

By way of this petition under Article 226 of the Constitution of India, petitioner seeks a direction to the respondents to appoint him as Vocational Subject Teacher in the subject Commercial Computer Application in any Government Higher Secondary School in the State of Assam.

2. The above prayer has been made in the context of the following facts.

3. According to the petitioner, he is qualified and eligible to be appointed as Subject Teacher in Government Higher Secondary Schools in the subject of Commercial Computer Application. Assam Public Service Commission (APSC) issued an advertisement dated 04.11.1997 inviting applications amongst others for 5 posts of Subject Teacher in the subject Commercial Computer Application. Petitioner had applied for the said post of Subject Teacher in Commercial Computer Application pursuant to the said advertisement. Following the selection held, APSC informed the Directorate of Secondary Education, Assam (Requisitioning Authority) vide letter dated 29.04.1999 that 34 candidates were interviewed by the APSC with the help of experts out of which 11 candidates were recommended in order of preference for the 5 posts of Subject Teacher in Commercial Computer Application. The recommended candidates were as follows:-

Position	Name
1.	Miss Karabi Hazarika.
2.	Sri Dipak Barman.
3.	Sri Kamal Baishya.
4.	Sri Dibyajyoti Gayan.
5.	Miss Ajanta Sonowal.
6.	Sri Dhruba Jyoti Sarma.
7.	Md. Masharaf Hussain.
8.	Bijit Sarma.
9.	Miss Inkey Sarma.
10.	Shri Kangka Chakravarty.
11.	Pankaj Kr. Gogoi.

4. Thus petitioner was placed in the 4th position in order of merit whereas respondent No. 3 (Kamal Baishya) was placed at Sl. No. 3 and respondent No. 4 (Bijit Sarma) was placed at Sl. No. 8.

5. Since no steps were taken by the departmental authorities for appointment following receipt of select list published by the APSC, petitioner approached this Court by filing a writ petition, which was registered and numbered as WP(C) No. 3051/2001. The said case was heard alongwith other connected cases filed by some of the selected candidates, including one filed by respondent No.3. This Court by the common judgment and order dated 03.06.2003 noted that the petitioner had approached this Court during the validity of the select list (as extended), which in any case was further extended from time to time. This Court also noted that one Smt. Purabi Kalita, who was selected at Sl. No. 2 in the merit list for the post of Subject Teacher in the subject Office Procedure and Management in the same selection process, had approached this Court by filing WP(C) No. 6740/2001, which was disposed of by directing the authority to consider her case for appointment in the said post within a period of 2 (two) months. In the above context, this Court vide the aforesaid common judgment and order held that the petitioners including the present petitioner were entitled to the same relief as was granted to Smt. Purabi Kalita and accordingly respondents were directed to pass necessary order for their appointment, further directing that any adhoc appointment would have to make way for the regularly selected candidates. Referring to the case of the present petitioner, this Court held that though the petitioner belongs to OBC, he was placed at Sl. No. 4 in the merit list in order of merit and as there were 5 posts, petitioner could not be displaced by a person placed below him in the merit list. It was specifically held that Dhruba Jyoti Sarma (Sl. No. 6) cannot take precedence over the petitioner. Referring to the case of respondent No. 4 (Bijit Sarma), this Court held that though he was appointed on adho

c basis and had continued as such, he had participated in the selection conducted by the APSC and his name appeared at Sl. No. 8 in the merit list. Therefore, he would have to make way for the regularly selected candidates who were recommended above him in order of merit.

6. It appears that the Requisitioning Authority i.e. Directorate of Secondary Education, Assam later on found that the advertised posts of Subject Teacher in Commercial Computer Application had no Government retention and, therefore, the recommended candidates could not be appointed.

7. In the meanwhile, 274 posts out of 297 posts of Vocational Subject Teacher in the Government Higher Secondary Schools of the State were normalised by the Government after abolishing the remaining 23 vacant posts, subject to the condition that the normalised posts would be personal to the incumbents and the posts would stand abolished on falling vacant for any reason.

8. According to the petitioner, respondent Nos. 3 and 4 Kamal Baishya and Bijit Sarma were appointed by the respondents though respondent No. 4 was below the petitioner in the merit list. On information sought for by the petitioner under the Right to Information Act, he was informed by the departmental authorities that respondent No. 3 was appointed as Subject Teacher in the subject Commercial Computer Application as per merit list published by APSC. He was further informed that service of respondent No. 4 (Bijit Sarma) was regularised pursuant to Government letter dated 04.02.2003. Thus the service of respondent No. 4 who was working on adhoc basis was regularised by the Government, ignoring his better claim on merit and the directive of this Court.

9. In the above context, petitioner had submitted a representation dated 05.08.2011 before the respondent No. 2 seeking his appointment but the said representation did not elicit any response.

10. Aggrieved, petitioner has approached this Court by filing the present writ petition.

11. Contention of the petitioner is that action of the State in regularising the service of respondent No. 4 was illegal in as much as respondent No. 4 was working only on adhoc basis and in the selection conducted by APSC, his merit position was below that of the petitioner. In terms of the order of this Court, the authority could not have regularised the service of respondent No. 4 by-passing the claim of the petitioner. In view of his better merit than respondent No. 4, petitioner is entitled to be appointed as Subject Teacher in the subject 'Commercial Computer Application', if necessary by removing the respondent No.4.

12. Respondent No. 2 (Director of Secondary Education, Assam) in his affidavit stated that advertisement was published by APSC on 04.11.1997 inviting applications amongst others for 5 posts of Subject Teacher in the subject Commercial Computer Application which is under the vocational stream of education under the Directorate of Secondary Education. Petitioner had participated in the selection and was placed at Sl. No. 4 in the merit list dated 29.04.1999. With the grievance that he was not appointed despite his selection, petitioner had preferred a writ petition before this Court being WP(C) No. 3051/2001 seeking a direction to the State authorities to appoint him as Subject Teacher in the subject Commercial Computer Application on the basis of his selection. On 03.06.2003, this Court disposed of the said writ petition alongwith other connected writ petitions by directing the respondents to make appointment in order of merit, clarifying that adhoc appointees would have to make way for the selected candidates. However, due to non-issuance of retention order by the Government in respect of the posts of Vocational Subject Teacher w.e.f. 01.03.1998 to 29.02.2000, appointment of the candidates selected by the APSC during the year 1999 could not be made. Further, Government vide letter No. B(3)S.261/99/39 dated 19.11.2000 normalised 274 numbers of post of Vocational Subject Teacher out of 297 posts by making those posts personal to the incumbents holding the posts at that point of time (the other posts were abolished). Thereafter, the Directorate of Secondary Education regularised the services of those Vocational Teachers as per Government letter No. B (3)S.456/94/27 dated 04.02.2003. Respondent No. 4 was initially appointed as Vocational Subject Teacher on adhoc basis. Subsequently, his service was normalised and thereafter regularised alongwith other Vocational Subject Teachers purs

uant to the aforesaid Government letter dated 04.02.2003. Respondent No.3, who was selected by the APSC, was appointed as Subject Teacher in Commercial Computer Application pursuant to the Government letter dated 13.05.2010.

13. Respondent Nos. 3 and 4 have filed their individual affidavits justifying their respective appointment and regularisation. In fact stand of respondent No. 3 is that since he is above the petitioner in the merit list, he has been rightly appointed by the Government. If the petitioner is appointed without affecting the interest of the respondent No. 3, he would have no objection to the same.

Respondent No. 4 on the other hand contends that there is delay in filing the writ petition. Respondent No. 4 was appointed on adhoc basis in the year 1994. His service was normalised vide order dated 19.10.2000 and, thereafter, it was regularised on 18.09.2003 pursuant to Government letter dated 04.02.2003. His service was normalised and subsequently regularised by the Government following decision taken to that effect in respect of 274 posts of Subject Teacher in vocational stream in Government Higher Secondary Schools. Respondent No. 4 being included in the batch of 274, his service was accordingly normalised and regularised. He, therefore, contends that his regularisation which took place more than 12 years ago alongwith 273 other Subject Teachers should not be disturbed now at the instance of the petitioner, whose writ petition is hit by delay and laches.

14. Heard Mr. B. D. Das, learned senior Counsel for the petitioner, Mr. J. A. Bedin, learned Standing Counsel, Education Department, Mr. M. K. Mishra, learned Counsel for respondent No. 3 and Ms. B. Bhuyan, learned counsel for the respondent No. 4.

15. Submissions made by learned counsel for the parties are on pleaded lines and, therefore, a detailed reference to the individual submissions made is considered not necessary.

16. While hearing the matter, this Court had passed the following order on 09.05.2013:-

In the course of hearing, it is found that respondent No. 4 was placed at serial No. 8 in the select list dated 29.04.99 prepared by the APSC while the petitioner was placed at serial No. 4. The select list was for five vacancies of Subject Teacher in Commercial Computer Application. In an earlier round of litigation, this Court had categorically held that the petitioner cannot be displaced by a person who is below him and hence the respondent No. 4 cannot take precedence over the petitioner. While the petitioner has not been appointed as yet, the authorities had regularised the ad-hoc service of respondent No. 4.

Prima facie this could not have been done.

Learned standing Counsel submits that altogether 274 numbers of ad-hoc Subject Teachers have been regularised, including the respondent No. 4. He, however, seeks time to obtain instruction as to whether the issue can be resolved by accommodating the petitioner without disturbing the service of Respondent No. 4.

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17. Thereafter, respondent No. 2 (Directorate of Secondary Education, Assam) filed an additional affidavit on 25.11.2013. In this additional affidavit, he has elaborated the stand taken by him in the earlier affidavit. He has stated that 297 numbers of posts of Vocational Subject Teacher were originally created under Centrally Sponsored Scheme to introduce vocational stream of education in the Higher Secondary Schools in the State of Assam. Accordingly, adhoc appointments were made against those 297 posts created under Centrally Sponsored Scheme but subsequently those posts were abolished w.e.f. 01.03.2000. Thereafter, the State Government created 274 numbers of posts of Vocational Subject Teacher in Higher Secondary Schools with retrospective effect from 01.03.2000 upto 28.02.2001 to accommodate the existing incumbents. The said posts were normalised under vocational stream from Centrally Sponsored Scheme to non-plan head of account with the clarification that those 274 posts were personal to the incumbents and as and when those posts would fall vacant for any reason, the posts would stand abolished. Thereafter, no fresh appointments were made due to want of availability of posts. Moreover, no appointments could be made on the basis of the select list furnished by the APSC as there was no Government retention for the 5 advertised

ed posts for the period from 01.03.1998 to 29.02.2000. Thus, none of the candidates selected by the APSC were appointed. On the other hand, the authority normalised 274 numbers of posts against which adhoc appointees were working. The candidates at Sl. Nos. 1, 2 and 4 (respondent No.4) in the APSC merit list were already working on adhoc basis and their services were accordingly normalised. In so far as respondent No. 3 (Kamal Baishya), who was selected by the APSC at Sl. No. 3 is concerned, he was appointed by converting a post of Assistant Teacher to a post of Subject Teacher in Commercial Computer Application as per Government letter dated 13.05.2010 which was passed following this Court's common judgment and order dated 03.06.2003 [Be it stated that Kamal Baishya had also filed a writ petition before this Court being WP(C) No. 3052/2001, which was disposed of by this Court alongwith the writ petition filed by the present petitioner vide the common judgment and order dated 03.06.2003]. Respondent No. 3 was thereafter appointed vide order dated 19.05.2010 issued by the Director of Secondary Education, Assam.

18. On 30.05.2014, Mr. J. Abedin, learned Standing Counsel, Education Department referring to the above affidavit filed by respondent No. 2 contended that respondent No. 3 was appointed as Subject Teacher in the subject Commercial Computer Application under vocational stream in view of the order of this Court by conversion of a post of Assistant Teacher to Subject Teacher. Responding to the above submission, Mr. B. D. Das, learned Senior Counsel for the petitioner submitted that similar course of action can be adopted in the case of the writ petition as well to ensure compliance of this Court's earlier order.

19. I have considered the rival contentions and also perused the materials on record.

20. On such consideration, I am of the view that there is substance in the claim made by the petitioner.

21. The fact that petitioner, respondent No. 3 and respondent No. 4 had participated in the selection conducted by the APSC for the post of Subject Teacher in the subject Commercial Computer Application in the vocational stream of study is not disputed. It is also not disputed that in the select list published following the selection, merit position of respondent No. 3 was at Sl. No. 3, petitioner at Sl. No. 4 and respondent No. 4 at Sl. No. 8. In the earlier round of litigation where both petitioner and respondent No. 3 had filed separate writ petitions, this Court by the common judgment and order dated 03.06.2003 had directed the State to pass necessary order(s) for their appointment by removing any adhoc appointee, if necessary. Referring to the petitioner, this Court had directed that since he was at Sl. No. 4 in the merit list against 5 posts, he cannot be displaced by a person placed below him in merit. This Court referring to respondent No. 4 held that since he had participated in the selection process and his name appeared at Sl. No. 8 in the merit list, his appointment would have to be as per recommendation of APSC. The earlier appointment made in 1994 was a stop-gap arrangement and, therefore, he would have to make way for the regularly selected candidates who were placed above him in merit.

22. Respondent No. 2 has now come up with the stand as reflected in his additional affidavit filed on 25.11.2013 that respondent No. 3 has been appointed as Subject Teacher in the subject Commercial Computer Application on 19.05.2010 by conversion of a post of Assistant Teacher to Subject Teacher. This is stated to have been done in compliance to this Court's common judgment and order dated 03.06.2003 as referred to above.

23. It was only when the respondent No. 3 was so appointed that petitioner moved this Court by filing the writ petition in the year 2011. Moreover, as already noticed, petitioner had earlier approached this Court in the year 2001 and the verdict of the Court was in his favour. Therefore, it cannot be said that there is delay and laches on the part of the petitioner in approaching this Court and the same cannot be a ground for denying him the relief claimed.

24. Fact remains that respondent No. 4 was earlier appointed on adhoc basis and he continued as such. In the selection held, he was placed at Sl. No. 8 below the respondent No. 3 and the petitioner. His adhoc service alongwith that of the candidates at Sl. No. 1 and Sl. No. 2 in the merit list were normalised i.e.

brought into the regular cadre under the non-plan head of account and thereafter regularised following Government decision.

25. On the other hand, as per the pleaded case of respondent No.2, respondent No. 3 has been appointed in terms of this Court's earlier order dated 03.06.2003 by conversion of a post of Assistant Teacher to Subject Teacher. Respondent No. 4 continues to remain in service, rather his adhoc service has been regularised, whereas petitioner is out of appointment. In the light of the previous order of this Court dated 03.06.2003, this situation cannot be permitted to continue.

In the singular facts and circumstances of the case, interference by this Court is thus called for. However, looking to the fact that respondent No. 4 is continuing in service since 1994 and his service having being normalised in the year 2000 and thereafter regularised following Government decision dated 04.02.2003 alongwith 273 other teachers, this Court would not like to interfere with his service at this distant point of time.

26. Thus having regard to the discussions made and considering the matter in its entirety, respondent No.1 [Commissioner and Secretary to the Government of Assam, Education (Secondary) Department] and respondent No. 2 (Director of Secondary Education, Assam) are directed to treat the case of the petitioner like that of respondent No. 3 and offer appointment to him as Subject Teacher in the subject Commercial Computer Application under vocational stream in any Higher Secondary School of the State by exploring all possible options including by conversion of post, if necessary. This shall be done within a period of 4 (four) months from the date of receipt of a certified copy of this order.

27. Writ petition is allowed to the extent indicated above.

28. No costs.