



IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

Principal Seat at Guwahati

WP(C)/6870/2025

1. Ashad Ali Sheikh,
S/O- Lt. Yeaj Uddin,
Resident of Village: Mayerchar Pt-VII,
P.O. Nayeralga, P.S. Bilasipara,
District- Dhubri, Assam, PIN-783348.
2. Abdul Mannan Mondal,
S/O- Iman Ali Mondal,
Vill- Mayerchar Pt- VII,
P.O. Nayeralga, P.S. Bilasipara,
District- Dhubri, Assam, PIN-783348.
3. Sohar Ali Mondal,
S/O- Lt. Siddik Ali Mondal,
R/O- Vill. Mayer Char Pt- VII
P.O.- Nayer Alga, P.S- Bilasipara
Dist.- Dhubri, Assam, PIN-783348.
4. Shayedul Ahmed,
S/O- Lt. Abdul Aziz Ahmed,
Vill- Mayerchar Pt-VII,
P.O. Nayeralga, P.S. Bilasipara,
District- Dhubri, Assam, PIN-783348.
5. Abu Bakkar Siddique,
S/O- Abdul Sk,
Vill- Mayerchar Pt-VII,

P.O. Nayeralga, P.S. Bilasipara,
District- Dhubri, Assam, PIN-783348.

6. Abdus Sobur Mollah,
S/O- Lt. Haji Majom Ali,
R/O- Vill. Boyjeralga Pt- V,
P.O.- Nayer Alga, P.S.- Bilasipara,
Dist.- Dhubri, Assam, PIN-783348.
7. Shahida Khatun Mondal,
D/o- Akbar Ali Mondal,
Vill- Mayerchar Pt-VII,
P.O. Nayeralga, P.S. Bilasipara,
District- Dhubri, Assam, PIN-783348.
8. Habia khatun,
W/O- Joynal Abedin,
Vill- Mayerchar Pt-VII,
P.O. Nayeralga, P.S. Bilasipara,
District- Dhubri, Assam, PIN-783348.
9. Korban Ali Mondal,
S/O- Lt. Jamat Ali Mondal,
Vill- Mayerchar Pt-VII,
P.O. Nayeralga, P.S. Bilasipara,
District- Dhubri, Assam, PIN-783348.
10. Altap Hussain,
S/O- Lt. Taher Ali,
Vill- Mayerchar Pt-VII,
P.O. Nayeralga, P.S. Bilasipara,
District- Dhubri, Assam, PIN-783348.

.....Petitioners

-Versus-

1. The State of Assam represented by the Chief Secretary to the Government of Assam, Dispur, Guwahati-781006.
2. The Secretary to the Government of Assam, Education (Secondary) Department, Dispur, Guwahati-781006.
3. The Director of Secondary Education, Assam, Kahilipara, Guwahati-781019
4. The Inspector of Schools, Dhubri District Circle, Dhubri, Assam Pin-783301.
5. The Assam Secondary School Education Board (ASSEB), Represented by its Chairman, Joint Committee and Chairman, ASSEB, Bamunimaidan, Ghy-21.
6. The Secretary, Department of School Education, Dispur and Member, Joint Committee, Dispur Ghy-06.
7. The Additional Secretary, Finance (SIU), Department, Dispur and Member, Joint Committee, Dispur Ghy-6.
8. The Director of Secondary Education, Assam and Member, Joint Committee, Kahilipara Ghy-19.

.....Respondents

WP(C)/6997/2025

Utpal Nath,
S/o Lt. Bhaben Kr. Nath,
Vill. RangachahiMajuli,
P.O. Rangachahi, P.S. Jengraimukh,
Dist. Majuli, Assam, PIN-785104.

.....Petitioner

-Versus-

1. The State of Assam,
[To be represented by the Secretary to the Government of Assam,
School Education Department, Dispur, Guwahati-06].
2. The Commissioner & Secretary to the Govt. of Assam,
Finance Department, Dispur, Guwahati-06.
3. The Director of Secondary Education, Assam, Kahilipara,
Guwahati-19.
4. The State Level Scrutiny Committee, Secondary Education
Department, Kahilipara, Guwahati-19.
(To be represented by the Chairman of the State Level Scrutiny
Committee, Secondary Education Department, Kahilipara,
Guwahati-19).
5. The District Scrutiny Committee, Jorhat district
(To be represented by its Chairman-cum- the District Commissioner,
Jorhat, P.O. & Dist. Jorhat, Assam. PIN-785001.)
6. The Joint Committee,
(To be represented by its Chairman, Janata Bhawan, Dispur,
Guwahati-06).
7. The Inspector of Schools, JDC, Jorhat, P.O. & Dist. Jorhat,
Assam, PIN-785001.

.....Respondents

- B E F O R E -

HON'BLE MR. JUSTICE ROBIN PHUKAN

Advocate for the petitioners	:	Mr. M.U. Mondal Mr. R. Islam
Advocate for the respondents	:	Mr. D. Saikia, AG-cum-Sr. Adv. Mr. B. Kaushik, SC, SEC EDU
Date on which judgment is reserved	:	24.02.2026
Date of pronouncement of judgment	:	02.05.2026
Whether the pronouncement is of the operative part of the judgment?	:	N/A
Whether the full judgment has been pronounced?	:	Yes

JUDGMENT & ORDER (CAV)

Heard Mr. M.U. Mondal, learned counsel for the petitioners in WP(C)/6870/2025, and Mr. R. Islam, learned counsel for the petitioner in WP(C)/6997/2025. Also heard Mr. D. Saikia, learned Advocate General-cum-Senior Counsel, assisted by Mr. B. Kaushik, learned standing counsel for the respondents in Secondary Education Department in both the petitions.

2. Since a common question of law is involved in both the petitions and since the subject matters, being challenged in both

the petitions are same and the parties are also same, it is proposed to dispose of both the petitions by this common judgment and order.

3. It is to be noted here that in **WP(C) No. 6870/2025**, the petitioners have challenged the Resolution No. 6 of the Minutes dated 25.09.2025, adopted by the Joint Committee and Chairman, Assam State School Education Board (ASSEB) (Annexure-24) in respect of Noser Mondal Memorial High School, Dist. Dhubri, Assam; and also prayed for issuing direction to the respondents, particularly the respondent Nos. 2 & 3 to pay the arrear salary to the petitioners by provincializing the services of the teaching and non-teaching staffs of Noser Mondal Memorial High School, as per the recommendation of District Scrutiny Committee, Dhubri, dated 16.02.2019, District Scrutiny Committee recommendation (Re-verification), dated 03.04.2023, District Scrutiny Committee recommendation (Original documents), Dhubri, dated 12.04.2023, and State Level Scrutiny Committee recommendation dated 31.07.2023, Letter dated 14.08.2023, and order dated 15.12.2023, in Contempt Case (C) No. 103/2021 and order dated 29.08.2025, in WP(C) No. 2387/2025 w.e.f. 01.01.2021.

4. And in **WP(C) No. 6997/2025**, the petitioner has challenged the Joint Committee, constituted for the purpose of verification of service particulars of serving teachers of venture Educational Institutions for the purpose of provincialisation of their services and also the Resolution No. 8 of the Minutes of the Joint Committee held on 25.09.2025, qua the petitioner (Annexure-18); and also prayed

for issuing direction to the respondent authorities to provincialize the service of the petitioner on the basis of recommendations made by the District Scrutiny Committee and State Level Scrutiny Committee as Tutor in the category of Post Graduate Teacher (History) of Rangachahi TN HS School, at par with the other similarly situated Post Graduate Teachers of the aforesaid school, whose services have already been provincialized w.e.f 30.11.2021 (Annexure-7).

Background Facts:-

5. The background facts, leading to filing of WP(C) No. 6870/2025, are briefly stated as under:

“There petitioners in WP(C) No. 6870/2025, altogether 10(ten) in numbers, are employee of Noser Mondal Memorial High School in Dhubri district, which was established w.e.f. 01.01.1995. The petitioner Nos. 1, 2 and 3 are serving as Assistant Teachers (Arts); petitioner Nos. 4 and 5 are serving as Assistant Teachers (Science); petitioner Nos. 6 and 7 are serving as Assistant Teachers (Arabic); petitioner No. 8 is serving as an Assistant Teachers (Hindi); petitioner No. 9 is serving as an LDA and petition No. 10 is serving as a Grade-IV employee in the said School. The School is functioning under the Inspector of Schools, DDC, Dhubri. All the petitioners were appointed by the Managing Committee of the said school and they are serving in their respective posts and they are also eligible for being provincialized. Thereafter,

District Scrutiny Committee (DSC), Dhubri on 16.02.2019, had recommended the names of the petitioners for provincialization of their services, and subsequently, their names were re-verified and authenticated and also re-recommended by the DSC, vide its reports dated 03.04.2023 and 12.04.2023, vide Letter dated 27.04.2023, and accordingly, all the petitioners were recommended after re-verification and authentication of the original documents as per the Letter No. 33625/2023, dated 02.03.2023 and Letter No. PC/CC/24/2021/83, dated 02.08.2022, issued by the Director of Secondary Education, Assam. Thereafter, vide order dated 29.08.2025, in WP(C) No. 2387/2025, the respondent authorities were directed to provincialize the services of the petitioners within a period of four months on the basis of the Letter dated 14.08.2023. But, in spite of the aforesaid communication, the services of the petitioners have not yet been provincialized due to the impugned Resolution No. 6, adopted in the Minutes, dated 25.09.2025, by the Chairman, Joint Committee for provincialization of services and Chairman, ASSEB, which is in violation of Sections 2, 3, 4 and 13 of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017 ('Act of 2017', for short).

5.1. Being aggrieved, the petitioners have approached this Court by filing the present petition seeking the reliefs as aforesaid."

6. The background facts, leading to filing of WP(C) No. 6997/2025, are briefly stated as under:

"The petitioner herein is serving as Subject Teacher in History in the Rangachahi T.N Higher Secondary School w.e.f 20.09.2004, and his name appeared in the UDISE regularly. In the subject of History, a total 17, 24, and 11 numbers of students had appeared in HS Examination, in the year 2014, 2015 and 2016 respectively. Thereafter, the DSC, Jorhat recommended seven Post Graduate Teachers, including the petitioner, for provincialization of their service and the same was placed before the State Level Scrutiny Committee (SLSC). Then the SLSC sought a report from the Chairman, SEBA about enrolment of students in the HS Examination, 2016 in History. But, the Chairman, SEBA wrongly reported enrolment in the subject of History as six. Thereafter, the Controller of Examinations, Assam Higher Secondary Education Council, vide Letter dated 04.03.2021, informed that the enrolment in the year 2016 was 11 (eleven), and thereafter, the Director of Secondary Education, Assam, had issued a letter, dated 08.11.2021, and the Secretary, AHSEC, vide letter dated 25.11.2021, reported that 10 (ten) students appeared in the HS Examination, 2016, which is the minimum qualifying number. Thereafter, the Director of Secondary Education, Assam vide order dated 30.11.2021, provincialized the services of the five Post Graduate Teachers, except however, the petitioner. The Director of

Secondary Education, Assam again issued a letter, dated 11.02.2022, seeking authentication of the subject wise enrolment in HS Examination, 2016. Thereafter, the SLSC had scrutinized the particulars and submitted proposal for creation of 54 posts of eligible teachers. But, the Government chooses to place the matter before the Joint Committee. Thereafter, the Joint Committee had decided to re-verify the proposals from the Chairman, DSC, who recommended the name of the petitioner for provincialization of his service. Then, the SLSC in its meeting dated 02.08.2023, recommended the name of the petitioner for provincialization, but the Joint Committee directed for re-verification again by an independent authority and the said authority verified the case of the petitioner and submitted before the Director of Secondary Education, Assam for provincialisation of the service.

However, the Joint Committee, vide impugned resolution, had decided to verify the proper reasons of variation of enrolment data. Further, the DSC and SLSC recommended the name of the petitioner on several occasions, but the Joint Committee is sitting over such recommendations though the Joint Committee is not a statutory body.

6.1. And being aggrieved, the petitioner has approached this Court by filing the present petition seeking the reliefs as aforesaid.”

7. The respondent No. 1 has filed an affidavit-in-opposition, wherein it is stated that under the Act of 2017, once recommendations for provincialization are received from the DSC and SLSC in favour of a Teacher of a venture educational institution for provincialization of services, the Administrative Department starts the process for endorsement of the proposal for creation of post to the Finance Department, in respect of the recommendation for provincializing the services of Teachers by the SLSC for provincialization; and that the Department of Finance, which is the authority for creation of posts, has prescribed check list and has specific conditions, which are to be fulfilled including ascertaining the financial implications, fixation of different scales and grade pay and ensuring that the eligibility conditions for the proposed post are fulfilled and the recommended teachers are fully eligible to hold the post of teacher or tutor, as the case may be and to ensure that no errors occurred in the process of recommendation, so as to avoid any loss to the public exchequer and to avoid a situation, whereby the sanctioned posts would be filled up by non-eligible persons.

7.1. It is also stated that the Department of School Education and the Department of Finance constituted a joint team of officers and staff to fast track the proposals, which are error free and also for expediting the re-submission of the proposals, where there are errors in calculations or shortcomings in assessing the eligibility conditions etc. or in which there was a lack of clarity in the proposal; and it is also observed that the recommendations of the DSC and SLSC, sometimes, due to the huge load in dealing or

processing the recommendations for teachers, which had applied for provincialization, would at times err in ensuring that only eligible persons were recommended or at times failed to clearly reflect the eligibility of persons recommended for provincialization and such a situation had led to delays in post creation process, and these anomalies act as a barrier to the completion of the process of provincialization; and that the Government, having the experience during the past, while provincializing the teachers under the erstwhile statutes and therefore, to ensure a smooth process, during the implementation of the provisions of the Act of 2017, and in order to remove difficulties and delays, the Joint Committee was formed with representatives from the Finance Department and Department of School Education to rectify the errors in documents/relevant papers prior to being endorsed to the post creation branch of the Finance Department, so as to ensure that the concurrence for the creation of post is accorded smoothly and swiftly without any error.

7.2. It is further stated that the very purpose of the Joint Committee is to fast track the process of provincialization and to ascertain whether necessary documents/papers, which are enclosed with the proposal, are as per requirements in order to make the process error free, prior to submission of the proposal to the Finance Department for creation of post; and that the Joint Committee was initially formed, vide Notification dated 27.01.2019, and the same was later re-constituted, vide Notification dated 14.09.2022, in pursuance of the Administrative Reforms, Training,

Pension and Public Grievance's Notification No. AR.65/2022/3, dated 06.09.2022, and in partial modification of the Notification No. PMA.162/2019/651, dated 05.08.2022.

7.3. It is also stated that the benefits and positive impact of constituting the Joint Committee are reflected by the fact that after having provincialized thousands of Teachers and Tutors, the complaints of error in provincialization are very minimal and the least which are detected are due to internal disputes between the teachers and lack of assistance of the Head of the Schools. The procedures were fast tracked with the assistance of the Joint Committee and this aided in the provincialization of thousands of teachers and tutors in the year 2021, within a very short period of time, and in the process, multiple queries were avoided between the two departments i.e. Finance and Education and matters were resolved promptly due to assistance and verification of the Joint Committee; and that public interest is being served by the Joint Committee. It is also stated that the SLSC qua the petitioners, a decision was taken for re-verification of the minutes of the DSC dated 16.02.2019, as relevant page concerning the recommendation of the petitioners is apparently without any date and as to complete the process of provincialization without any error, and in the public interest.

8. The petitioners have filed a rejoinder affidavit denying the statements and averments made in the affidavit-in-opposition filed by the respondent No. 1.

9. The respondent No. 2 has also filed an affidavit-in-opposition on 20.02.2026, wherein it is stated that Section 13(7) of the Act of 2017 states that "The District Scrutiny Committee shall forward the list of eligible teachers Base school-wise in accordance with the Act, to the concerned Director, who shall place the matter before the State Level Scrutiny Committee, to be constituted under sub-section (10) of this Section and after making such further scrutiny as may be required, shall forward the same to the concerned Department of the State Government for consideration and for issuing Notification in respect of the eligible institutions and teachers eligible for getting their services provincialized." It has been clearly stated in Section 13(7) of the Act of 2017, that State Government will take up the matter for the purpose of 'consideration' for further purpose of issuing Notification for provincialisation, and according to Black's Law Dictionary, to 'consider' means to 'fix the mind on, with a view to careful examination, to examine and to inspect.' Consideration is not to be confounded with motive. 'Consideration' means something, which is of value in the eye of law, benefit either to the petitioner or to the respondent taking account of the circumstances. To consider a matter does not mean to comply with the order without careful examination or inspection. It is also stated that Hon'ble Supreme Court in a catena of judgments, clearly stated the meaning and the essence of the word to 'consider' in a matter, which means to look at closely and carefully, to think or deliberate on. A direction by the Court to 'consider' a matter requires the authority to apply its mind to the facts and circumstances of the case, and then take a decision thereon, in accordance with law. It is

pertinent to clarify that to 'consider' a matter, the authority will have to consider the matter in accordance with law, with reference to the facts and circumstances of the case, its power not being circumscribed by any observations or findings of the Court. Therefore, the respondents are obliged to take into account to consider the matter, but not obligatory to comply it without applying the mind. Similarly, the State Government is not bound to accept recommendations made by the statutory committees, when final power of issuing notification is conferred upon the Government after consideration of a proposal received for provincialisation.

9.1. It is also stated that in accordance with Rule 10 of the Assam Rules of Executive Business, 1968, no department shall, without previous consultation with the Finance Department, authorize any orders (other than orders issued under any Act or Rules made there under, or pursuant to any general or specific delegation made by the Finance Department), and it is discernible that consultation with the Finance Department is a mandate, not a discretion, and the Department of Finance, which is the authority for creation of posts, has prescribed a check list and has specific conditions which are to be fulfilled including ascertaining the financial implications, fixation of different scales and grade pay and ensuring that the eligibility conditions for the proposed posts are fulfilled and the recommended teachers are fully eligible to hold the post of teacher or tutor, as the case may be, and to ensure that no errors occurred in the process of recommendation, so as to avoid any loss to the public exchequer and to avoid a situation, whereby the sanctioned posts would be

filled up by non-eligible persons; and with the above intent, in exercise of power conferred under Article 162 of the Constitution of India, the Governor of Assam constituted a Joint Committee, consisting of the Department of School Education and Department of Finance, to examine the provincialization of the services of the teaching staff of Educational Institution, under the provisions of the Act of 2017, and to avoid delays and to ensure error free provincialisation of services of teacher under the Act of 2017, the Government constituted the Joint Committee comprising of members, who can aid to bring the process to its logical conclusion, after receipt of proposal by the administrative department of the State Government.

Submissions:-

Submission of learned counsel for the petitioners in WP(C) No. 6870/2025,

10. Mr. Mondal, learned counsel for the petitioners in WP(C) No. 6870/2025, submits that DSC, Dhubri on 16.02.2019, had recommended the names of the petitioners for provincialization of their services and thereafter, their names were re-verified, authenticated and also re-recommended by the DSC, after re-verification and authentication of the original documents as per the Letter dated 02.03.2023 and the Letter dated 02.08.2022, issued by the Director of Secondary Education, Assam. Mr. Mondal also submits that however, the services of the petitioners have not been provincialized, for which they preferred one writ petition, being WP(C) No. 2387/2025, wherein a direction was issued to the

respondent authorities to provincialize the services of the petitioners within a period of four months on the basis of the Letter dated 14.08.2023. However, the services of the petitioners have not been provincialized due to the impugned Resolution No. 6, adopted in the Minutes, dated 25.09.2025, by the Chairman, Joint Committee for provincialization of services and Chairman, ASSEB. Mr. Mondal further submits that constitution of the Joint Committee is not contemplated under the Act of 2017, and what contemplated is only DSC and SLCS, and once the DSC recommends the name of the petitioners, the same are to be placed before the SLSC and if found correct, then the SLSC has to approve the same and the proposal has to be submitted to the Government for creation of post, and that nowhere in the Act and Rules, constitution of Joint Committee is provided, and as such, placing the matter of provincialisation before the Joint Committee is not in accordance with law, and it causes delay in provincialisation of the service of the petitioners to a considerable extent. And therefore, the impugned Resolution No. 6 adopted in the Minutes dated 25.09.2025, is illegal and arbitrary and the same is liable to be set aside.

10.1. In support of his submission, in respect of arbitrariness in constitution of the Joint Committee and the impugned minutes of meetings of the said Joint Committee, Mr. Mondal has referred to a decision of Hon'ble Supreme Court in the case of **State of Orissa and Anr. vs. Mamata Mohanty**, reported in (2011) 3 SCC 436.

Submission of learned counsel for the petitioners in WP(C) No. 6997/2025,

11. Mr. Islam, learned counsel for the petitioner, in WP(C) No. 6997/2025, has also subscribed to the submission advanced by Mr. Mondal, learned counsel for the petitioners in WP(C) No. 6870/2025. Supplementing Mr. Mondal, Mr. Islam has drawn attention of this Court to the observation made by a Co-ordinate Bench of this Court in WP(C) No. 2426/2023, wherein it has been observed that "Joint Committee which had also considered the case of the petitioner is a committee not contemplated under the provisions of the said Act of 2017 and accordingly, the exercise as required to be now done in terms of the directions passed by this Court hereinabove, shall be so carried out solely by the State Level Scrutiny Committee and not by any other Committee not contemplated under the provisions of the Act of 2017." Mr. Islam also submits that in spite of such directions issued by a Co-ordinate Bench of this Court, in the instant case, re-verification is again being carried out by the Joint Committee only to delay the matter of provincialization of the petitioner. Mr. Islam also submits that the Joint Committee, vide impugned Resolution No. 8 of the Minutes of the Meeting held on 25.09.2025, qua the petitioner, has decided to re-verify the documents, and that the petitioner is serving in a Higher Secondary School as a Subject Teacher and regarding the enrolment, the Director of Secondary Education, Assam has called for a report from SEBA, which has no business with the enrolment of students in a Higher Secondary School. Mr. Islam further submits that thereafter, the report in respect of the enrolment of the students in History was

called for from the Assam Higher Secondary Education Council and in the report furnished by the Council, enrolment number was shown as 11 (eleven) and that the basic requirement for provincialization of service is 10(ten) only and in spite of the fulfilment of all those criteria, and the petitioner being recommended by the DSC and SLSC after due verification, the Joint Committee, which has already been held to be a committee not contemplated under the Act of 2017 by a co-ordinate bench of this court, has decided to re-verify it again.

11.1. Mr. Islam has also pointed out that the Director of SEBA is the Chairman of the Joint Committee and the Director of Secondary Education, Assam is the Member Secretary of the said Committee. He also submits that the Director of Secondary Education, Assam is also the Chairperson of the SLSC. He pointed it out that as Chairperson of SLSC, she has recommended the name of the petitioner for being provincialised his service. But, thereafter, as member in the Joint Committee, she had decided to again re-verify the same. Thus, according to him, the process adopted by the State respondents, is strange and the same are contrary to the principles of natural justice, and there is conflict of interest.

11.2. Under such circumstances, Mr. Islam has contended to set aside the impugned resolution, adopted by the Joint Committee and also to declare the Joint Committee as illegal, as not contemplated under the Act of 2017.

Submission of learned counsel for the respondents in both the writ petitions:-

12. Per contra, Mr. Saikia, learned Advocate General-cum-Senior Counsel for the respondents, by referring to the additional affidavit filed by the respondent No. 1, submits that though constitution of the Joint Committee is not provided in the Act of 2017, yet Section 13(7) of the Act of 2017 provides that the DSC shall forward the list of eligible teachers, base school-wise, in accordance with the Act, to the concerned Director, who shall place the matter before the SLSC to be constituted under sub-section (10) of the said section and after making such further scrutiny as may be required, shall forward the same to the concerned Department of the State Government for consideration and for issuing notification in respect of the eligible institutions and teachers eligible for getting their services provincialized.

12.1. Mr. Saikia also submits that under Section 13(7) of the Act of 2017, State Government has to take up the matter for the purpose of '**consideration**' for further purpose of issuing notification for provincialisation. By referring to two decisions of Hon'ble Supreme Court, one in **Barium Chemicals Ltd. and Anr. vs. A.J. Rana and Ors.**, reported in (1972) 1 SCC 240 and the other in **Divisional Personnel Officer, Southern Rly. and Anr. vs. T.R. Chellappan**, reported in (1976) 3 SCC 190, Mr. Saikia submits that to '**consider**' means to 'fix the mind on, with a view to careful examination, to examine and to

inspect', and this 'consideration' does not mean to carry out direction being issued by the Court.

12.2. Mr. Saikia further submits that though there is an Act and the Rules are enacted prescribing the procedure of provincialization of services of Teachers, being the Act of 2017 and the Rules of 2018, nowhere in the Act and Rules prescribed for constitution of the Joint Committee. But, the Government has issued the Notification constituting the Joint Committee under Section 13(7) of the Act of 2017, for 'consideration' of the recommendation of the Teachers for provincialization of their services and the Government has the authority to issue such Notification, and that the said Joint Committee has aided the process of provincialization and not delayed it, as contended by the petitioners, as it aid in error free provincialisation and thousands of Teachers were provincialized by the Joint Committee and only in those cases, where issues arises or some anomalies have been noticed, the Joint Committee has directed for re-verification of the same.

12.3. Mr. Saikia also submits that with a view to 'consider'the recommendation of the DSC and SLSC, the Government has created the committee to aid the process and how to consider by the Government is not prescribed under the Act and Rules and that a vacuum is created and the this field i.e. how to consider, is not occupied and therefore, in view of the doctrine of occupied filed and in exercise of the power under Article 162 of the Constitution the Governor had issued the Notification, constituting the Joint Committee.

12.4. Mr. Saikia also submits that in the instant case, the Joint Committee has not rejected the prayer of the petitioners in both the petitions and that they have noticed some anomalies and therefore, they have adopted a resolution to further verify the same, and the Joint Committee, so constituted by the Government by a Notification, is not illegal and no interference of this Court is required at this stage, and therefore, Mr. Saikia has contended to dismiss the petitions.

12.5. In support of his submission, Mr. Saikia has referred to the following decisions:

- (i) **A.B. Krishna and Ors. vs. State of Karnataka and Ors.**, reported in (1998) 3 SCC 495.
- (ii) **Satya Narain Shukla vs. Union of India and Ors.**, reported in (2006) 9 SCC 69.
- (iii) **Mahendra Nath Mudoi and Ors. vs. State of Assam and Ors.**, reported in (2017) 6 GLR 381.
- (iv) **P.H. Paul Manoj Pandian vs. P. Veldurai**, reported in (2011) 5 SCC 214.

13. Having heard the submissions of learned counsel for both the parties, this Court has carefully gone through the petitions and the documents placed on record, and also the decisions referred to by the learned counsel for both the parties, and also the Notification, constituting Joint Committee.

Consideration of this court:

14. It is not in dispute that the recommendations made by the DSC and SLSC, to provincialize the services of the petitioners, in both the writ petitions, have not been rejected by the Joint Committee. It appears that the Committee had decided to further verify the anomalies they had noticed. In order to deal with the issue with greater precision, this Court deems it appropriate to reproduce the said resolutions herein below.

15. The impugned Resolution No. 8 of the minutes of the meeting of the Joint Committee dated 25.09.2025, which relates to provincialization of service of the petitioner in WP(C) No. 6997/2025, which reads as under:

“The Committee discussed the matter concerning the provincialisation of services for Ranjan Regon, PGT (Economics) and Utpal Nath, PGT (History) at Rangachahi TN Higher Secondary School and also Nandeswar Boruah, PGT (Economics) in Barbali H.S. School, Dist: Lakhimpur.

The services of Ranjan Regon, PGT (Economics), Utpal Nath, PGT (History) and Nandeswar Boruah, PGT (Economics) were not provincialised earlier due to non-fulfilment of the required enrolment of students in their respective subjects.

On the basis of fresh report regarding enrolment data received from ASSEB, Div.-II, the State Level Scrutiny Committee recommended the names of Ranjan Regon, Utpal Nath and Nandeswar Boruah.

But the Joint Committee decided to verify the proper reason as how the enrolment data can be changed.”

15.1. Further, the impugned Resolution No. 6, which relates to the provincialisation of services of the petitioners in WP(C) No. 6870/2025, in the minutes of the meeting of the Joint Committee held on 25.09.2025, reads as under:-

“The Committee discussed the matter concerning the provincialisation of services of Ashad Ali Sk A/T(Arts), Shyedul Ahmed A/T(Sc.), Abu Bakkar Siddique A/T(Sc.), Shahida Khatun A/T(Arabic), Abdul Mannan Mondal A/T(Arts) in Noser Mondal Memorial High School, Dist.: Dhubri.

Noser Mondal Memorial High School Dist.: Dhubri was not provincialised earlier due to late submission of proposal under the Provincialisation Act/2017.

There is no mention of a date in the District Scrutiny Committee Report, which is doubtful.

Now, the Committee has decided to obtain enrolment of students from ASSEB, Div.-I and also as well as to trace out when the District Scrutiny Committee submitted the report to the State Level Scrutiny Committee.”

16. But, herein these two petitions, the very constitution of the said Committee is being challenged. And therefore, before a discussion is directed into the merit of the resolutions, this Court

deemed it appropriate to examine as to whether constitution of the Joint Committee is in accordance with law.

17. It is not in dispute that the Act of 2017 and Rules of 2018, do not provide for constitution of any committee except, however, the DSC and SLSC. Once the proposal for provincialization of service is accepted by the DSC then it recommended the same for being placed before the SLSC, under Section 13 of the Act of 2017, and once the SLSC approves the recommendation, the same has to be forwarded to the Administrative Department of the Government for creation of post after 'consideration'.

18. Though in the additional affidavit filed by the respondent No. 1, a stand has been taken that the Government has issued the Notification constituting the Joint Committee to 'consider' the proposal received by the Administrative Department from the SLSC for creation of post, yet, as per submission of Mr. Saikia, the learned Advocate General, a vacuum is created and the field is not occupied and therefore, the State Government, in exercise of the powers under Article 162 of the Constitution of India, had issued the Notification creating Join Committee to consider the case of the Teachers and Schools for Provincialisation under sub-section (7) to Section 13 of the Act of 2017.

18.1. The Notification dated 27.01.2019, constituting the Joint Committee is extracted herein below for ready reference:

**“GOVERNMENT OF ASSAM
FINANCE (SIU) DEPARTMENT
Dispur:: Ghy-6**

Dated Dispur the 27th January, 2019

NOTIFICATION

No. ASE.208/2019/1: The Governor of Assam is pleased to constitute a Committee as mentioned below, to examine the cases for provincializing the services of the teaching staff of Educational Institutions under the provisions of Assam Education (Provincialization of Services of Teachers & Recognition of Educational Institutions) Act, 2017, as amended up to date:-

<u>NAME</u>	<u>DESIGNATION</u>
1. Sri R.C. Jain, Chairman, SEBA,	Chairman
2. Sri Preetam Saikia, IAS	Member
3. Sri G.K. Pegu, Addl. Secretary, Finance Department	Member
4. Director, Secondary Education, Assam	Member

Terms & Reference to the Committee:

1. To examine the proposals received for provincialization of Secondary Schools and teaching staff thereof and to ascertain whether the proposals are in accordance with the relevant provisions of Assam Education (Provincialization of Services of Teachers and Reorganization of Educational Institutions) Act, 2017, as amended up to date.

2. To obtain further information/ clarification required, if any, from competent authority/person/ applicant educational institutions.

3. To obtain certification from the appropriate authority on all information provided for provincialization of school and teaching staff.

Secretarial Assistance:

The Educational (Secondary) Department will provide secretarial assistance to the Committee.

Timeline for submission of Report by the Committee:

The Committee will submit its report within 7 days from the date of notification.

Sd.

Principal Secretary to the Govt. of Assam
Finance Department, Dated Dispur the 27th
January, 2019”

18.2. However, the said Notification was modified by another Notification dated 14.09.2022, which is extracted herein below:

“GOVERNMENT OF ASSAM
DEPARTMENT OF SCHOOL EDUCATION
DISPUR, GUWAHATI-6

ORDERS BY THE GOVERNOR OF ASSAM

NOTIFICATION

Dated Dispur, the 14th September, 2022

PMA. 162/2019/653; In pursuance of Administrative Reforms, Training, Pension and Public Grievances Department's Notification No. AR.65/2022/3 dated 06/09/2022 and in partial modification of the

Notification No. PMA.162/2019/651 dated 05/08/2022, the Governor of Assam is pleased to re-constitute the Joint Committee for Provincialisation of Services, as mentioned below, to examine the cases for provincialising the services of the teaching staff of Educational Institutions under the provisions of the Assam Education (Provincialization of Services of Teachers & Reorganisation of Educational Institutions) Act, 2017, as amended.

<u>Members of the Committee</u>	<u>Designation</u>
1. Sri R.C. Jain, Chairman, SEBA	Chairman
2. Sr. most Secretary, Department of School Education	Member
3. Sri Pradip Sarma, Deputy Secretary, Finance Department (Representative of Finance Department)	Member
4. Director of Elementary Education/Secondary Education (as case may be)	Member

Terms & Reference to the Committee:

1. To examine the proposals received for provincialisation of teaching staff of Venture I.P/Recognized UP Schools and to ascertain whether the proposals are in accordance with the relevant provisions of Assam Education (Provincialisation of services of Teachers and Reorganisation of Educational Institutions) Act, 2017, as amended up to date.

2. To obtain further information/ clarifications required, if any, from competent authority/person /applicant of educational institutions.

3. To obtain certification from the appropriate authority on all information provided for provincialisation of services of teaching staff of Venture LP/Recognized UP Schools.

Sd./-

Secretary to the Govt. of
Assam Department of School Education
Dated Dispur, the 14th September,
2022”

19. This Court has carefully considered the submission of Mr. Saikia, the learned Advocate General-cum-Senior Counsel for the respondent and has also gone through the decisions referred to by him, in this regard.

20. It is not in dispute that the Government has enacted the Act of 2017, to provincialize the Schools and Teachers and has also enacted the Rules 2018, prescribing the procedure of provincialization. Now, the question is while the State respondents have enacted the Act and Rules, can it be said that the field is not occupied. Under the aforesaid context, it becomes necessary to understand what Doctrine of Occupied field is.

Doctrine of Occupied Field:-

21. This Doctrine is a legal principle in Constitutional Law, which deals with the distribution of powers to the government at different levels in a federal system. This doctrine essentially means that if a particular subject matter or field is exclusively occupied by

legislation, enacted by Parliament then the state legislature cannot legislate on the same subject matter. This doctrine helps in resolving conflicts between laws made by the Parliament and a state legislature on the same subject. If Parliament legislates on a subject in the Concurrent List and that law occupies the field, then any inconsistent State legislation on the same subject, is rendered ineffective to the extent of the conflict. This doctrine is closely linked to Article 254 of the Indian Constitution and the broader doctrine of repugnancy: where there is repugnancy between Union and State laws, the Union law prevails. However, this Doctrine does not absolutely bar the States from legislating on a subject. It only makes their law inoperative to the extent it conflicts with a central legislation, that has fully occupied that field.

21.1. This Doctrine of “occupied field” has been invoked by Hon’ble Supreme Court in numbers of cases, including the case of **Forum for Peoples Collective Efforts v. State of West Bengal** reported in **2021 SCC ONLINE SC 231**, and in some recent constitutional bench decisions, when discussing repugnancy and denudation of State power, though sometimes as a restatement of the repugnancy principle, under Article 254, rather than a wholly separate doctrine.

22. In the case of **A.B. Krishna** (supra), especially paragraph Nos. 6, 7, 8 and 9, wherein, Hon’ble Supreme Court has dealt with the Doctrine of Occupied Field as under:-

“6. It is primarily the legislature, namely, Parliament or the State Legislative Assembly,

in whom power to make law regulating the recruitment and conditions of service of persons appointed to public services and posts, in connection with the affairs of the Union or the State, is vested. The legislative field indicated in this article is the same as is indicated in Entry 71 of List I of the Seventh Schedule or Entry 41 of List II of that Schedule. The proviso, however, gives power to the President or the Governor to make Service Rules but this is only a transitional provision as the power under the proviso can be exercised only so long as the legislature does not make an Act whereby recruitment to public posts as also other conditions of service relating to that post are laid down.

7. The rule-making function under the proviso to Article 309 is a legislative function. Since Article 309 has to operate subject to other provisions of the Constitution, it is obvious that whether it is an Act made by Parliament or the State Legislature which lays down the conditions of service or it is a rule made by the President or the Governor under the proviso to that article, it has to be in conformity with the other provisions of the Constitution specially Articles 14, 16, 310 and 311.

8. The Fire Services under the State Government were created and established under the Fire Force Act, 1964 made by the State Legislature. It was in exercise of the power conferred under Section 39 of the Act that the State Government made Service Rules regulating the conditions of

the Fire Services. Since the Fire Services had been specially established under an Act of the legislature and the Government, in pursuance of the power conferred upon it under that Act, has already made Service Rules, any amendment in the Karnataka Civil Services (General Recruitment) Rules, 1977 would not affect the special provisions Validly made for the Fire Services. As a matter of fact, under the scheme of Article 309 of the Constitution, once a legislature intervenes to enact a law regulating the conditions of service, the power of the Executive, including the President or the Governor, as the case may be, is totally displaced on the principle of "doctrine of occupied field". If, however, any matter is not touched by that enactment, it will be competent for the Executive to either issue executive instructions or to make a rule under Article 309 in respect of that matter.

9. It is no doubt true that the rule-making authority under Article 309 of the Constitution and Section 39 of the Act is the same, namely, the Government (to be precise, the Governor, under Article 309 and the Government under Section 39), but the two jurisdictions are different. As has been seen above, power under Article 309 cannot be exercised by the Governor, if the legislature has already made a law and the field is occupied. In that situation, rules can be made under the law so made by the legislature and not under Article 309. It has also to be noticed that rules made in exercise of the rule-making power given under an Act constitute delegated or

subordinate legislation, but the rules under Article 309 cannot be treated to fall in that category and, therefore, on the principle of “occupied field”, the rules under Article 309 cannot supersede the rules made by the legislature.”

23. Same proposition is reiterated in the case of P.H. Paul Manoj Pandian (supra), especially in paragraph No. 45, 46, 47 and 48. The relevant paragraphs are reproduced herein below for ready reference:-

“45. Departmental circulars are a common form of administrative document by which instructions are disseminated. Many such circulars are identified by serial numbers and published, and many of them contain general statement of policy. They are, therefore, of great importance to the public, giving much guidance about governmental organisation and the exercise of discretionary powers. In themselves they have no legal effect whatever, having no statutory authority. But they may be used as a vehicle in conveying instructions to which some statute gives legal force. It is now the practice to publish circulars which are of any importance to the public and for a long time there has been no judicial criticism of the use made of them.

46. Under Article 162 of the Constitution, the executive power of the State extends to matters with respect to which the State Legislature has power to make laws. Yet the limitations on the exercise of such executive power by the

Government are twofold; first, if any Act or law has been made by the State Legislature conferring any function on any other authority, in that case the Governor is not empowered to make any order in regard to that matter in exercise of his executive power nor can the Governor exercise such power in regard to that matter through officers subordinate to him. Secondly, the vesting in the Governor with the executive power of the State Government does not create any embargo for the legislature of the State from making and/or enacting any law conferring functions on any authority subordinate to the Governor.

47. Once a law occupies the field, it will not be open to the State Government in exercise of its executive power under Article 162 of the Constitution to prescribe in the same field by an executive order. However, it is well recognised that in matters relating to a particular subject in absence of any parliamentary legislation on the said subject, the State Government has the jurisdiction to act and to make executive orders. The executive power of the State would, in the absence of legislation, extend to making rules or orders regulating the action of the executive. But, such orders cannot offend the provisions of the Constitution and should not be repugnant to any enactment of the appropriate legislature. Subject to these limitations, such rules or orders may relate to matters of policy, may make classification and may determine the

conditions of eligibility for receiving any advantage, privilege or aid from the State.

48. The powers of the executive are not limited merely to the carrying out of the laws. In a welfare State the functions of the executive are ever widening, which cover within their ambit various aspects of social and economic activities. Therefore, the executive exercises power to fill gaps by issuing various departmental orders. The executive power of the State is coterminous with the legislative power of the State Legislature. In other words, if the State Legislature has jurisdiction to make law with respect to a subject, the State executive can make regulations and issue government orders with respect to it, subject, however, to the constitutional limitations. Such administrative rules and/or orders shall be inoperative if the legislature has enacted a law with respect to the subject. Thus, the High Court was not justified in brushing aside the Government Order dated 16-11-1951 on the ground that it contained administrative instructions.”

24. Same proposition is laid down in the case of *State of Sikkim vs. Dorjee Tshering Bhutia and Ors.*, reported in (1991) 4 SCC 243, wherein Hon’ble Supreme Court has held as under:-

“15. The executive power of the State cannot be exercised in the field which is already occupied by the laws made by the legislature. It is settled law that any order, instruction,

direction or notification issued in exercise of the executive power of the State which is contrary to any statutory provisions, is without jurisdiction and is a nullity. But in this case, we are faced with a peculiar situation. The Rules, though enforced, remained unworkable for about five years. The Public Service Commission, which was the authority to implement the Rules, was not in existence during the said period. There is nothing on the record to show as to why the Public Service Commission was not constituted during all those five years. In the absence of any material to the contrary, we assume that there were justifiable reasons for the delay in constituting the Commission. The executive power of the State being divided amongst various functionaries under Article 166(3) of the Constitution of India there is possibility of lack of co-ordination amongst various limbs of the government working within their respective spheres of allocation. The object of regulating the recruitment and conditions of service by statutory provisions is to rule out arbitrariness, provide consistency and crystallize the rights of employees concerned. The statutory provisions which are unworkable and inoperative cannot achieve these objectives. Such provisions are non-est till made operational. It is the operative statutory provisions which have the effect of ousting executive power of the State from the same field. When in a peculiar situation, as in the present case, the statutory provisions could not be operated there was no bar for the State Government to act in exercise of its executive

power. The impugned notification to hold special selection was issued almost four years after the enforcement of the Rules. It was done to remove stagnation and to afford an opportunity to the eligible persons to enter the service. In our view the State Government was justified in issuing the impugned notification in exercise of its executive power and the High Court fell into error in quashing the same.”

25. In the case of *Satya Narain Shukla vs. Union of India and Ors.*, reported in (2006) 9 SCC 69, Hon’ble Supreme Court has held as under:-

“19. The appellant contended that this provision of the Central Staffing Scheme is ultra vires Articles 309 and 312 of the Constitution. Amplifying this it is urged by the appellant that several rules have been framed by the Central Government in exercise of its statutory powers under the AIS Act, 1951 i.e. the Indian Administrative Service (Cadre) Rules, 1951; the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955; Indian Administrative Service (Pay) Rules, 1954; Indian Administrative Service (Regulation of Seniority) Rules, 1987; Indian Administrative Service (Probation) Rules, 1954; and that these rules occupy the whole field of executive discretion, and, therefore, by the doctrine of occupied field there is no scope left for exercise of executive action outside the purview of these rules. It is difficult to accept this contention. Each one of these rules

is intended to take care of a specific facet of IAS. No set of these rules is exhaustive by itself of all the service conditions applicable to the IAS. It is, therefore, incorrect to contend that the field of possible executive action is completely occupied by the statute or the statutory rules framed there under, deriving force from Article 309 read with Article 312 of the Constitution. We have not been shown any provisions in these Rules which deal specifically with the subject of the procedure for selection of officers from the said cadre for the post of Additional Secretary/Secretary to the Government of India. This is a subject in respect of which the field does not appear to be occupied. Consequently, it was very much open to the executive to resort to executive instructions by way of an office memo for dealing with this subject. The contention, therefore, must fail."

26. Again a division bench of this court, in the case of Mahendra Nath Mudoï and Ors. vs. State of Assam and Ors., reported in 2017 SCC OnLine Gau 1037, held as under:-

"54. Again in *A.B. Krishna* (supra), Supreme Court referring to article 309 of the Constitution of India held that it is primarily the Legislature, namely, Parliament or the State Legislative Assembly with whom power to make law regulating the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or State is vested. The proviso, however, gives power to the

President or the Governor to make service rules, but this is only a transitional provision as the power under the proviso can be exercised only so long as the Legislature does not make an act whereby, recruitment to public post, as also other conditions of service relating to that post are laid down. However, the rule making function under the proviso to article 309 of the Constitution of India is a legislative function. Elaborating further, Supreme Court held that under the scheme of article 309 of the Constitution, once a Legislature intervenes to enact a law regulating the conditions of service, the power of the Executive, including the President or the Governor, as the case may be, is totally displaced on the doctrine of occupied field. Power under article 309 cannot be exercised by the Governor, if the Legislature has already made a law and the field is occupied. In that situation, rules can be made under the law so made by the Legislature and not under article 309. Rules made in exercise of the rule making power under an act constitute delegated or subordinate legislation, but the rules under article 309 cannot be treated to fall in that category and, therefore, on the principle of occupied field, the rules under article 309 cannot supersede the rules made by the Legislature. However, if any matter is not touched by that enactment, it will be competent for the Executive to either issue executive instructions or to make a rule under article 309 in respect of that matter.

55. This position was reiterated in *D.R. Yadav* (supra) wherein, it was held that there cannot be any doubt whatsoever that rules framed under the proviso to article 309 of the Constitution of India would apply so long as a statute or statutory rules or any other subordinate legislation governing the conditions of service are not enacted or made or is not otherwise operating in the field. In other words, rules made under the proviso to article 309 of the Constitution are for a transitory period and the same would give way to the statutory rules once framed. However, if a statute or rules made there under is already operating in the field, the rules made under the proviso to article 309 would not apply to the services created there under.

56. Supreme Court has, however, clarified that though non-statutory rules cannot modify statutory rules, there is nothing to prevent the Government from issuing administrative instructions or frame rules under the proviso to article 309 on matters in respect of which the statutory rules are silent.”

27. Thus, the legal proposition, that can be crystallised from the aforesaid decisions and discussions is that once a law occupies the field, it will not be open to the State Government, in exercise of its executive power, under Article 162 of the Constitution of India, to prescribe in the same field by an executive order. However, it is well recognized that in matters relating to a particular subject, in absence of any parliamentary legislation on the said subject, the

State Government has the jurisdiction to act and to make executive orders. The executive power of the State would, in the absence of legislation, extend to making rules or the orders regulating the action of the executive. Nevertheless, such orders cannot offend the provisions of the Constitution and should not be repugnant to any enactment of the appropriate legislature. Subject to these limitations, such rules or orders may relate to matters of policy, may make classification and may determine the conditions of eligibility for receiving any advantage, privilege or aid from the State.

28. Thus, there is no doubt that when the field is not occupied, the State respondents have the authority to issue Executive Instructions or to make Rules under Article 309 of the Constitution of India in respect of the matter.

Application of Doctrine of Occupied Field in the case in hand:

29. In the instant case, it is the categorical contention of the learned Advocate General that the Joint Committee was constituted by the Government to 'consider' the proposal received by the Administrative Department from the SLSC for creation of post and that there is a vacuum as to how to consider the proposals and as such the field is unoccupied and therefore, the State Government, in exercise of the powers under Article 162 of the Constitution of India, the Notification creating Join Committee to consider the case of the Teachers and Schools for Provincialisation under sub-section (7) to Section 13 of the Act of 2017.

29.1. The submission of Mr. Saikia, the learned Advocate General, Assam cum- Senior Counsel for the state respondent received due consideration of this court. Also this court has carefully gone through the decisions relied upon by him, in (i) **A.B. Krishna(supra)** (ii) **Satya Narain Shukla(supra)** (iii) **Mahendra Nath Mudoi (supra)** and (iv) **P.H. Paul Manoj Pandian (supra)**, which have already been discussed in the forgoing para.

29.2. Notably, in the case of **A.B. Krishna(supra)** it has been held that ‘any matter’, which is not touched by that enactment, it will be competent for the Executive to either issue executive instructions or to make a rule under Article 309 in respect of that matter. In the case of **Mahendra Nath Mudoi (supra)**, relying upon **A.B. Krishna (supra)** and another decision in **D.R. Yadav vs. R.K. Singh**, reported in (2003) 7 SCC 110, held that though non-statutory rules cannot modify statutory rules, there is nothing to prevent the Government from issuing administrative instructions or frame rules under the proviso to Article 309 ‘on matters’ in respect of which the statutory rules are silent. In the instant case the matter is ‘provincialisation of service’, which field is already occupied by Act and Rules.

29.3. In the case of **Satya Narain Shukla(supra)** there was no provisions in the Rules which deal specifically with the subject of the ‘procedure for selection of officers from the said cadre for the post of Additional Secretary/Secretary to

the Government of India'. And under such circumstances the Supreme Court has laid the proposition. In the case of **P.H. Paul Manoj Pandian (supra)**, it was held that if the State Legislature has jurisdiction to make law with respect to a subject, the State executive can make regulations and issue government orders with respect to it, subject, however, to the constitutional limitations. Such administrative rules and/or orders shall be inoperative if the legislature has enacted a law with respect to the subject.

30. It is well settled that the precedential value of a decision has to be understood in the given factual backdrop of the given case. In the case of **Divisional Controller, KSRTC vs. Mahadeva Shetty and Anr.**, reported in (2003) 7 SCC 197 Hon'ble Supreme Court, while dealing with this issue, held that a judgment ordinarily is a decision of the case before the Court and it is further held that a decision often takes its colour from the question involved in the case in which it is rendered and the scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation.

30.1. Again in the case of **Uttaranchal Road Transport Corpn. and Ors. vs. Mansaram Nainwal**, reported in (2006) 6 SCC 366, Hon'ble Supreme Court has held that:-

“..... Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything

said by a judge while giving judgment that constitutes a precedent. The only thing in a judge's decision binding a party is the principle upon which the case is decided and for this reason, it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates: (i) findings of material facts, direct and inferential. An inferential finding of fact is the inference which the judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent.....”

30.2. Again in the case of *Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. and Ors.*, reported in (2003) 2 SCC 111, Hon’ble Supreme Court has held that:

“59. A decision, as is well known, is an authority for which it is decided and not what can logically be deduced there from. It is also well settled that a little difference in facts or additional facts may make a lot of

difference in the precedential value of a decision.”

30.3. Dealing with the issue again in the case of **Haryana Financial Corporation and Anr. vs. Jagdamba Oil Mills and Anr.**, reported in (2002) 3 SCC 496, Hon’ble Supreme Court has held as under:-

“19. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark upon lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes.....”

30.4. Thus, the proposition, that can be crystallized from the aforesaid decision is that - each case presents its own features. A decision is a precedent on its own facts. Further, reliance on the decision without looking into the factual background of the case before it is clearly impermissible. What is binding a party in a decision is the principle upon which the case is decided and for this reason. Observation made in a decision must be read in the context in which they appear and that the judgments of courts are not to be construed as statutes.

30.5. Thus, having considered the decisions relied upon by Mr. Saikia, learned Advocate General in the factual background of the case before the Hon'ble Supreme Court, this court is of the view that the decisions relied upon by him would not advance his argument.

31. Further, from the materials placed on record and discussed above, it becomes apparent that the Joint Committee in the instant case, was not constituted by making any rules under Article 309 of the Constitution of India. Indisputably, the same is constituted under Article 162 of the Constitution of India. Now, the issue is whether the state executive can constitute such a committee by issuing such a notification under Article 162 of the Constitution of India.

31.1. Article 162 provides that the executive power of a State extends to matters with respect to which the State Legislature has power to make laws (subject to constitutional provisions). However, this power is not unlimited. Once the State Legislature has enacted a complete statutory scheme through an Act (and Rules framed there under), the executive cannot issue orders or notifications that are inconsistent with, override, supplement, or create parallel mechanisms to the legislative framework.

31.2. It is well settled that executive actions must align with and be traceable to the statute and they cannot amend or bypass it. This principle is well-established in Indian jurisprudence. In the case of **Rai Sahib Ram Jawaya Kapur and Ors. vs. State of**

Punjab reported in AIR 1955 SC 549, and subsequent cases it has been emphasised that executive power cannot encroach on the legislative domain or alter statutory processes. This is clear from the observation made in para No. 14 of the said decision, which is quoted as under:-

“14. It may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away. The Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another. The executive indeed can exercise the powers of departmental or subordinate legislation when such powers are delegated to it by the legislature. It can also, when so empowered, exercise judicial functions in a limited way. The executive Government, however, can never go against the provisions of the Constitution or of any law. This is clear from the provisions of article 154 of the Constitution but, as we have already stated, it does not follow from this that in order to enable the executive to function there must be a law already in

existence and that the powers of executive are limited merely to the carrying out of these laws.”

31.3. A Constitutional Bench of Hon’ble Supreme Court in the case of Sant Ram Sharma v. State of Rajasthan, reported in 1967 SCC OnLine SC 16, while dealing with the same issue has held as under:

“7. We proceed to consider the next contention of Mr. N.C. Chatterjee that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed. We are unable to accept this argument as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.”

32. In the instant case, in the specific context of provincialisation of Teachers' services, the Assam Education (Provincialisation of

Services of Teachers and Re-organisation of Educational Institutions) Act, 2017 provides a self-contained statutory code. It provides for constitution of following two committees:-

- (i) District Scrutiny Committee (constituted under Section 13(1)–(5) by the Deputy Commissioner). This committee scrutinises eligibility, verifies service records, prepares lists of eligible institutions/teachers, and forwards the verified recommendations to the Director for placing the same before the State Level Scrutiny Committee.
- (ii) State Level Scrutiny Committee (constituted under Section 13(10) with specified members including the Director as Chairman). This committee conducts physical verification, resolves discrepancies (its decision is final under Section 13(12) where differences arise with District recommendations), and this Committee forwards the matter onward.

32.1. Then, after the verification by the SLSC, the verified recommendations are forwarded to the "concerned Department of the State Government for 'consideration' and for issuing Notification" in the Official Gazette (Section 13(7)). Provincialization takes effect from the date of this Notification [Section 4(1)].

32.2. The Act also provides for an appellate mechanism. The State Level Committee acts as appellate forum against District recommendations. And the State Government (concerned

administrative department) itself is the appellate authority against State Level recommendations (Section 14).

32.3. Thus, it appears that under the scheme of the Act of 2017, the executive government has very limited executive discretion. None of the provisions, authorizes creating an additional or parallel committee to examine the recommendations of the two statutory committees. The recommendation of the two statutory scrutiny committees is not advisory in a loose sense. These committees form the core verification and recommendation process. The role of the department is limited to "consideration" within this framework (including appeal), followed by notification.

32.4. In view of the aforesaid discussion and finding, this court is of the view that for 'consideration' of the recommendations of the DSC and SLSC, under Section 13(7) of the Act, the executive, in the name of the Governor, cannot issue a Notification under Article 162 to constitute a separate committee, while the field is already occupied by the Act and the Rules framed there under, i.e. The Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017 and the Assam Secondary Education (Provincialised School) Services Rules, 2018.

32.5. And in view of above, the submission of Mr. Saikia, learned Advocate General, failed mandate acceptance of this court. In the instant case the field is occupied and as such the executive Government, can never go against the provisions of the Constitution and the Act and Rules already enacted. As held in the case of **Rai**

Sahib Ram Jawaya Kapur(supra), the executive actions must align with and be traceable to the statute and they cannot amend or bypass it. As the field is occupied, to considered opinion of this court the Doctrine of Occupied Field, would not apply here in this case.

33. Thus, to recapitulate, on the following grounds the impugned Notification, dated 27.01.2019, fails to withstand the legal scrutiny:-

- (i) It is ultra vires of the Act, and violative of the doctrine of separation of powers.
- (ii) The Joint Committee creates an extra-statutory body outside the scheme of the Act of 2017 and Rules 2018.
- (ii) It would potentially delay, (as in the present two cases), override, or dilute the finality of statutory recommendations and the appellate process.
- (iii) It amount to executive legislation or supplementation, which is impermissible when the field is occupied by the Act and Rules.

34. Thus, the impugned Notification is required to be interfered with being ultra-vires, in exercise of the power of judicial review. In this context, this court deemed it necessary to deal with the scope of judicial review of administrative action. While dealing with this issue in the case of **Tata Cellular v. Union of India**,

reported in (1994) 6 SCC 651 Hon'ble Supreme Court has held as under:-

71. Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy; thus they are not essentially justiciable and the need to remedy any unfairness. Such an unfairness is set right by judicial review.

34.1. Again, in para 77 of the said decision it has been held that-

“The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from

case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

- (i) **Illegality:** This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.
- (ii) **Irrationality,** namely, **Wednesbury unreasonableness.**
- (iii) **Procedural impropriety.**

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secretary of State for the Home Department, ex Brind* [(1991) 1 AC 696], Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, “consider whether something has gone wrong of a nature and degree which requires its intervention”.

34.2. Further in the case of *Mamata Mohanty*(supra) Hon’ble Supreme Court, while dealing with arbitrariness has held as under:-

“59. The rule of law inhibits arbitrary action and also makes it liable to be invalidated. Every action of the State or its instrumentalities should not only be fair, legitimate and above board but should be without any affection or aversion. It should neither be suggestive of discrimination nor

even give an impression of bias, favouritism and nepotism. Procedural fairness is an implied mandatory requirement to protect against arbitrary action where statute confers wide power coupled with wide discretion on an authority. If the procedure adopted by an authority offends the fundamental fairness or established ethos or shocks the conscience, the order stands vitiated. The decision-making process remains bad.”

34.3. Thus, it appears that Indian jurisprudence has long recognised that administrative actions are subject to judicial review when they are arbitrary, unreasonable or violate constitutional principles. Reference in this context can also be made to a decision of Hon’ble Supreme Court in the case of **EP Royappa vs. State of Tamil Nadu** reported in **1974 4 SCC 3**.

35. And here in this case, since the impugned Notification, is contrary to the scheme of the Act and Rule, and also arbitrary and illegal the same liable to be struck down in exercise of the power of judicial review.

36. If the Government needs any additional mechanism, it must amend the Act (via the Legislature) or frame specific Rules under the Act's rule-making power without resorting to a standalone Article 162 notification. Notably, any notification, in the name of Governor would carry no special immunity; they remain subject to

the same constitutional and statutory limits. It may also remove difficulties and interpret provisions (Section 20).

The Principle of “*nemo iudex in causa sua*”

37. Besides being contrary to the statutory scheme of the Act of 2017, and the Rules of 2018, on another count also the Notifications constituting Joint Committee, appear to be illegal. And this is, on one hand the Director of Secondary/Elementary Education is the Chairperson of the State level Committee. On the other hand he is also a member of the Joint Committee.

38. It is a fact that the 2017 Act and the Rules 2018, do not bar the Director from holding multiple roles in the chain of provincialisation. Yet, it risks violating the principles of natural justice, specifically the rule against bias (*‘nemo iudex in causa sua’*- no one should be a judge in their own cause). An officer, who serves as a member of the original (lower) committee and then participates in a higher/review/appellate committee examining the same decision often creates a reasonable apprehension of bias. This can vitiate the higher committee's proceedings, even without proof of actual bias. The test to be applied is objective i.e. whether a reasonable person would apprehend that the decision-maker might be influenced by their prior involvement. Prior involvement in the original decision often leads to "institutional" or "departmental" bias, where the officer may have a predisposition to defend or uphold the earlier stance. As held by Hon'ble Supreme Court in the case of **A.K. Kraipak v. Union of India**, reported in (1969) 2 SCC

262, a "reasonable likelihood" or genuine perception of bias is enough to invalidate the process (drawing from cases like where a committee member's personal interest tainted the selection process). Also there is conflict of interest/impartiality as the Director being a member of the SLSC (as Chairman) and then Member of the Joint Committee to 'consider' the SLSC recommendations, in view of the stand of the respondent authority, could mean reviewing or endorsing their own committee's work. On this count also the Notifications, constituting Joint Committee are liable to be interfered with.

Conclusion:-

39. The upshot of aforesaid discussion is that the legislature, having spoken through the Act and Rules, the executive is bound by it and cannot issue a Notification constituting a Joint Committee, under Article 162, which is contrary to the statutory scheme.

40. In the result, this court finds sufficient merit in these petitions and accordingly the same stand allowed. Under the given facts and circumstances following orders are being passed:-

- (i) The Notification Dated 27.01.2019, thereby constituting the Joint Committee, and subsequent Notification, dated 14.09.2022, modifying the first one, to consider the recommendations of the two statutory committees, being an extra statutory body, outside the scheme of the Act and also being ultra-vires of the Act and Rules made

there under is liable to be interefered with. Accordingly, the same stands set aside and quashed.

- (ii) Consequently, the follow up action, initiated pursuant to the recommendation of the Joint Committee, in the present two writ petitions are illegal and inoperative.
- (iii) Though, the Notification, constituting the Joint Committee is interfered with, yet, on the principle of finality of administrative action, it is impermissible to re-open already settled cases.
- (iv) The respondent authorities shall process the relevant file of the petitioners in both these petitions, as per recommendation of the State Level Committee, for follow up action, strictly, in accordance with the provision of the Act.
- (v) Let the aforesaid exercise be carried out with in a period of three months from the date of receipt of certified copy of this order.
- (vi) The petitioner shall obtain a certified copy of this order and place the same before the respondent No.2 within a period of one week from today.

41. The parties have to bear their own cost.

J U D G E

Comparing Assistant