

GAHC010019372018



2026:GAU-AS:2918

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

Case No. : WP(C)/539/2018

- 1. Musharraf Hussain**, S/o-Late Hatem Ali, R/o-Vill-Bamundanga
Part- II, P.O.- Markhula, P.S.-Baguan, District-Goalpara, Assam,
783120.

.....Petitioner

-Versus-

- 1. The State of Assam**, represented by the Commissioner &
Secretary to the Government of Assam, Department of Higher
Education, Dispur, Guwahati-6.
- 2. The Principal Secretary to the Govt. of Assam**, Department
of Higher Education, Dispur, Guwahati-6.
- 3. The Director of the Higher Education**, Assam, Kahilipara,
Guwahati-19.
- 4. The Principal of West Goalpara College**, Ambari, District-
Goalpara, Assam.
- 5. The Governing Body of West Goalpara College**, Ambari,
represented by its Chairman, C/o-The Principal of West Goalpara
College, Ambari, District-Goalpara, Assam.
- 6. Hafizur Rahman**, S/o-Md. Abdul Malek, Lecturer, Political
Science Department.

7. Nita Moni Nath, D/o-Late Nakul Chandra Nath, R/o-Charing Nath Gaon, District-Sibsagar, Assam.

8. Minhaz Uddin Ahmed, S/o-Late Abdul Hussain, R/o-Vill & Balarbhita, District-Goalpara, Assam.

9. Gagan Chandra Nath, S/o-Late Purander Ch. Nath, R/o-Chinabari, District-Goalpara, Assam.

10. Ruma Phukan, Department of Education, Amguri College, Amguri, District-Sivasagar, Assam.

.....Respondents

Advocates for the Petitioner : Mr. A. R. Sikdar.

Advocates for the Respondent : Mr. K. Gogoi SC, HED.

Date on which Judgment was reserved : 27.11.2025

Date of pronouncement of Judgment : 25.02.2026

**Whether the pronouncement is of the
operative part of the Judgment ? : NA**

**Whether the full Judgment has been
pronounced ? : Yes**

**BEFORE
HONOURABLE MR. JUSTICE ANJAN MONI KALITA**

JUDGMENT & ORDER (CAV)

1. Heard Mr. A. R. Sikdar, learned counsel for the Petitioner. Also heard Mr. K. Gogoi, learned Standing Counsel, Higher Education Department, Assam, and

Mr. A. K. Azad, learned counsel for the Respondent nos. 6 to 9 as well as Mr. P. J. Phukan, learned Standing Counsel for the Respondent no. 10.

2. By filing the instant writ petition under Article 226 of the Constitution of India, the Petitioner has challenged the impugned action of the Respondent authority in not including his name in the Final Seniority List of 254 nos. of Non-sanctioned College Lecturers, dated 22.04.2010 as well as the impugned letter, vide No. G(B)DHE/EST/50/05/Pt-1/266 dated 09.01.2017, issued by the Director of Higher Education, Assam, whereby one post in the Department of English has been blocked. The Petitioner has also challenged the impugned rejection of the proposal of regularization of the service of the Petitioner by the Deputy Director of Higher Education, Assam, vide letter dated 22.11.2017 and also the non-consideration and non-disposal of the representation dated 06.04.2017, submitted by the Petitioner, praying for regularization of his services against the vacant post arose on 02.07.2017 due to the resignation of one Dr. Mazibar Rahman, Associate Professor, Department of English, West Goalpara College.

3. The Petitioner's case is that the Petitioner has passed M.A. in English in the year 2001 having UGC norms and he has also passed M. Phil., having requisite qualification and following due process of selection through the Advertisement dated 11.05.2003, he was selected by the Government Body

of West Goalpara College. Accordingly, he was appointed by an order dated 15.12.2003, issued by the Principal-cum-Secretary of the aforesaid college. The Petitioner has been sincerely working in the college since his appointment and his name was included in the Provisional Seniority List published by the Respondent Dept. on 30.12.2009 as per the Official Memorandum dated 17.07.2004, whereby the Govt. wanted to regularize the service of lecturers working in non-sanctioned posts in various colleges across the State. However, he came to know only in 2017 that his name was deleted from the Final Seniority List published by the Govt. citing the reason that his subject of teaching, i.e., English was not a govt. concurred subject in West Goalpara College. He was further deprived from regularization though a vacancy arose due to resignation of Dr. Nazibur Rahman, a senior in English Dept. Government action of non-regularizing his service is the grievance for which he has approached this Court.

4. Mr. S. K. Sikdar, the learned counsel for the Petitioner submits that the petitioner's name has been illegally deleted from the Final Seniority List for want of alleged Government concurrence, whereas a huge number of Lecturers having no Government concurrence were not only included in the Final Seniority List, but, many of them had already been regularized/adjusted. It is submitted by the learned counsel that though the

Petitioner's name was not included in the Final Seniority List with the excuse by the Respondent Authority that Government concurrence was not there for English Department, however, similarly placed candidates who were working against non-sanctioned post without Government concurrence were included in the Final Seniority List.

5. Mr. Sikdar, the learned counsel for the Petitioner submits that 88 nos. of Lecturers, who were also similarly situated as the Petitioner have been regularized by the Respondents though they were not named in the Final Seniority List. He submits that the Respondent no. 10 is also one such Lecturer falling in the same category. He submits that due to such type of illegality committed in regularizing the services of college Lecturers and preparing the seniority list, some of the deprived lecturers, approached this Hon'ble High Court with their grievances. The issue ultimately reached the Full Bench of Hon'ble Gauhati High Court in the case of ***Mizanor Rahman Vs. State of Assam & Ors.***, reported in ***(2012) 1 GLT 520***. The Hon'ble Full Bench in the aforesaid case held that regularization shall be given to those Lecturers who were appointed prior to 17.07.2004. Similarly in the case of ***Imdad Ali & Ors., Vs. State of Assam (WP(C) No. 1103/2009***, this Court had directed to prepare a list based on seniority of college Lecturers in terms of OM dated 17.04.2004. He submits that though the

Provisional Seniority List was made as per the direction of the Hon'ble Gauhati High Court, wherein, the Petitioner's name was included, however, his name was deleted from the Final Seniority List without any intimation to him showing the reason of absence of Government concurrence of English subject. He submits that the aforesaid fact is totally untrue, as the Government concurrence for English Department was received by the West Goalpara College long time back in 1995. He submits that a copy of which has already been annexed to the writ petition.

6. The learned counsel submits that in the case of ***Abdul Wahid Vs. State of Assam & Ors.***, in ***WA No. 165/2017***, the Hon'ble Division Bench has clearly held that the candidates who were appointed prior to the Cabinet decision dated 09.06.2004 are eligible to be considered and appointed as they have been appointed prior to the Cabinet decision. He submits that since the Division Bench held that the Cabinet decision was taken for one time purpose and for a selected group of Lecturers, the Petitioner being one of those selected group of Lecturers, he should have been included in the Final Seniority List and thereby, his services should have been regularized by the Respondent Department. In view of the aforesaid facts, the learned counsel for the Petitioner submits that the non-inclusion of the Petitioner's name in the Final Seniority List and

consequently, the non-regularization of his post in the English Department is illegal due to the fact that similarly situated Lecturers, who have been also appointed in non-sanctioned posts and did not have Government subject concurrence were included in the Final Seniority List and thereafter, their services have been regularized. He submits that the contention of the Respondent Department that there was no Government concurrence for English Department is totally false, which is apparent from the document which has been annexed along with the writ petition. In view of the aforesaid, he submits that the Petitioner's case should be considered by the Respondent Department and accordingly, his services should be regularized as per law with all benefits from the time, he should have been legally regularized.

7. In support of his submissions, the learned counsel appearing for the Petitioner has relied on the following cases: -

(a) Imdad Ali Vs. State of Assam & Ors., in WP(C) No. 1103/2009, decided on 14.05.2009.

(b) Abdul Wahid Vs. State of Assam in W.A. No. 165/2017, decided by a Division Bench of Hon'ble Gauhati High Court on 03.04.2018.

(c) Mizanor Rahman Vs. State of Assam & Ors., reported in (2012) 1 GLT 520.

8. Mr. Sikdar, learned counsel appearing for the Petitioner has also referred to the case of ***C. Shivashankar Vs. Bangalore Mahanagara Palike & Ors.***, reported in ***(2001) ILR(Karnataka) 4907***, wherein, it has been held that once a person's name is included in the Provisional Seniority List before publication of the Final Seniority List, if someone's name requires reviewing or rectifying, a notice should be given to the him, if he is put in a disadvantageous position by such rectification or correction. He submits that in the instant case, though the Petitioner's name was included in the Provisional Seniority List, his name was deleted from the Final Seniority List without any notice or any intimation to him. Therefore, the same goes against the ratio laid down in the instant case.

9. In the instant case, an Affidavit-in-Opposition has been filed by the Respondent no. 3, i.e., the Director of Higher Education, Assam, to which an Affidavit-in-Reply has also been filed by the Petitioner. In addition to the aforesaid, an Additional Affidavit has also been filed by the Petitioner, whereas, Affidavits-in-Opposition have been filed by the Respondent no. 6, 7 and 10 respectively. Another Additional Affidavit was filed by the Petitioner on 18.09.2023.

10. From the Affidavit-in-Opposition filed by the Respondent no. 3, i.e., the Director of Higher Education, Assam, the primary stand taken by the Government is that the name of the Petitioner though figured in the Provisional Seniority List at Serial No. 305, however, against his name, there was a remark "No Government Concurrence". Therefore, the stand taken by the Government is that in the Final Seniority List, the Petitioner's name was not included because the Petitioner was working against a non-sanctioned post without having subject concurrence of the Government. It is also stated that after publication of the Final Seniority List dated 22.04.2010, some non-sanctioned Lecturers whose names were not included in the Provisional Seniority List and the Final Seniority List, had applied before the Government as well as Director of Higher Education Department for inclusion of their names in the Final Seniority List. Accordingly, the list of such persons had been forwarded to the Government for necessary orders from time to time. It is contended that the name of the Petitioner had also been included in one of such list and sent to the Government for necessary direction. It is also contended that the Final Seniority List of 354 nos. of non-sanctioned Lecturers was onetime exercise by following the terms and conditions of the OM dated 17.07.2004 and therefore, subsequent to such exercise, no further exercise could be taken by the Government and therefore, at this stage, no relief can be granted to the Petitioner.

11. It was contended in the Affidavit that pursuant to the aforesaid Memorandum and after final verification, 354 nos. of Lecturers were appointed by different colleges against non-sanctioned posts, have been prepared and after obtaining Government approval, the services of 187 nos. of Lecturers were regularized in a piecemeal manner from time to time, as, if there was no vacant sanctioned post in a particular college, one vacant post had to be withdrawn from another college as per Clause 4(c) of the OM dated 17.07.2004. It was further stated that in order to complete the entire regularization process of remaining 167 nos. out of 354 nos., Lecturers were called for hearings and only 123 nos. were present and submitted their documents. Out of 123 nos. of non-sanctioned Lecturers, 99 nos. of non-sanctioned Lecturers were considered for regularization of their services and remaining 24 nos. of non-sanctioned Lecturers were not recommended due to various reasons including pending Court cases. Therefore, in terms of the Government OM dated 17.07.2004, the Government decided to block the vacant post of Assistant Lecturers/Professors of the respective colleges, where non-sanctioned 354 nos. of Lecturers were working and yet to be adjusted/regularized of their services. Accordingly, it was found that out of 354 nos. who were listed in the Final Seniority List, 4 Lecturers were found to be working against the non-sanctioned posts in West Goalpara College. It was contended that the Petitioner's name was proposed by the

Principal of West Goalpara College for regularization, vide his letter dated 16.09.2017, to the Directorate. However, the same was rejected on the ground that the name of the Petitioner was not enlisted in the 354 nos. of non-sanctioned Lecturers' list. It was further stated in the rejection letter that there is no provision for regularization of services of Lecturers, appointed by the college authority against non-sanctioned posts/non-existent posts. Therefore, since his name was not included in the Final Seniority List, the Petitioner's service could not have been regularized.

12. Mr. K. Gogoi, learned Standing Counsel, Higher Education Department, Govt. of Assam, submits that the Petitioner's case was not considered due to the fact that his name was not included in the Final Seniority List prepared by the Government as his subject, i.e., English did not have any Government concurrence. He submits that his services cannot be regularized later on, due to the fact that as per the *Assam College Provincialisation Act, 2005*, as well as the *Assam College Employees (Provincialisation) Rules, 2010*, which regulate the conditions of service in the provincialised colleges, does not provide any provision whereby regularization of non-sanctioned Lecturer, who were appointed against non-existent post or a post which has not been sanctioned, could be regularized. Therefore, he submits that the Petitioner's

case cannot be considered by the Government due to the fact that his appointment was against a non-sanctioned post though a post was vacant. In this connection, he referred to Rule 5 as well as Rule 7 of the aforesaid Rule of 2010. He submits that the appointment of 354 Lecturers was done subsequent to a Cabinet approval as a one time measure for regularizing the services of various Lecturers working against non-sanctioned posts in various colleges across the State of Assam. That was a onetime measure and once the appointments have been made, no benefit out of the same can be claimed by any Lecturer. He also submits that the Hon'ble High Court in the Division Bench has, in the case of Abdul Wahid (supra) has already held that the aforesaid appointment was a onetime measure and only Lecturers who were appointed prior to the aforesaid Cabinet approval could have been eligible to be appointed or regularized under the aforesaid measure. He further submits that though the Petitioner was appointed prior to the aforesaid Cabinet approval but he could not be included in the Final Seniority List, due to the fact that the English subject was not concurred by the Government. He further submits that only because certain Lecturers at that point of time who were also working against non-sanctioned posts and their subjects were not concurred by the Government and since their services have been regularized will give any right to the Petitioner at this point of time. He submits that negative equality cannot be

considered in the matters of service law. In view of the aforesaid, he submits that on two counts, i.e., one, that the Petitioner was not included in the Final Seniority List because his subject was not having concurrence of the Government and therefore, his name was not included in the Final Seniority List and thereby, he was left out from being regularized at that point of time. Secondly, he cannot claim regularization of his services in the English Department as though there are three (3) posts and one (1) post is vacant, the same can only be filled up by advertisement and due process of selection and not by any other measure. He submits that since the Petitioner was appointed against the non-sanctioned post long time back and he was never appointed against a sanctioned post, his appointment cannot be regularized at this stage, without following the provisions of the aforesaid Rules of 2010.

13. In support of his submissions, the learned counsel appearing for the Respondent no. 3 has referred to the case of ***Abdul Wahib Vs. The State of Assam & Ors.***, reported in ***2015 8 GLT 801***. In the case of ***Abdul Wahib (supra)***, the Hon'ble Division Bench of Gauhati High Court has held that though the appellant in the case was appointed against a non-sanctioned post on 02.07.2004, i.e, prior to the issuance of OM dated 17.07.2004, he cannot claim the benefit flowing out of the said OM as the same was purpose specific and the

same was intended to address the problems, issues with regard to an identified group of college Lecturers. It was held that since the appellant was not one among the group, the OM dated 17.07.2004 was not intended to be a perennial source for regularizing the services of Lecturers. Therefore, it was held that the appellant **Abdul Wahib** cannot claim and/or he is not entitled to seek the shelter of OM dated 17.07.2004 for adjustment/regularization of his services. In this connection, the learned counsel has further referred to the case of **Mohan Nath Vs. The State of Assam & 3 Ors., (WP(C)/7124/2017)**, decided on **20.06.2022**, wherein a Co-ordinate Bench of this Court, while relying on the case of **Abdul Wahib (supra)**, held that since the appointment of the Petitioner was outside the purview of the OM of the State Government dated 17.07.2004 and as his name was not incorporated in the list of non-sanctioned Lecturers, consisting 354 nos. in terms of the decision of the Gauhati High Court, vide it's order dated 14.05.2009, passed in WP(C) No. 1103/2009 and WP(C) No. 724/2009, the Petitioner is not entitled to any such benefit of said OM dated 17.07.2004, for regularization of his service against a sanctioned post being serving in non-sanctioned post in the concerned college.

14. The learned counsel has also referred to the case of **Union of India & Ors., Vs. Mahendra Singh**, reported in **MANU/SC/0919/2022** to

buttress his case on the principle that if a statute provides a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. He referred to the case to support his argument that since the aforesaid Act and Rules do not provide for any provision of regularizing service without following the proper procedure for recruitment, i.e, the procedure followed after proper advertisement for the post, a person, in spite of working in the college, cannot be regularized. As far as his submission regarding the fact that some of the candidates, whose services have been regularized in spite of their names were not there in the Final Seniority List, the learned counsel has referred to the case of ***R. Muthukumar & Ors., Vs. Chairman and Managing Director TANGEDCO & Ors.***, reported in ***2022 SCC OnLine SC 151***, wherein the Hon'ble Supreme Court has held that a principle axiomatic in this country's constitutional lore is that there is no negative equality. It was held that if there has been a benefit or advantage conferred on one or a set of people, without having legal basis or justification that benefit cannot multiply or be relied upon as a principle of parity or equality. In view of the aforesaid judgment, the learned counsel submits that though it may be a case where certain people whose services have been regularized, however, the same cannot be taken as a clue for regularizing the service of the Petitioner in the instant case without following the procedures as laid down by the aforesaid Act and

Rules. In view of the aforesaid submissions, the learned counsel appearing for the Respondent no. 3 submits that there is no case made out in the instant case to consider the prayer of the Petitioner and therefore, the instant writ petition should be rejected and dismissed.

15. This Court has gone through the Affidavits filed by the private respondents in the instant case, wherein, the contentions are primarily same. In their affidavits, the private respondents have basically reiterated what have been stated in the Affidavit by the Respondent no. 3 in the instant case. Additionally, they have stated that there was no illegality committed by the Respondent Authorities in regularizing their services as they have been appointed after due advertisements and against non-sanctioned posts and their subjects had concurrences of the Government. It was contended that the subject of the Petitioner has not been concurred by the Government. Therefore, the Respondent Authority has rightly not included the name of the Petitioner in the Final Seniority List.

16. From the factual matrix involved in the instant case, it is not disputed that against an advertisement dated 11.05.2003, pursuant to a resolution of the Governing Body of the West Goalpara College dated

06.08.2003, after being duly selected, the principal and secretary of West Goalpara College issued appointment letter to the Petitioner dated 15.12.2003 for his appointment as a lecturer in a non-sanctioned post in the department of English on a temporary basis. Accordingly, the Petitioner joined the said post of lecturer on the very day by submitting his joining report dated 15.12.2003. Therefore, this makes it clear that the Petitioner was appointed prior to the Government of Official Memorandum dated 17.07.2004, whereby, the Government took a policy decision to accommodate the lecturers working against non-sanctioned posts with certain procedure and modalities. In pursuant to the aforesaid Official Memorandum dated 17.07.2004 as per the direction of the Hon'ble Gauhati Court a Provisional Seniority List of lecturers working against non-sanctioned posts dated 30.12.2009 was published in the Assam Tribune, a popular local english newspaper. In the aforesaid Provisional Seniority List, a total number of 327 lecturers working in different colleges from all over Assam, have been listed. It is seen that the Petitioner's name had been placed at Sl. No. 305 of the list, wherein his date of joining clearly shown as 15.12.2003. However, in the remarks column, it was shown as "No Government Concurrence".

17. The aforesaid Provisional Seniority List was published to invite any

objection and or any comments about the aforesaid Provisional Seniority List within a period of fifteen (15) days from the publication of the newspaper.

18. It is seen from the records that the Final Seniority List consequent to the publication of the Provisional Seniority List dated 30.12.2009 was published on 22.04.2010, wherein, a total number of 354 lecturers had been included. It was mentioned in the aforesaid Final Seniority List that after final verification of proposals received from various colleges, some anomalies have been detected for some names published in the Provisional Seniority List, were deleted and some new names had been included in the Final Seniority List. It was also mentioned that in the Final Seniority List, lecturers appointed prior to 17.07.2004 had only been included and the same had been prepared as per seniority in accordance with date of joining in the colleges.

19. It is the primary contention of the Petitioner in the instant petition that though his name was listed in the Provisional Seniority List and he is qualified to be included in the Final Seniority List from every prospects, his name was illegally not included in the Final Seniority List without having any legal or cogent reason. The Petitioner in his petition has specially made an averment that the subject English had the concurrence of the Government in his

college, i.e., West Goalpara College. In support of his submission, he has submitted a document issued by the secretary to the Government of Assam, Education Department bearing No. B (2) H.358/92/30 Dated Kahilipara the 30th Jan. 94/5. The subject of the aforesaid letter has been mentioned as "Government Concurrence", the relevant portion of the aforesaid letter is extracted herein below ready reference.

"I am directed to say that Govt. convey concurrence to the permission/affiliation for starting subjects as detailed against the college subject to fulfillment of the conditions laid down by the council.

The grant of permission/affiliation as detailed below is subject to the condition that Govt. will not take any financial liability for increase on the teaching staff/accommodation in the college. Govt. will also not take any liability for maintaining the posts of part-time teachers or teachers not qualified under norms.

Name of College. Concurrence to grant permission for subject.
Affiliation for subject.

West Goalpara College. Concurrence to the affiliation upto TD.C (Arts) part-II standard is accorded with effect from authority must be replaced under qualified lecturers by appointing

qualified lecturers.

Sub.:- English. MIL.(ASS.). Elective Assamese. Pot. Science.
Economics. Education. History. Maths.& Arabic.

Deputy/under

(A.C.Dey)

Secy. of. The Govt. of Assam. Education
Department.

20. The aforesaid letter, which was issued by the Secretary to the Government of Assam Education Department to the Director of Higher Education, Assam, Kahilipara, Guwahati-19 clearly mentioned that the concurrence to grant permission for subject as well as concurrence to grant affiliation for subject have been given to the English subject (T.D.C Arts. Part-2) w.e.f. 1994-95 on the condition that the college authority must be replaced under qualified lecturers by appointing qualified lecturers.

21. Now, from the Affidavit-in-Opposition filed by the Respondent No. 3, i.e., the Director of Higher Education, Assam, it is evident that a contradictory stand has been taken by Respondent No. 3 regarding the subject concurrence for English at West Goalpara College. In this regard, it may be relevant to refer to paragraph 5 of the affidavit-in-opposition filed by the Respondent.

“ That with regard to the statements made in paragraph 6 of the Writ Petition, the deponent begs to state that, a provisional Seniority List of Lecturers working against non-sanctioned posts was published in the Assam Tribune dated 08.01.2010 and 09.01.2010 vide Director of Higher Education, Assam Letter No. G(B)AC/Regu/22/2009/38 dated 30.12.2009 as per direction of Hon’ble High Court dated 14.05.2009 passed in W.P.(C) No. 1103/2009 and W.P.(C) No. 724/2009, for general information to all concerned and inviting objection if any in the provisional Seniority List. The name of the Petitioner has been figured in the provisional Seniority List at Serial No. 305 and against his name there was given the remark that “No Government Concurrence.”

As per terms and conditions laid down in the Government Office Memorandum No. B(2)H.97/2003/98 dated 17.07.2004 and after final verification a Final List of 354 Nos. of teachers appointed by different colleges against non-sanctioned post was published on 22.04.2010, where the name of the Petitioner did not figure because, the Petitioner working against a non-sanctioned post without having the Government concurrence. The Petitioner do not stand in equal footing with others as the Petitioner was appointed against non-sanctioned post that too where no Government concurrence to the post held by the Petitioner.”

22. On the face of the aforesaid contentions made in paragraph 5, the Respondent No. 3 in paragraph 7 of the same Affidavit-in-opposition has contended as follows:

“That with regard to the statements made in paragraph 8 of the Writ Petition, the deponent states that West Goalpara College was accorded concurrence in English General Course with effect from 1994-95 vide Government Letter No.

G(2)H.358/92/30 dated 30.01.1995 and there are 3 Nos. of sanctioned posts of Assistant Professors, Department of English of West Goalpara College for General Course.”

23. In view of the aforementioned contradictory statements and disputed facts in the Affidavit-in-Opposition, as well as the Petitioner’s assertion, supported by a document that the subject of English had received government concurrence as far back as 1994-95, it is apparent that there exists an unclear fact regarding the subject concurrence for English at West Goalpara College. However, the document has not been disputed specifically by the Respondent No. 3 in its Affidavit-in-Opposition. Another important factor is that if there was no subject concurrence for english subject, how three (3) sanctioned posts are available in the English Department of West Goalpara College.

24. Now, coming to the Petitioner’s second contention, which pertains to the resignation of Dr. Najibur Rahman on 02.07.2017 and the subsequent resolution by the Governing Body of West Goalpara College dated 08.09.2017, proposing to adjust the Petitioner’s service against the aforesaid vacant post, the proposal of the Governing Body was rejected by the Deputy Director of Higher Education, Assam, through his letter dated 22.11.2017. The letter stated that there is no provision for the regularization of the services of lecturers appointed by the college authorities against non-sanctioned posts. This issue of

regularization of services of non-sanctioned teachers against sanctioned posts had already been settled by the Hon'ble Gauhati High Court in the case of *Abdul Wahid (supra)* wherein, at paragraph 5, the Division Bench of this Hon'ble Court held as follows:

“5. The learned Single Judge observed that Kharupetia College is a provincialised college in terms of the Assam College Employees (Provincialisation Act), 2005 and, therefore, governed under the said Act and the Rules framed thereunder. Referring to Rule 5(2) of the Rules 5(2) of the Rules i.e. the Assam College Employees (Provincialisation) Rules, 2010, the learned Single Judge observed that appointment to the post of Lecturer/Assistant Professor is to be made by direct recruitment from amongst candidates having the prescribed qualifications through open Advertisement published in two leading dailies, at least in two consecutive issues. Under the statutory provisions the Governing Body is to conduct the selection process through a duly constituted selection committee and make proposal to the Director of Higher Education on the basis of the recommendation of the selection committee, wherafter, order of appointment is to be issued by the said Director of Higher Education. This, we also find, is the only mode for appointment of Lecturer/Assistant Professor, as statutorily ordained.”

25. Therefore, in view of the provisions laid down in the aforesaid Rules of 2010 and as held by the Hon'ble Division Bench, there is no scope for regularization in a sanctioned post other than through an appointment made in accordance with Rule 5 and Rule 7 of the aforesaid Rules of 2010.

26. In view of the aforesaid findings, this Court does not find it necessary to delve into the other aspects of the matter, as the main contention raised in the instant petition is, in fact, a disputed fact. The Government has taken two different stands in the same Affidavit-in-Opposition which is not expected from an important Department like Higher Education Department. Therefore, in the absence of a clear factual position, the instant petition cannot be adjudicated upon.

27. Consequently, this Court is of the considered opinion that the instant case needs to be remanded to the Government authorities, particularly to the Respondent No. 3, to conduct an enquiry into whether the subject of English had prior Government concurrence or not. They must examine the document bearing No. B(2)H.358/92/30 dated 30.01.1995, submitted by the Petitioner along with the instant petition, to verify its correctness. Upon completion of the enquiry, a report must be submitted, and after receiving the report, Respondent No. 3 shall consider the case based on the findings of the enquiry, in accordance with the law. If the Petitioner's rejection was solely due to the alleged "No Govt. concurrence" and it is found to be incorrect, the Government must reconsider his case and the Petitioner should be treated as one of the targeted candidates as per the Office Memorandum dated

17.07.2004, issued by the Secretary of the Government of Assam, Education Department, since the Petitioner was duly appointed to a non-sanctioned post on 15.12.2003, which is prior to both the Cabinet decision as well as the aforementioned Office Memorandum. Accordingly, in that event, the petitioner shall be eligible for consequential benefits.

28. Therefore, the Respondent No. 3 on receipt of a copy of this Judgment & Order, within a period of two (2) months shall make the enquiry and prepare a report and thereafter, after considering the report, within a period of one (1) month shall pass a speaking reasoned order in consideration of the case of the Petitioner.

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

JUDGE

Comparing Assistant