have passed HSLC or equivalent Examination with Hindi language as one of the

subjects or read up to HSLC level in Hindi medium School;

(iv) In case of Bodo Medium School, the candidate must have passed HSLC or equivalent Examination with Bodo language as one of the

subjects or read up to HSLC level in Bodo medium School;

(v) In case of English Medium School , the candidate must have passed HSLC or equivalent Examination with Alternative English as one of

the subjects or read from Class XI onwards in English medium School:

Provided that for recruitment of teacher for teaching MIL subject, the candidate who passed FISLC examination with particular MIL

subject shall be considered.

24. The present writ petition has been filed to challenge the legality of the appointment order dated 28.12.2018. Thus, there is no challenge to the

legality and validity of the Rule 10(5) of the 2018 Rules.

25. The provisions of Rule 35 of the 2018 Rules is quoted below:-

“35. Repeal and savings: The Assam Secondary Education (Provincialized) Service Rules, 2003, order or notifications corresponding to

these rules and in savings force immediately before commencement of these rules are hereby repealed:

Provided that all orders made or action taken under the rules so repealed or under any general orders ancillary thereto, shall be deemed to

have been validly made or taken under the corresponding provisions of these rules.

26. It would now be relevant to quote section 6 of the Assam General Clauses Act, 1915 as well as Sections 6 and 6A of the General Clauses Act,

1897 below:-

Assam General Clauses Act, 1915:

6. Effect of repeal.- Where any Act repeals any enactment hitherto made, or hereafter to be made, then, unless a different intention appears,

the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) alter the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or

punishment may be imposed as if the Repealing Act had not been passed.

General Clauses Act, 1897:

“6. Effect of repeal.- Where this Act, or any, Central Act or Regulation made after the commencement of this Act, repeals any enactment

hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

(a) Revive anything not in force or existing at the time at which the repeal takes effect; or

(b) Affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) Affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) Affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) Affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or

punishment as aforesaid; any such investigation, legal proceeding or remedy may be instituted, continued or enforced;

and any such penalty, forfeiture, liability or punishment may be imposed as if the repealing Act or Regulation had not been passed.

6-A. Repeal of Act making textual amendment in Act or Regulation. - Where any Central Act or Regulation made after the commencement of

this Act repeals any enactment by which the text of Central Act or Regulation was amended by the express omission, insertion or substitution

of any matter, then unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the

enactment so repealed and in operation at the time of such repeal.

27. Thus, it is seen that in the provisions of Section 6 of the Assam General Clauses Act, 1915 there is no reference to “Rules” or

“Regulations”, but it applies only to Acts by which enactment is repealed. Moreover from the observations made by the Constitution Bench of the

Supreme Court of India in para-36 of the case of Kolhapur Canesugar Works Ltd. & Anr. (supra), relied upon by the learned counsel for the

respondent no. 6, it is crystal clear that the provisions of Section 6 of the General Clauses Act, 1897 would only apply to Central Acts and therefore,

the said provisions would have no effect on a State Act, Rules or Regulations. The said para 36 of the said judgment is quoted below:-

36. In the case in hand Rule 10 or Rule 10-A is neither a "Central Act" nor a "Regulation" as defined in the Act. It may be a Rule under

Section 3(51) of the Act. Section 6 is applicable where any Central Act or Regulation made after commencement of the General Clauses Act

repeals any enactment. It is not applicable in the case of omission of a "Rule".

28. Similar observations have been made by Constitution Bench of the Supreme Court of India in the case of Rayala Corpn. (supra), which has also

been relied upon by the learned counsel for the respondent no.6. The relevant paragraph 17 thereof, is quoted below:-

“17. Reference was next to a decision of the Madhya Pradesh High Court in State of Madhya Pradesh v. Hiralal Sutwala, AIR 1959 MP

93 but, there again, the accused was sought to be prosecuted for an offence punishable under an Act on the repeal of which Section 6 of

the General Clauses Act had been made applicable. In the case before us, Section 6 of the General Clauses Act cannot obviously apply on

the omission of Rule 132A of the D.I.Rs. for the two obvious reasons that Section 6 only applies to repeals and not to omission, and applies

when the repeal is of a Central Act or Regulation and not by a Rule. If Section 6 of the General Clauses Act had been applied, no doubt,

this complaint against the two accused for the offence punishable under R. 132A of the D.I.Rs. could have been instituted even after the

repeal of that rule.”

29. In view of the discussions above, except for the herein before two cases cited by the learned counsel for the respondent no. 6, no other cited

cases are found to apply under the distinguishable facts of the instant case. Therefore, this order has not been burdened with the discussions on all the

cases cited at the Bar.

30. Be that as it may, the petitioner has not been able to show that merely because the challenge to the O.M. dated 14.07.2016 is sub judice in W.P.

(C) 4609/2016, the rights of the petitioner, if any, would be saved notwithstanding the provisions of Rule 10(5) of the 2018 Rules, which are to his

disadvantage.

31. In the aforesaid context, it is reiterated at the cost of repetition that by an OM dated 19.02.2014, amongst others, candidates were debarred to

apply in Bengali and Hindi medium schools for teaching posts if such candidate did not have Bengali/ Hindi as MIL in HSLC. However, this Court, by

order dated 23.07.2014, passed in W.P.(C) 3403/2014, as clarified by order dated 30.07.2014, passed in MC 2123/2014, arising in W.P.(C) 3403/2014,

had provided that irrespective of pendency of the writ petition and the impugned OM dated 19.02.2014, the petitioners may be allowed to offer their

candidature in response to the impugned advertisement, which might be issued in due course. Consequently, by WT message dated 08.08.2014, issued

by the Director, Secondary Education, Assam, the ten petitioners in W.P.(C) 3403/2014 were permitted to participate in the interview. The fate of the

said W.P.(C) 3403/2014 has not been brought on record by the petitioner. The petitioner has not been able to demonstrate that merely by participation

in the selection process, any indefeasible right has accrued in favour of the petitioner. It is contended that after participating in the selection process,

some of the 10 (ten) petitioners in W.P.(C) 3403/2014 were appointed as PGT in Cachar District. However, before the petitioner could be appointed,

the OM dated 14.07.2016 was issued. This writ petition was filed on 27.03.2019, but on 10.10.2019, the 2018 Rules was notified in the Official Gazette

of the State. However, Clause 10(5) of the 2018 Rules are not under challenge.

32. Therefore, in the light of the prescription of Rule 10 of the 2018 Rules, the petitioner does not have the eligibility criteria to be appointed as Post

Graduate Teacher in Chemistry in Narsing H.S. School, Silchar. Thus, no case has been made out by the petitioner to be entitled to any relief as

prayed for.

33. This writ petition stands dismissed.

34. Parties to bear their own cost.