

HON'BLE MR JUSTICE AMITAVA ROY

JUDGEMENT AND ORDER

The petitioners seek annulment of the letter No.ASE.108/2007/76 dated 12.12.2007 of the Under Secretary to the Govt. of Assam (S) Department whereby the process for appointment of Lower Division Assistants in the Directorate of Secondary Education, Assam is directed to be undertaken de novo in terms of the Assam Directorate Establishment(Ministerial) Service Rules, 1973(hereafter referred to as the 'Rules') in which ,they claim to have been selected for the same posts. In responding to the challenge, this Court by order dated 28.5.2008 while issuing notice restrained the State respondents from filling up the posts against which the petitioners had been earlier selected.

2. I have heard Mr N.Dutta, Senior Advocate assisted by Mr I. Choudhury, Advocate for the petitioners and Mr MR Pathak, learned Standing Counsel, Education Department for the respondents.

3. The rival pleadings in brief, would have to be traversed to outline the respective factual projections. The petitioners contend that they are all eligible for being selected to Grade III(LDA/UDA) posts under the Directorate of Secondary Education, Assam and had duly registered themselves under the Employment Exchange, Department of Labour, Govt. of Assam. Out of them, the petitioner No.9 along with Shri Ratul Choudhury and Shri Nripen Das are in service as on date as Computer Operator in the DTP works in the aforementioned Directorate and the office of the Commissioner and Secretary to the Govt. of Assam, Education Department.

The Deputy Secretary to the Govt. of Assam , Education(S) Department by his letter No.ND(3)S.358/2001/322 dated 14.12.2005 while requesting the Director of Secondary Education, Assam to initiate a process of selection to fill up 24 posts of Grade III(LDA) lying vacant in the office of the Inspector of Schools including High/Higher Secondary Schools, also instructed him to obtain the names of the candidates from the local Employment Exchange and submit the information in the prescribed format for obtaining the approval from the Finance (SIU) Department for filling up the vacancies. Thereafter by notification No. B(3) S.358/2001/338 dated 17.1.2006, the Government constituted the District Level Selection Committee for selection against the abovementioned posts. In quick succession the reto, however, by a notification No.B(3) S.358/2001/340 dated 17.1.2005(sic) /18.1.2006, a State Level Committee for selection of candidates against the vacancies in the Grade III and Grade IV posts in the offices mentioned therein including that of the Inspector of Schools and Government Secondary Schools was constituted in supersession of the earlier mentioned notification dated 17.1.2006. This , the petitioners have maintained was presumably for the purpose of administrative convenience and expedition of the selection process in respect of the vacancies referred to in the latter notification.

4. Subsequent thereto, the Director of Secondary Education, Assam by his letter No.NDSR/ESTT/1/2005/13 dated 24.1.2006 forwarded a request to the Director of Employment and Craftsmen Training, Guwahati to forward the names of candidates for filling up Grade III and Grade IV posts in his Directorate. The petitioners have asserted that though by this letter the requisition to fill up only 14 posts of Assistant was made, a request for candidates for filling up 10 more posts was also made thereafter. In response thereto in all, the Department of Labour and Employment, Govt. of Assam forwarded names of 594 candidates vide letters dated 17.2.2006 and 22.2.2006 of the Assistant Director of Employment Exchange, District Employment Exchange, Guwahati to the Director of Secondary Education, Assam.

In continuation of the process, the Commissioner and Secretary (S & E) Department by his letter No.ASE/21/2006 /8 dated 18.2.2006 instructed the Director of Se

condary Education, Assam to inform the said candidates of the date, time and venue of the interview as mentioned therein. According to the petitioners, 238 candidates appeared in the type writing test and interview for selection to the post of LDA. Eventually, in the meeting of the State Level Committee held on 27.2.2006, 24 candidates including the petitioners were recommended for appointment to the post of LD Assistant(Grade III) in the office of the Directorate of Secondary Education, Assam and the Inspector of Schools, KDC.Kamrup. Pursuant thereto, the Commissioner and Secretary to the Govt. of Assam, Education (S&E) Department by his communication No.EB/S.358/241 dated 27.2.2006 while forwarding the minutes of the aforementioned meeting to the Director of Secondary Education, Assam intimated the latter to issue appointment orders to the recommended candidates mentioning the places of their posting, subject, however to observance of all necessary formalities as required as per the Rules.

5. While the process lingered at that stage, the model code of conduct relating to State assembly election was enforced and resultantly some restrictions were clamped following the Election Commission's instructions in that regard. This was inter alia communicated to the Education(S & E) Department by the Chief Electoral Officer, Assam by his letter NO.ELE.110/2006/Pt/39 dated 11.4.2006.

6. All formalities thus being complete, the petitioners waited in anxious expectation for their appointment only to encounter the inexplicable delay on the part of the State respondents. Being aggrieved by such an inert disposition of the official respondents, they along with other selected candidates instituted WP(C) Nos 939/2007, 857/2008 and 962/2007 before this Court praying for a direction to the State respondents to appoint them in accordance with law. These petitions were eventually disposed of on 11.5.2007 leaving the State respondents at liberty to fill up the posts of LDA (Grade III) in the office of the Director of Secondary Education and the Inspector of Schools, KDC from the related select list in accordance with law. While passing the above order, this Court noted that the selection of the petitioners was not in dispute and that the learned counsel for the parties had submitted that they could not be appointed due to the code of conduct imposed following the announcement of the election to the State Assembly. The approval of the department of Finance, Govt. of Assam was also taken note of by the Court. It was at this stage that the impugned letter dated 12.12.2007 was issued by the Under Secretary to the Govt. of Assam, Education(S) Department apprising the Director of Secondary Education, Assam that the appointment to Grade III posts in his Directorate would be governed by the Rules and that the selection therefor has to be made as per Rule 12(1) thereof as predicated in the circular No.ABP.123/2001/257 dated 23.10.2006 of the Department of Personnel(B), Govt. of Assam. Thereby it was underlined that the earlier notification(s)/instruction(s) stood modified and the Director of Secondary Education, Assam was requested to start the process for appointment of LD Assistant in his Directorate anew as per the provisions of the aforesaid Rules and procedure treating the earlier select list as cancelled.

7. The petitioners have asserted that the factual details obtained by them from various other departments of the Government of Assam under the Right to Information Act, 2005 pertaining to the procedure adopted by them for appointment to the post of LDA (Grade III) demonstrate in clear terms that since the year 1988 those have also pursued the same mode of selection as adopted in their case following which they had been recommended for appointment. The petitioners have maintained that to the best of their knowledge and information, the Director of Employment and Craftsmen and Training has not administered any selection in respect of any such departments since the year 1988. The impugned decision has thus been emphatically repudiated by them to be arbitrary, unreasonable, unjust and discriminatory, in violation of Articles 14 and 16 of the Constitution of India.

8. The State of Assam in the Education Department, in its affidavit a

ffirmed by the Under Secretary thereof, while emphasizing on the essentiality of the observance of the Rules ,more particularly Rule 12 thereof for selection of candidates for appointment to the post of LD Assistant under the administrative departments/Head of departments etc. including the Education Department, has insisted that though Rule 22 mandates relaxation of the rigour of any provision of the Rules, it is the Personnel (B) Department which is the only competent authority to invoke the power therefor. As no relaxation by the Personnel(B) Department had been made and instead observation of the Rules had been insisted upon by it as would be apparent from the circular No.ABP.123/2001/257 dated 23.10.06, the Directorate of Employment and Craftsmen Training only was authorized to conduct the process of selection. According to the answering respondent neither the details of the selection procedure nor the minutes of the State Level Selection Committee is traceable in the Government file. The letter No.B(S). 358/2001 dated 27.2.2006 of the department forwarding the minutes of the State Level Selection Committee to the Directorate of Secondary Education, Assam with the instructions for appointment of the recommended candidates is also not on record. The answering respondent has also expressed reservation on the unusual alacrity with which the meeting of the Selection committee was held and the select list was forwarded to the Directorate for implementation. The factum of enforcement of the model code of conduct has been referred to. Incidentally, it has been mentioned as well that the Chairman of the State Selection Committee was due to retire on 28.2.2006 ie. a day subsequent to the one on which the minutes of the Committee had been drawn up and forwarded to the Directorate of Secondary Education, Assam. That pursuant to the model code of conduct on the eve of the State Assembly Election ,2006, the process of appointment had been stopped, however, has been admitted.

While, the answering respondent has conceded that the clarification of Finance(SIU) department had been intimated to the Director of Secondary Education for all categories of posts, it ,has however, been denied that the same extended to the appointment of the petitioners as claimed. It has been clarified that after the disposal of the aforementioned writ petitions by this Court vide its order dated 11.5.2007 granting the respondents liberty to fill up the posts involved in accordance with law, the Department obtained the view of the Legal Remembrancer as well as Personnel(B) Department and the latter insisted on compliance of the provisions of Rule 12(1) in reiteration of its circular dated 23.10.2006. According to the answering respondent as the Rules are still in force, no departure therefrom is permissible and therefore, the impugned decision is valid in law .

9. Whereas, the respondent No.5 in his affidavit through the Assistant Director of Employment Exchange, Guwahati has admitted that in response to the request forwarded by the Director of Secondary Education, Assam by letter No.D ET(B) 01/09/05 dated 7.2.2006, the District Employment Exchange, Guwahati had sponsored candidates including the petitioners to the Directorate of Secondary Education, Assam, the Respondent No.6 , Director of Employment and Craftsmen Training, Assam, in his affidavit while acknowledging his role under Rule 12 to conduct the process of direct recruitment to Grade III and Grade IV posts under the offices of the Heads of Departments as referred to the office Memorandum No.ABP/101/75/Pt/1/4 dated 31.7.75 and the circular No.ABP.123/2001/257 dated 23.10.2006 of the Department of Personnel(B) in this regard has admitted that his Directorate had conducted said exercise till the year 1988 and that due to various reasons including the ban on direct recruitment and appointment , no further process had been undertaken thereafter till 2006. The initiation of the process by the Director of Secondary Education, Assam to fill up the vacancies in Grade II I and Grade IV posts in his Directorate as well as in the office of the Inspector of Schools, Karmup District Circle, Guwahati has been admitted. The answering respondent endorsed the fact that the Employment Exchange had been instructed to forward the list of candidates from his Directorate. It has been stated further that pursuant to the letter No.ABP. 123/2001/257 dated 23.10.2006 of the department of Personnel(B), the Directorate of Employment and Craftsmen Training

as in the meantime, issued an advertisement soliciting applications for the posts of Junior Assistant and Grade IV to draw up a panel to fill up the corresponding vacant posts in the offices of the Heads of the departments of Assam and that the written examination in connection therewith has already been held on 23.3.2008. The deponent has affirmed that the process pertaining thereto is in progress.

10. Mr Dutta has strenuously argued that the impugned decision of re-initiating the process in terms of the Rules is in violation of and disregard to the undertaking given by the State respondents before this Court on the basis of which the earlier writ petitions had been disposed of on 11.5.2007. It having been candidly admitted on behalf of the State authorities that the petitioners had been duly selected for recruitment to the posts involved and that their appointments could not be effected for the enforcement of the model code of conduct at the relevant point of time and as this Court recording the same had permitted them to complete the process in accordance with law as represented by the same, this sudden turn around is a contemptuous affront to the Court, he urged. The learned Senior counsel was trenchant in maintaining that as the undertaking as on date has not been withdrawn and the order of this Court has attained its finality, in absence of any appeal or review, it is assuredly impermissible for the State respondents to retrace therefrom and therefore, the impugned decision is per se non est in law. Mr Dutta has urged that not only the endeavour to initiate a fresh process in essence tantamounts to supersession of the order of this Court, the statement made in the impugned letter dated 12.12.2007 that an affidavit incorporating the necessity of compliance of the Rules had been filed in the connected writ petitions is not borne out by the records and being a deliberate misstatement calls for a deterrent punitive action. Referring to the documents annexed to the writ petition, bearing on the process of recruitment to Grade III and Grade IV posts therein, undertaken by various other departments of the State, the learned Senior counsel has insisted that the same would unequivocally proclaim that though generally the Directorate of Employment and Craftsmen Training is required to conduct the procedure therefor, the same has not been adhered to and the method pursued in respect of the petitioners had been invoked continuously for almost a decade. In course of the arguments, Mr Dutta has also drawn the attention of this Court to a number of advertisements of 2008-09 in various local dailies to bolster his plea that even as on date, the Director of Employment and Craftsmen Training though required under the Rules has not been associated with any of such exercises and that the front assumed by the State respondents vis a vis the petitioners is only a pretension on collateral considerations. The learned Senior Counsel has thus maintained that in the attendant facts and circumstances, even in the perspective of law of desuetude due to consistent non compliance of the Rules, the provisions thereof stood denuded of their mandatory essence and thus the impugned decision to cancel the earlier selection under the cover thereof (Rules) is patently faulty and unjustifiable in law. To buttress his arguments, Mr Dutta has placed reliance on the following decisions of the Apex Court in -

- (i) 1992(Supp)1 SCC 584, N. Suresh Nathan vs. Union of India;
- (ii) 1992(1) SCC 105, Uma Kant University of Rajasthan, Jaipur through its Registrar vs. Bhikalal Join and others ;
- (iii) 1993(Supp) 2 SCC 419, M.B. Joshi vs. Satish Kumar Pandey
- (iv) 1995(3) SCC 434, Municipal Corporation for City of Pune vs. Bharat Jorge Company Ltd.
- (v) 1997(9) SCC 450, Cantonment Board Mhow :
- (vi) vs. Cantonment Board Saugar, MP State Road Transport Corpn REWA transport Services Rewa.
- (vii) 2006(6) SCC 673, Arvinder Singh Bains vs. State of Punjab.

11. Per contra, Mr Pathak has submitted that the Rules being admittedly an enactment in exercise of powers under Article 309 of the Constitution of India, the same is binding on all concerned and therefore, the selection and appoint

ment as claimed by the petitioners being in contravention thereof is outright ly null and void. While admitting that no affidavit in the writ proceedings disposed of by this Court on 11.5.2007 had been filed by the State respondents and that a reference thereof in the impugned order is therefore unwarranted, the learned Standing counsel has generally reiterated the stand recorded in the affidavit of the respondent No.1. When queried by this Court, Mr Pathak could not vouch safe that the Rules are being followed as on date in all other departments of the Government.

12. I have lent my conscious consideration to the pleadings on record and the rival submissions. The existence of the Assam Directorate Establishment (Ministerial) Service Rules, 1973 is not in dispute. Incidentally, it is a legislation in exercise of powers under Article 309 of the Constitution of India regulating the recruitment and conditions of service of persons appointed to the Ministerial services to the various offices of the Heads of Departments, Govt. of Assam. Rule 2(iii) specifies Head of the Department as the appointing authority vis a vis the posts of the Superintendents, Upper Division Assistants, Lower Division Assistants and Typists as enumerated in Column I of Schedule I.

Rule 1(2) makes the Rules applicable to the ministerial staff of the offices of the Heads of Departments mentioned in the aforementioned schedule which at Sl. No.7 refers to Director of Public Instruction to be so in respect of Education(G) department of the State. Nothing has been brought on record to demonstrate any amendments to this entry, though it is a matter of record that in the meantime, Directorate of Public Instructions has been bifurcated into four Directorates, namely, that of (1) Elementary Education (2) Secondary Education (3) Higher Education and (4) Madrasa Education. This assumes some significance for its bearing on the question of applicability of the Rules to the establishment of Director of Secondary Education as had also met the attention of the departmental authorities as revealed by the official records placed before this Court.

Be that as it may, the post of Lower Division Assistant is one lodged in the offices of the Heads of Departments to which the Rules are intended to apply, Rule 10 mentions the three modes of induction, one of those being by direct recruitment in terms of Rule 12 which prescribes the procedure thereof. The appointing authority thereunder has to make an annual assessment of the requirement of his staff and inform the Employment Exchange concerned at the beginning of each year. The Director of Employment and Craftsmen Training, Assam therein is independent to conduct competitive examination at such intervals and in accordance with such instructions as the Government may from time to time direct and forward the names of suitable persons in order of preference and further get the character and antecedents of the selected candidates verified from the Deputy Inspector General of Police, Criminal and Investigation Department without waiting for their actual appointments. The appointing authority, however, if it does not deviate from the order of preference for good reasons to be recorded in writing, would make recruitment therefrom. The Rules also prescribe the conditions of eligibility of candidates for the post of Lower Division Assistant or Typist including the academic qualifications, age etc.

The office memorandum No.ABP.101/75/pt/1/4 dt. 31.07.95 and the official communication No.ABP.123/2001/275 dated 23.10.2006 of the Personnel(B) Department, Government of Assam outlined the process to be undertaken by the Director of Employment and Craftsmen Training, Assam for recruitment to Grade III and Grade IV posts in the offices of the Heads of Departments. Whereas, the office memorandum dated 31.7.75 delineates the procedure in conformity with Rule 12, the letter of the Personnel(B) Department dated 23.10.06 discloses the concern in view of the omission on the part of a few of the Heads of Departments to adhere to the Rules for recruitment to the post of Lower Division Assistant (presently re-designated as Junior Assistant) in their establishments. Thereby all the administrative departments and the Heads of the Departments have been impressed upon to comply with the Rules and relevant circular(s) in the matters of such recruitment. Noticeably, a copy of the office memorandum and the letter referred to

hereinabove had been forwarded to the Director of Employment and Craftsman Training, Assam, Guwahati.

The Rules and the documents alluded hereinabove therefore demonstratively stipulate the compliance of the procedure referred to herein for the purpose of direct recruitment to the post of Lower Division Assistant or Typist in the offices of the Heads of Departments of the State.

13. In the above backdrop, the Respondent No.1's stand in its counter qua, the steps pertaining to the process of selection involving the petitioners is construed to be evasive. There is no categorical denial of the process administered by the departmental authorities to fill up 24 Grade III (Lower Division Assistant) in the offices of the Director of Secondary Education, Assam and the Inspector of Schools, Kamrup District Circle, Guwahati commencing with the letter dated 14.12.2005 of the Deputy Secretary to the Govt. of Assam, Education(S) Department to the Director of Secondary Education, Assam, Kahilipara, Guwahati requesting the latter to obtain the names of candidates from the local Employment Exchange and also to submit the required materials in the prescribed format to obtain the approval from the Finance(SIU) Department for filling up these vacancies. The respondents have neither denied the constitution of the State Level Committee in supersession of the District Level Committee composed earlier for the same purpose and the initiative taken by the Director of Secondary Education, Assam to obtain the names of candidates from the Director of Employment and Craftsman Training in connection therewith., nor the response of the District Employment Exchange, Guwahati in forwarding the names of candidates as sought for. The letter dated 18.2.2006 (Annexure-C to the writ petition) requiring the Director, Employment and Craftsman Training to intimate the candidates recommended by him of the date, time and venue of the interview is a clear indicator of the approval of the highest authority of the department of the process then underway. The respondent No.5, Assistant Director of Employment, District Employment Exchange, Guwahati in his counter has clarified that the District Employment Exchange headed by him is an establishment under the Directorate of Employment and Craftsman Training and that the list of candidates was forwarded by him to the Director of Secondary Education, Assam on the instructions of the Director of Employment and Craftsman Training. There is no dispute that the petitioners had been enlisted in the panel so forwarded by the District Employment Exchange, Guwahati and that they had duly participated in the selection that followed. Limited though, the Director, Employment and Craftsman Training, albeit did not conduct any competitive examination for direct recruitment to the post involved as comprehended by the Rules, his association with the preparatory steps leading to the selection of the petitioners by the State Level Committee as evidenced by the minutes of its meeting held on 27.02.2006 is clearly discernible. Thereby the petitioners were recommended to be appointed subject to police verification and observance of other formalities. The clearance of the Finance(SIU) Department for filling up the posts for which the petitioners had been recommended was also granted as is attested by the letter No.ASE.46/2006/16 dated 3.5.2007 of the Deputy Secretary to the Govt. of Assam, Education(S) Department addressed to the Director of Secondary Education, Assam. This evidently is subsequent to the enforcement of the Election Commission's guidelines relatable to the Assembly Election in the State vide letter No.ELE.110/2006/Pt/39 dated 11.4.2006 of the Chief Electoral Officer, Assam.

14. The verification of the records of WP(C) No 857/2007(Miss Dipa Das Vs State of Assam and Ors), WP(C) No.939/2007(Arun Kumar Das and Ors vs. State of Assam and Ors) and WP(C) No.962/2007 (Pankaj Medhi vs. State of Assam and Ors) do not reveal that any affidavit had been filed by the State Respondents therein. A perusal of the order dated 11.5.2007 disposing of the same also does not bear any semblance of reference thereof. This Court while disposing of the said writ petitions by the aforementioned order noticed that the conduct of the selection process as claimed by the petitioners was not in dispute and that according to the learned counsels the appointments did not follow in view of the code of conduct saddled owing to the announcement of elections to the State

Legislative Assembly. The approval of the Department of Finance ,the Govt. of As sam for the appointment as well as the submission on behalf of the State respon dents that needful would be done in accordance with law for the purpose of makin g appointment of persons selected was taken note of. This Court, in the above pr emise disposed of the petitions by granting liberty to the respondents to fill u p the posts in accordance with law. Significantly, as observed hereinabove, neit her any affidavit had been filed by the respondents, nor any reservation whatsoe ver was expressed on their behalf about the validity of the process or the eligi bility of the petitioners vis a vis the Rules. The pleaded stand of the State R espondents indicating against such selection is thus untenable.

15. The official records being No.ASE 108/2007 reveal a conflict of opi nion with regard to the course of action to be taken consequential to the order dated 11.5.2007 of this Court disposing of the aforementioned writ petitions in the above terms. The note dated 31.5. 2007 put up before the Deputy Secretary of the Department acknowledges a selection conducted by the Selection Committee n ot inconsonance with the Rules and that the plea had been taken in the affidavi t filed by the Respondents in WP(C)No.875/2007 (Miss Dipa Das vs. State of Assa m and ors). According to the note , the observations of this Court permitting t he State respondents to fill up the posts in accordance with law signified its affirmation that the selection conducted by the Selection Committee was not in accordance with the Rules and that therefore to avoid future complications a fr esh selection ought to be held through the Director of Employment and Craftsmen Training .

The Departmental Minister, however, was in favour of appointments on the basis of the selection made and therefore advised that the matter be placed with the Judicial department for its comments/views. The Deputy Legal Remembrancer, Judic ial Department by his note dated 12.9.2007 was of the view that the Rules were n ot applicable to the Directorate of Secondary Education, Assam , it not being ca tegorized in Schedule I thereof to be an office of the Heads of departments of the State and opined that appointments be made from the select list in complia nce of the order dated 11.5.2007 of this Court. In view of the apparent inconsi stent comprehension , the view of the Personnel(B) Department was obtained .It however, emphasized on the compliance of the Rules and the procedure outlined in the office memorandum dated 23.10.2006. This view eventually prevailed culmin ating in the impugned letter dated 12.12.2007. While copies of the affidavits m eant for the three writ proceedings are available in the official records , the same do not bear out any indication to suggest the date/dates of their actual f iling in the court. The contents of these affidavits are identical with each oth er and are also substantially similar to the one filed by the respondent No.1 i n the instant case.

In the above state of records, the incorporation of the statement in t he impugned order about the filing of affidavit in the earlier writ proceedings is not only a travesty of truth ,but also is redolent of reckless carelessness on the part of the State authorities. They are therefore cautioned to be meticul ously vigilant and circumspect in future.

16. Having regard to the state of the pleadings in the writ petitions di sposed of by this Court on 11.5.07 and the submissions recorded therein, it cann ot be construed that the State respondents were thereby permitted to re-enact t he selection by forsaking the one in which the petitioners had been selected a nd were awaiting appointments. The order of this Court, read as a whole does no t permit such a construction. Following excerpts thereof seem to be decisive.

In view of the above, it is, now, submitted, on behalf of the respondents , that the respondents will do the needful in accordance with law for the purpos e of making appointments of persons, who stand selected in the said selection pr ocess.

Considering, as a whole, the submissions made on behalf of the parties and in t he interest of justice, this writ petition is disposed of with liberty granted t o the Respondents to fill up the posts aforementioned in accordance with law. T he interim directions, passed in this case, on 13.03.2007, shall accordingly sta

nd modified.

Read conjointly , in the estimate of this Court, the respondents thereby were required to take essential steps in effecting the appointments of the persons already selected and to effectuate the same act in accordance with law. In absence of any objection on their behalf that the process undertaken was in contravention of the Rules, the liberty granted to them to do the needful in accordance with law cannot logically be construed to be permissive of a discretion to launch a new exercise in accordance with the Rules. Such an interpretation would present contradictions in terms, not intended by this Court. This order , as is submitted at the Bar remains in force as on date and has therefore attained finality. Assuredly therefore, the decision to redo the process in accordance with the Rules could not have been unilaterally taken without reference to this Court.

17. The other equally significant facet of the lis is the continual departure from the Rules made by various offices of the Heads of departments of the State Government in the matter of appointment of Grade III and Grade IV posts thereof. This is obviously demonstrated by the documents (Annexure-N collectively to the writ petition) , and the orders of appointments of 2008/2009 in the post of LD Assistant/Junior Assistant in the various offices of the Heads of the Departments sans any association with the Director of Employment and Craftsman Training, Assam as mandated by the Rules. As a matter of fact, the learned Standing Counsel when confronted by this Court did not in his usual fairness question the veracity of these documents. He could not assert either that as on date , no process is being undertaken to fill up such posts in the offices of the Heads of the Departments except in accordance with the Rules. The mode of selection adopted by the department in which the petitioners had been selected ,thus otherwise cannot be proscribed as an anathema to all known procedures of recruitments to such posts in vogue since long.

18. This determination though does not signify trivialization of the Rules, in the facts and circumstances of the case, the belated application thereof in case of the petitioners to efface their prospects for appointment founded on the order of this Court cannot be countenanced. The impugned letter dated 12.12.2007 vis a vis the petitioners therefore warrants interference. There being no material on record to suggest any overt or covert act on their behalf to secure any undeserved benefit for any one or more of them, they ought not to be penalized for no fault of theirs , more so after having participated in a public process pertaining to appointments under the State. The appointment which the petitioners seek if provided to them, would by no means tantamount to backdoor entries in public employment without any modicum of a participatory process envisaged therefor. The State respondents having consciously deviated from the provisions of the Rules designing the different stages of the process, they ought not in the facts of the case and more particularly, having regard to the litigational background adumbrated hereinabove, be permitted to make a volte face to the detriment and prejudice of the petitioners.

19. The Apex Court in Municipal Corporation for the City of Pune (Supra) while observing that the application of the law of desuetude in the country would advance the cause of justice recognized it to be a process by which through disobedience or lack of enforcement for a long period, a statute may lose its force without express or implied repeal. Their Lordships referred to Craies Statute Law (7th Edn) to enunciate that denudation of the potency of a legislative enactment by desuetude does not follow merely from obsolescence or disuse, but there must also be a contrary practice which must be of some duration and general application.

The same view , in essence was reiterated in Cantonment Board(Supra) underlining that long disuse of a statute and contrary practice for a appreciable period of time are the indispensable factors to emasculate a statutory enactment of its binding efficacy.

Though the respondent No.5 in his counter has admitted that the Directorate of Employment and Craftsmen Training ,Govt. of Assam had conducted examinations in

terms of Rules upto 1988,whereafter no such process had been undertaken till 2006 and documents placed on record testify independent processes pursued by various other offices of the Heads of Departments for recruitment to the Grade II I and Grade IV posts to the exclusion of the said Directorate , I do not feel persuaded however , having regard to the other materials on record to sustain the plea based on law of desuetude . Judged on the touchstone of the criteria insisted upon in the aforementioned decisions as sine qua non for application of the law of desuetude , I am not inclined to sustain the contentions raised on behalf of the petitioners on this count.

20. Nevertheless, on a totality of the considerations set out hereinabove , the petition has to be allowed. The impugned letter dated 12.12.2007 qua, cancelling the process in which the petitioners had participated and had been recommended for appointment to Grade III posts i.e. Lower Division Assistant/Junior Assistant as the case may be, in the Directorate of Secondary Education, Assam and the Inspector of Schools, KDC, Kamrup is hereby set aside. The petition is thus allowed to the extent as indicated hereinabove. No costs.

The Registry would forward a copy of this judgment and order to the Chief Secretary of the State drawing his attention to the observation of this Court in particular to paragraph 15 for necessary action.