

**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM &
ARUNACHAL PRADESH)**

WP(C) No. 3305 of 2009

Bharati Devi

.....Petitioner

Vs

The State of Assam and Ors.

.....Respondents

WP(C) No. 2758 of 2009

Laksheswar Talukdar

.....Petitioner

Vs

The State of Assam and Ors.

.....Respondents

WP(C) No. 4213 of 2009

Smti. Bharati Devi

.....Petitioner

Vs

The State of Assam and Ors.

.....Respondents

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

Advocates for the Petitioner
{in WP(C) No.3305/2009 & WP(C) No.4213/2009}

: Dr. B. Ahmed,
: Mr. N. Haque,
: Mr. J.R. Jhon, Advocates

Advocate for the Petitioner : None appears
{in WP(C) No.2758/2009}

Advocate for the Respondents : Mr. K. Gogoi, SC, EDU.
: Mr. Mr. C. Baruah, SC, APSC

Date of Hearing : 05.12.2016 and 08.12.2016
Date of Judgment : 02.01.2017

JUDGEMENT & ORDER (CAV)

1. Heard Dr. B. Ahmed, learned counsel for the petitioner. Also heard Mr. K. Gogoi, learned State Counsel appearing for Higher Education Department as well as Mr. C. Baruah, learned Standing Counsel, APSC.
2. The three writ petitions involving the same petitioner with facts inter-connected with each other are taken up for analogous hearing.
3. In WP(C) No. 3305/2009, the case of the petitioner in brief is projected as follows:-
 - 3.1. This writ petition under Article 226 of the Constitution of India has been filed for setting aside the impugned Notice No. 253 PSC/DR_5/1/2000-2001 dated 12.8.2009 issued by the APSC bearing Advt. No. 03/09, insofar as it relates to invitation for appointment to the post of 6 whole time Lecturers in BRM Govt. Law College, Guwahati under the Education (Higher) Department, which finds mention in Sl. No. 4 of the said notification. The petitioner has also prayed for regularization of her service as full time lecturer in the said college.
 - 3.2. The petitioner was appointed as a part time lecturer in BRM Govt. Law College on 20.11.89 through a recruitment process initiated by the office

of the Directorate of Higher Education, Assam under Memo No. AAP/ST/1/89/4 dated 16.2.1989. At that time, the qualification for appointment as a part time lecturer was that a candidate must have higher second class LLM Degree from a recognized university. The petitioner was appointed by virtue of the Notification No. EPG 448/89/90-A dated 20.11.1989 as a part time lecturer in the vacancy, which arose on resignation of one Sri JN Sarma. The said notification was issued by the Dy. Secretary to the Govt. of Assam, Education Deptt. The petitioner submits that she passed LLM Degree in the year 1989, securing 4th position from the Gauhati University with 53.2% marks.

- 3.3. The petitioner submitted several representations since 20.10.1994, requesting the authorities to consider her appointment as full time lecturer against existing vacant post. In the meanwhile, the authorities issued an Advt. dated 22.07.1997, invited applications for appointment to the post of full time lecturer to be recruited under Regulation 3(f) of APSC (L&F) Regulation, 1951, showing the post as belonging to fall under "reserve category for ST (P)" only.
- 3.4. The petitioner challenged the said advertisement before this court by filing C.R. No.3500/97 as the said post was an unreserved post. Consequently, the respondent had stopped the appointment process and during the pendency of the said civil rule, the authorities de-reserved the said post. This Court by order dated 08.12.2005, disposed of the said Civil Rule No. 3500/97, inter-alia, with a direction to the respondent authorities to consider the long pending case of the petitioner considering her length of service in the said college.
- 3.5. The petitioner submitted a copy of the said order dated 08.12.2005 before the authorities, but no decision was taken in respect of the petitioner till date.
- 3.6. In the meanwhile, one similarly situated person, namely, Sri Laksheswar Talukdar, who was also working in the said BRM Govt. Law College for a long tenure, and whose appointment was made as a full time lecturer

under Regulation 3(f) of APSC (L&F) Regulation, 1951, filed a writ petition, being C.R. No. 885/98 before this Court for regularization of his service and this Court vide judgment and order dated 27.06.2006 allowed the writ petition by directing the authorities to take immediate steps for regularization of the services of the petitioner. The relevant paragraph 10 of the said judgment is extracted below:

“It is therefore ordered that the State respondents, more particularly, the respondent No. 1, Secretary to the Govt. of Assam, Education Department (Higher Education), respondent No. 2 Secretary to the Govt. of Assam, Personnel Department, Dispur, Guwahati, Respondent No. 3, Director of Public Instructions, Assam, Guwahati and the respondent No. 5, Principal, B.R. Medhi, Govt. Law College, Guwahati would cause immediate steps to be taken for regularization of the petitioner's service as a lecturer of B.R. Medhi Govt. Law College, Guwahati and release him all consequential service benefits. As the petitioner is waiting for long, the process indicated hereinabove should be completed within a period of one month from the date of receipt of the certified copy of this order. The State respondents would also process the petitioner's claim for pay and allowance from 03.03.2005 expeditiously. The petition stands allowed. No costs. ”

- 3.7. By filing another writ petition, being WP(C) No.2758/09, the said Sri Laksheswar Talukdar, also challenged the same advertisement dated 12.05.2009, which was assailed by the present writ petitioner. In the said proceeding, the State respondents through an affidavit filed by Dy. Secretary to the Govt. of Assam, Education (Higher) Department, inter-alia, took a stand that the said writ petitioner had not surrender his Bar licence, which was required to be surrendered as per conditions imposed by the Bar Council of India in respect of whole time lecturer of law.

- 3.8. The petitioner submits that as per the Advocates (Right to take up Law Teaching) Rules, 1979 a person who is enrolled as an Advocate is entitled to take up law teaching. The aforesaid Rules were framed by the Central Govt. in exercise of power under section 42(A) of the Advocate's Act, 1969.
- 3.9. The learned counsel for the petitioner further placed reliance on the case of Mrs. Deepa Saikia Vs. State of Assam and other reported in 1996 (III) GLT 271, where this Court had held that the petitioner therein was entitled to continue her practice in addition to her employment as full time lecturer. By relying on the ratio of the said judgment, the petitioner submits that if she is compelled to surrender her Bar enrollment certificate as a pre-condition for teaching law, and that too without being confirmed as a Full-Time lecturer, the same would be in violative of her legal right to carry on practice in law.
- 3.10. The petitioner submits that the stand of the respondent authorities in WP(C) No.2758/09 is that out of 7 (seven) vacant posts, 1 (one) post was kept vacant for during the pendency of the said writ petition, subject to surrender of his Bar licence. The Petitioner further submits that as per her knowledge, now there are still about 5 (five) more vacancies of Full- Time Lecturer in BRM Govt. Law College and there is no other impediment for regularization of service of the petitioner as full time lecturer.
- 3.11. Hence, on the basis of her pleadings made in the writ petition, the petitioner has prayed for quashing of the impugned Advt. No.3/09 only in respect of item No.4 of the said advertisement.

4. In WP(C) No. 2758/2009, the case as projected by the petitioner Sri Laksheswar Talukdar, was that he was appointed as the Whole Time Lecturer in BRM Govt. Law College, Guwahati, vide Notification No. EPG.689/86/148 dated 03.10.1987, issued by the Secretary to the Govt. of Assam, Education (Higher) Department. The rest of the facts are by and large similar to the facts in W.P.(C)

No.3305/09, save and except that the petitioner herein was working as whole time lecturer in the BRM Govt. Law College.

4.1. On the aforesaid facts, Dr. Ahmed, the learned counsel for the petitioner in W.P. (C) No.3305/09 and W.P.(C) No. 4213/09 at the outset submits that as per his instructions, the service of Sri Laksheswar Talukdar, who is the petitioner in W.P.(C) No.2758/09, was in the meantime regularized as a Whole Time Lecturer in BRM Govt. Law College and apart from that, during the pendency of the said writ petition, he has already been superannuated from service and, as such, perhaps said petitioner has remained unrepresented when WP(C) No.2758/09 was called for hearing.

4.2. Hence, without taking up the said case for hearing on merit, the said writ petition is being dismissed for non- prosecution.

5. The case as projected in W.P.(C) No. 4213/2009 is that the writ petitioner herein i.e. Smt. Bharati Das is also the writ petitioner in WP(C) No.3305/09. The facts in this case are almost similar to the facts as contained in W.P.(C) No.3305/09. The additional facts in this case is that by the order dated 08.12.2005 passed by this Court in C.R. No.3500/97, the operative part of which is already quoted herein before, the authorities were directed to take a decision on the issue. Accordingly, the Principal Secretary to the Govt. of Assam, Education (Higher) Department, by an order bearing No. AHE.107/2006/188 dated 27.08.2009, held that the petitioner was not entitled to be regularly appointed as a full time lecturer because the mode of recruitment of the said post is through APSC and, as such, the appointment to the said post is not by way of regularization of a part time lecturer and that the petitioner did not possess the required qualification as per UGC norms. Hence, the petitioner had filed this writ petition for setting aside and quashing of the said order dated 27.08.2009 on the ground that the said order takes away the right of the petitioner to be regularized and /or regularly appointed as a whole time lecturer in BRM Govt. Law College.

6. Dr. B. Ahmed, learned Counsel for the petitioner submitted that Smt. Bharati Devi, the petitioner in the two writ petitions can be said to be similarly situated like Sri Laksheswar Talukdar, who is the writ petitioner in W.P. (C) No.2758/09, except for the fact that she was a part time lecturer and Laksheswar Talukdar was a whole time lecturer. The argument forwarded by Dr. Ahmed can be compartmentalized under 3 broad issues:

- 6.1. The existence of qualifying UGC norms at the time of entry in service;
- 6.2. Continuous length of service since the year 1989; and
- 6.3. Power of the Government to relax the rules.

7. In the context of issue No.6.1, Dr. Ahmed submits that as the per mark sheet of the petitioner (Annexure-Q to the writ petition), the petitioner had secured 53.2.% marks i.e. total of 532 marks out of 1000 marks in LLM Examination.

7.1. He further submits that it is specifically pleaded case in the writ petition that at the time when the petitioner had entered into service as part time lecturer as per the Memo No. AAP/ST/3/89/4 dated 16.02.1990 (Annexure-A to the writ petition), the educational qualification for appointment to the post of part time lecturer was that a candidate must have higher Second Class LLM Degree (B+) from a recognized University whereas at that point of time, the State Government's prescribed norms was 52.5% for appointment as full time lecturer in Govt. Law Colleges in Assam.

7.2. He further submits that by referring to 9.0 UGC Regulation, 1991 regarding minimum qualification for appointment of teachers in University and Colleges, which was notified and published in the Gazette under Notification No. F.1-11/87(CPP) dated 19.09.1991, the qualification for appointment as a lecturer in Law Colleges was increased to at least "55%" marks. Mr. Ahmed submits that despite his best efforts, he could not lay his hands on the original copy of the said notification, however, in order to demonstrate this fact, Dr. Ahmed has referred to the case citation of State of Maharashtra Vs. Shashi Kanta S. Pujari and others,

reported in 2006 (13) SCC 175 and contends that from the reading of paragraph 19(iv) thereof, it would be clear that the norms of 55% marks for appointment of teaching post came in to effect from the year 1991.

7.3. Accordingly, Dr. Ahmed would argue that as the petitioner had passed-out her LLM Examination in June, 1988 by securing 53.2% marks, which was above the prescribed qualifying marks of 52.5%, the petitioner cannot be deprived from being regularized because she entered service in the year 1989 when the qualifying marks for appointment as a lecturer in Law College was still 52.5%. Dr. Ahmed argues that the date of sitting in LLB Examination and passing the said examination and the date of entry in service is the most relevant event in the present case because having passed out her LLM Examination with 53.2%, the petitioner had no way for subsequently improve her marks.

7.4. Dr. Ahmed further submits that despite due diligence, petitioner has not been able to procure a copy of the relevant UGC regulations. However, he submits that from the judgment passed by the Hon'ble Division Bench of this Court in the case of Ramesh Goswami Vs. State of Assam, reported in 2002 (3) GLT 377, it is seen from paragraph-4 of the said judgment that prior to 30.12.1988, the UGC norms for a College Teacher was 52.5% marks in Master Degree. Referring to the UGC norms of 52.5%, the reference, which appears in various other paragraphs of the said judgment, Dr. Ahmed submits that there is no dispute that the pre-existing norms prior to 1991 was 52.5% for appointment as a Lecturer in Law Colleges in the Country.

8. On the point of relaxation of age and qualification etc., Dr. Ahmed submits that at the relevant time, the petitioner was fully qualified to hold the post of Whole Time Lecturer in law in BRM Govt. College by securing 53.2% in LLM Examination, which was more than the then existing norms of 52.5%, when the petitioner had entered into service, it is fit and proper case where the petitioner required a fair and/or reasonable consideration in respect of relaxation of her age by

the authorities because at the present time, the petitioner has already put in more than 27 years of continuous unblemished service as a Part Time Lecturer in BRM Govt. Law College, Guwahati.

8.1. Referring to the case citation of Ramesh Goswami (*supra*), Dr. Ahmed submits that this Court had directed the Higher Education authorities to examine the claim of the appellant in that case and, as such, submits that the Government has the power to relax the norms for giving equal treatment with similarly situated persons.

8.2. Dr. Ahmed, learned counsel for the petitioner by further referring to the documents annexed to the writ petition, has projected that the service of at least two similarly situated persons, namely, Sri Laksheswar Talukdar and Sri Binod Chandra Pathak, were regularized by appointing them as a Whole/ Full Time Lecturer in BRM Govt. Law College and, as such, he submits that the petitioner, who is similarly situated person ought not to have been denied the relief of being regularized as a Whole/Full Time Lecturer in the same College.

9. The other issue raised by Dr. Ahmed was the continuous length of service which the petitioner has put in as a part time lecturer in the said BRM Govt. Law College and refers to the notification for appointment issued by the Govt. on 20.11.1989, and submits that by this time she has already put in more than 27 years of continuous and unblemished service. Accordingly, Dr. Ahmed, the learned counsel for the petitioner submits that the petitioner is entitled to the reliefs as prayed for in this writ petition.

10. Apart from the above mentioned two case law citations, Mr. Ahmed, learned counsel for the petitioner has further relied on the following case law citations:-

- i) AIR 1973 SC 69: (1972) 2 SCC 862 – N. Subba Rao V. Union of India;
- ii) AIR 1974 SC 451: (1976) 4 SCC 226- D. Rajiah Raj & Ors V. The Union of India & others;

- iii) AIR 1977 SC 451: (1976) 4 SCC 226- Govt. of A.P. V. D. Janardhan Rao;
- iv) AIR 1990 SC 857: (1990) 2 SCC 189- J. Yadav V. State of Haryana;
- v) AIR 1992 SC 2130: (1992) 4 SCC 118- State of Haryana V. Piyara Singh;
- vi) AIR 1993 SC 1650- State of Orissa V. Sukanti Mohapatra;
- vii) (1998) 8 SCC 731: Union of India V. RN Hegde;
- viii) (2010) 9 SCC 247- State of Karnataka V. ML Kesari & Ors.

11. Per contra, Mr. C. Baruah, learned standing counsel, APSC, submits that the post of lecturer in BRM Govt. Law College is required to be filled up by direct recruitment through APSC and not by relaxation and therefore, states that the writ petition is misconceived one and liable to be dismissed. He further submits that the present educational qualification under the norms is 55% and, as such, the same cannot be relaxed.

12. Per contra, Mr. K Gogoi, learned counsel appearing for the Education (Higher) Department i.e. Respondents No. 1 & 3 in W.P.(C) No. 3305/09, by referring to the Assam Educational Service Rules, 1982 submits that under Rule 5 thereof, the method of recruitment is by the process of direct recruitment. He further submits that the academic qualification for appointment as Lecturer in Law is prescribed under Rule 8 of the said Rules. He further submits that as per Rule 7(vi) of the said Rules, the maximum age for recruitment in a Govt. Law College is 30 years. Mr. Gogoi further submits that it is the prerogative of the State Govt. to apply Rule 29 to consider the relaxation of age of candidates in appropriate cases. He forcefully submits that the present case is not a case for allowing absorption and/or regularization and if such an order is passed, it would render the provisions of direct recruitment as otiose. He further submits that even if there is a vacancy, the petitioner has no vested right for appointment as lecturer in law in BRM Govt. Law College. Hence, Mr. Gogoi, learned State Counsel, prays for dismissal of the writ petition.

13. No other issues have been raised before this court in this writ petition.

14. Having heard the learned counsels for the parties, I have perused the materials on record. According to this Court, the following points of determination has arisen in course of hearing:-

- i) Whether the prescription of age and educational qualification as prescribed w.e.f. 1991 could be relaxed under Assam Education Service Rules, 1982?
- ii) Whether under the unique facts and circumstances of the case, the petitioner is entitled to any reliefs as prayed for?

15. **Point of determination No.1:**

15.1. In order to appreciate the issues raised before this Court, it would be pertinent to extract the relevant rules i.e. Assam Education Service Rules, 1982 (*as amended upto 30.12.2013*).

“Rule 5. Method of recruitment.- Recruitment to the service shall be made in the manner prescribed hereinafter-

(1) Recruitment to the post of Director of Public Instruction Principal State Institute of Education, [Principal of Government Decree Colleges], Principal Government Law College, Principal Hindi Teachers training College Lecturers, Government Degree Colleges, Assistant Director, Vocational Guidance Bureau, Lecturers of other colleges, Lecturers, SIE/SISE shall be made by direct recruitment only with qualification prescribed under Rule 8:

Provided that if no suitable person is found to fill up the post of Director and if it is necessary to fill up the post urgently but cannot be in accordance with the procedure laid down above or under the APSC (Limitation of Functions) Regulation, 1951, the appointing authority reserves the right to fill up the post of Director temporarily from the members of the Administrative Services of the State and such appointment shall not extend beyond the period of 2 years at a time. In

such appointment prior consultation with the Commission shall not be necessary.

(2) Recruitment to the post of Additional Director, Joint Director, Principal Science College, Principal, Post Graduate Training Centre, Principal, Government Sanskrit College and Professors of Government Degree College, Professors of Post Graduate Training Centre, Professor, Science College Professors, State Institute of Education and State Institute of Science Education, Assistant Director, Educational Planning and Co-ordination, Deputy Inspector of Schools shall be made by promotion in the manner prescribed in Rule 11.

(3) Recruitment to all other posts of the service shall be made:-

(a) by direct recruitment up to 75 per cent with qualification prescribed under Rule 8 in the cadre of Dy. Director and by promotion up to 25 per cent in the cadre of Dy. Director from the select list of Assistant Inspector/Assistant Inspectress of Schools and Assistant Directors, Vocational Guidance and Assistant Directors, Planning and Co-ordination having five years experience in the post and possessing at least Second Class Masters Degree.

(b) by direct recruitment up to 75 per cent with qualification prescribed under Rule 8 on the basis of open competitive examination to be conducted by the Commission in the cadre of Assistant Inspector/Assistant Inspectress of Schools V.M.O. and by promotion up to 25 per cent in the cadre of Assistant Inspector/Assistant Inspectress of Schools from amongst the Deputy Inspector of Schools/District Social Education Officer.

Rule 7. *A candidate for direct recruitment to the service shall be within the following age limits on the first January of the year of the advertisement with candidates belonging to special categories like Scheduled Castes, Scheduled Tribes and any other category as laid down by the Government from time to time:-*

<i>(i) Director of Public Instruction</i>	<i>Maximum 50 years</i>
<i>(ii) Principal State Institute of Education</i>	<i>Maximum 40 years</i>
<i>(iia) Principal Government Degree Colleges</i>	<i>Maximum 55 years</i>
<i>(iii) Principal Government Law College</i>	<i>Maximum 40 years</i>
<i>(iv) Dy. D.P.I./Inspector of Schools</i>	<i>Maximum 40 years</i>
<i>(v) Principal H.T.T.C.</i>	<i>Maximum 40 years</i>
<i>(vi) Lecturer Government Degree Colleges</i>	<i>Maximum 30 years</i>
<i>(vii) Assistant Director, Vocational Guidance</i>	<i>Maximum 40 years</i>
<i>(viii) Assistant Inspector of Schools</i>	<i>Maximum 30 years</i>
<i>(ix) Lecturers of other Colleges</i>	<i>Maximum 30 years</i>
<i>(x) Lecturers of SIE/SISE</i>	<i>Maximum 30 years.</i>

Rule 8. Academic qualification.- *The academic qualification of a candidate for direct recruitment shall be as prescribed by the appointing authority from time to time. The qualifications and experience prescribed as on the date of commencement of these rules, are given in Schedule II.*

Rule 29. Relaxation.- *Where the Government is satisfied that operation of any these rules may cause undue hardship in any particular case it may dispense with or relax the recruitment of that rule to such extent and subject to such condition as it may consider necessary for dealing with the case in a just and equitable manner.*

Schedule II (relevant portion only).

(1)

(2)

(3)

(4)

(5)

(6) Lecturer, Government Degree College.- A consistently good academic record with (a) 1st Class or High 2nd Class (B+) at the Master's

Degree in the concerning subjects and (b) an M. Phil Degree or a recognized degree beyond Master's level or published work indicating the capacity of a candidate for independent research work.

(7)

(8)

(9)

(10)

(11)

15.2. This Court finds that there is no dispute in the Bar that the petitioner Smt. Bharati Devi was appointed as Part-time Lecturer in BR Medhi Govt. Law College vide notification under memo No. EPG 448/89/90-A dated 20.11.1989 [Annexure-B of WP(C) No. 3305/2009]. The learned counsels for the parties are also *ad-idem* at the Bar that at the relevant point of time, the prescribed minimum educational qualification for being appointed as a Teacher in law in Colleges in Assam was that a candidate must hold a Degree of LL.M. with minimum of 52.5% marks and that when the petitioner had passed out her LL.M. from Gauhati University in the year 1989, she had secured 4th Position with 53.2% marks.

15.3. A bare reading of the said notification dated 20.11.1989 shows that there is a misquoting and/or wrong quoting of the rules. The appointment of the petitioner was shown to have been made under Rule 3(f) of APSC (Adhoc) Apptt. Rules, 1986, whereas the correct provisions for ad-hoc appointments by the Assam Public Service Commission (APSC for short) is either Rule 3(1) of APSC (Adhoc) Apptt. Rules, 1986 or it should be Regulation 3(f) of the Assam Public Service Commission (Limitation of Functions) Regulation, 1951. This mistake is being ignored by this court singularly for the purpose of this case alone, as it is not material for deciding this case.

15.4. Further it appears to this Court that after the petitioner was appointed under Regulation 3(f), she had represented before the authorities for being appointed on full time basis, but the recruitment process was kept stalled by the authorities for the reasons best known to them. In the meantime, before the regular appointment of the petitioner as a Full/ Whole Time Lecturer in law could materialize, the minimum qualifying educational norms for teaching in law in colleges in Assam was enhanced to 55% marks in LL.M. by the herein before mentioned Notification dated 19.09.1991, and therefore, the petitioner became prospectively disqualified for being appointment as a regular and Whole/Full time teacher in law in B.R. Medhi Government Law College, Guwahati.

15.5. This Court further finds that in the meanwhile the authorities had advertised on 22.07.1997 for appointment to the 1 (one) post of Lecturer in BRM Govt. Law College, Guwahati to be recruited under Regulation 3(f). However, as per the said advertisement, the invitation for appointment was reserved for ST(P) only. This compelled the petitioner to approach this Court by filing Civil Rule No. 3500/1997 and during the pendency of the said Civil Rule, the authorities de-reserved the said post. Ultimately, this Court by order dated 08.12.2005, disposed of the said Civil Rule, inter-alia, with a direction to the respondent authorities to consider the long pending case of the petitioner considering her length of service in the said college.

15.6. Thereafter, vide notification dated 12.05.2009, the APSC advertised applications in respect of 6 (six) posts of Whole/Full Time Lecturer in B.R. Medhi Government Law College, Guwahati, wherein the prescribed minimum educational qualification was LL.M. with 55% marks with NET/SLET or Ph.D. It was provided that 5% marks in LL.M. was relaxable in respect of SC/ST candidates and the age criteria was fixed between 21 years to 38 years as on 01.01.2009 and the upper age limit was relaxable

by 5 years in case of SC/ST candidates. It is observed by this Court that the advertised qualification was not strictly as per Schedule-II appended to the prescribed 1982 Rules. As per the said provisions, a candidate for being appointed as a Lecturer in Govt. Degree College was that he/she should possess "a consistently good academic record with (a) 1st Class or High 2nd Class (B+) at the Master's Degree in the concerning subjects and (b) an M. Phil Degree or a recognized degree beyond Master's level or published work indicating the capacity of a candidate for independent research work." Hence, the indelible impression is assumed by this Court that the Govt. had relaxed the Rules for appointment as advertized.

15.7. In order to appreciate the argument made by Dr. Ahmed, it is recapitulated that according to Dr. B. Ahmed, learned counsel for the petitioner, the provisions of Rule 29 of the Assam Education Service Rules, 1982 conferred upon the Government the power to relax the rules to such extent and subject to such condition as it may consider necessary for dealing with the case in a just and equitable manner if it is satisfied that operation of any this rule may cause undue hardship in any particular case. In this regard, he relied on the judgment of the Hon'ble Supreme Court of India in the case of *Government of A.P. vs. D. Janardhana Rao*, reported in 1976 (4) SCC 226 to project that the relaxation of rules can be done with retrospective effect. He had submitted that because the new minimum educational norms had set in after the petitioner was appointed in the year 1989 under Regulation 3(f) as a part-time Lecturer, the same cannot be considered to be a disability on part of the petitioner to be considered for being appointed as a whole time lecturer in law. Mr. Ahmed had submitted that all other citations referred by him are only to project that the Government had the power to relax the rules.

15.8. This Court has further considered the fact that the power to relax rules under Rule 29 appears to be permitted if the Government is satisfied that

operation of any these rules may cause undue hardship in any particular case, which is evident from plain and clear language used in the said Rule 29 of the 1982 Rules. However, this Court is not inclined to accept the argument of Dr. Ahmed, learned counsel for the petitioner that as the petitioner was qualified to be appointed in the year 1989. She would be still qualified for appointment as a Lecturer in law after the new 1991 Regulation had come into effect, prescribing that a candidate must have 55% marks in LL.M. for being appointed as a teacher in Law College in Assam. This Court is of the view that as per the provisions of Rule 8 read with Rule 5(1), read with Clause-6 of Schedule-II appended to the 1982 Rules, this Court is of the view that educational qualifications are to be construed from the relevant date when such qualifications have been prescribed. The petitioner, being a part-time Lecturer in law in B.R.M. Government Law College, Guwahati, did not have any vested right to be absorbed as a Full/Whole time Lecturer, because as per Rule 5 of the 1982 Rules, the appointments are to be made only by direct recruitment and recourse to the APSC (Limitation of Functions) Regulation, 1991 was not available for filling up the post of Lecturers, as would be evident from the reading the provisions of Rule 5 of the said 1982 Rules. Therefore, the case laws cited by Dr. Ahmed, including the one reported in *1976 (4) SCC 226* (supra) are not applicable under the singular facts and circumstances of this case because, as stated above, the Govt. had apparently already relaxed the Rules as regards minimum educational qualification in the advertisement dated 12th May, 2009 and a Degree of M. Phil or a recognized Degree beyond Master's level or published works were not insisted therein.

15.9. This Court is further of the opinion that as the educational norms of 55% had been incorporated in the year 1991 only after the implementation of the 9.0 UGC Regulation, 1991, there is no power under the said 1982 rules for relaxation of the minimum educational norms required for

appointment of a Lecturer in law in the Assam. Moreover, as per the various case law citations referred above, this Court finds that the power to relax, if any, was available only to the Government.

15.10. This Court in the previous proceedings of Civil Rule No. 3500/199,7 by order dated 08.12.2005 had disposed of the civil revision with a direction to the Commissioner and Secretary to the Government of Assam, to consider the case of the petitioner in the background of the facts as narrated in the said judgment and take an appropriate decision in accordance with law. Pursuant to the said direction, the Principal Secretary to the Government of Assam, Education (Higher) Department, by a speaking order under memo No. AHE./107/2006/188 dated 27.08.2009, did not find any ground to consider the prayer of Smt. Bharati Devi, part-time Lecturer of B.R.M. Government Law College, Guwahati for regularization against the post of full time Lecturer of the said college.

15.11. Hence, under the singular facts of this case, the issue arising out of Point of Determination No.1 is decided in the negative and against the petitioner.

16. **Point of Determination No.2:**

16.1. It appears to this Court that the records of Civil Rule No. 885/1998 (Sri Laksheswar Talukdar V. State of Assam & others) and Review Petition No. 46/2009 (State of Assam & others V. Sri Laksheswar Talukdar) have been tagged with the record of the present three writ petitioners. On perusal of the said records it appears that in paragraph 3 and 4 of the said CR No. 885/98, the case projected by writ petitioner therein, namely, Sri Laksheswar Talukdar was that he had obtained his LL.M. degree with 53% marks in the year 1984 conforming to the requirement and norms as

was prevalent at that time and he joined J.B. Law College as a Lecturer and worked there upto March, 1986 and thereafter he served at the Gauhati University Law College as well as Post Graduate Department of Law of Gauhati University as Guest Lecturer upto October, 1987 and thereafter pursuant to advertisement published on 12.07.1987, petitioner offered his candidature and he was appointed by the APSC under Rule 3(1) of APSC (Adhoc) Appointment Rules, 1986 vide notification dated 03.10.1987.

16.2. This Court has perused the judgment dated 27.06.2006 passed by this Court in the said Civil Rule No. 885/1998 and it would be relevant to once again refer to paragraph-10 of the said judgment as reproduced above. It is seen that this Court had allowed the said writ petition.

16.3. This Court finds that the facts relating to the said CR No. 885/1998 is somewhat similar to the facts of this case, save and except that in the earlier case, the writ petitioner therein was appointed as Full/ Whole Time Lecturer and in the present two writ petitions involving the petitioner Smt. Bharati Devi, she was appointed as a Part-Time Lecturer.

16.4. This Court is of the view that as this Court has already granted similar relief in Civil Rule No. 885/1998, it would be grossly unjust to deny the present petitioner of the said relief as because even in the present case in hand, the petitioner, namely, Smt. Bharati Devi has put in 27 years of her service in B.R. Medhi Government Law College, Guwahati. It is her specifically projected case that two of her colleagues in the same college, namely, Sri Laksheswar Talukdar and Sri Binod Chandra Pathak have both been given the said benefit. Therefore, the Point of Determination No.2 is answered and decided in favour of the Petitioner.

17. Keeping in parity with the judgment dated 27.06.2006, passed by this Court in Civil Rule No. 885/1998, it is, therefore, ordered that the State respondents, more particularly, the respondent No. 1, namely, The Commissioner, Department of Education, the respondent No. 2, namely, the Secretary to the Govt. of Assam, Department of Personnel, the Respondent No. 3, namely, the Director of Higher Education, Assam, and the respondent No. 5, namely, the Principal, B.R. Medhi, Govt. Law College, would cause immediate steps to be taken for regularization of the petitioner's service as Lecturer of B.R. Medhi Government Law College, Guwahati. Consequently, W.P.(C) No. 3305/2009 and W.P.(C) No. 4213/2009 filed by the petitioner, Smt. Bharati Devi stands allowed.

18. As the petitioner is waiting for long, the process indicated above should be completed within a period of two months from the date of receipt of the certified copy of this order.

19. As further consequential reliefs, (a) the impugned advertisement No. 3/2009 dated 12.05.2009 issued by the APSC [Annexure-N to WP(C) 3305/09] so far it relates to only 1(one) out of 6 (six) posts of Whole Time Lecturer in B.R.M. Govt. Law College, Guwahati under Education (higher) Deptt. is quashed, (b) the order bearing No. AHE.107/2006/188 dated 27.08.2009, passed by the Principal Secretary to the Government of Assam, Education (Higher) Department, which is impugned in W.P.(C) No. 4213/2009 stands set aside and quashed.

20. As indicated in paragraph 4.2 above, WP(C) No. 2758/2009, filed by Sri Laksheswar Talukdar stands dismissed for non- prosecution.

21. However, as this Court is of the view as expressed earlier that educational qualification is to be read in prospective from the date when such minimum qualification came into force, for which there is no power with the Government to relax such Rules, therefore, it is provided that this judgment and order shall not be

treated as a precedent as this order has been passed under the facts and/or circumstances unique to this case.

22. The parties are to bear their own costs.

JUDGE

Mks/Mkumar