**IN THE HIGH COURT OF GAUHATI**

W.P.(C)No. 312 of 2011

Decided On: 07.02.2012

Appellants: **Smti. Rumi Gogoi (Hazarika)**
**Vs.**
Respondent: **State of Assam & Ors.**

**Hon'ble Judges/Coram:**
Iqbal Ahmed Ansari, J.

**JUDGMENT**

**I.A. Ansari, J.**

1. The Government of India, Ministry of Human Resources Development Department, with a view to ensuring free and compulsory education for all children, up to the age group of 14 years, adopted various schemes as an integral part of universalization of elementary education, under 'Sarva Sikshya Abhiyan', commonly known as 'SSA', namely, Non-formal education, District Primary Education Programme, popularly known as 'DPEP' Alternative Schooling, commonly called 'AS', etc., but since these programmes could not cover all the children of 6-14 years age group, the Government of India, Ministry of Human Resources Development Department, adopted a new scheme, known as Education Guarantee Scheme, which is called and knows as 'EGS'. Under the EGS, EGS centres were required to be set up in those areas, where no schooling facilities existed within a radius of 1.5 Kilometer and where, at least, 15 children, in the age group of 6-14 years, were not going to school. In exceptional cases, however, EGS centres could be established even for 10 children. The Government of Assam signed a Memorandum of Understanding (MOU) with the Department of Elementary and Literacy, Government of India, for implementation of the EGS. The funds of EGS were shared in ratio of 75:25 between the Central and the State Governments. The EGS centres were to be upgraded to the level of formal schools.

2. The EGS centres were funded under the SSA and were manned by, Village Education Committee (in short, 'VEC'). Under the EGS, one Education Volunteer (Sikshya Mitra) was to be appointed in every EGS centre and a Sikshya Mitra was to be selected by the concerned VEC. The EGS prescribed the qualification, for appointment of Sikshya Mitra by laying down that a Sikshya Mitra must have passed higher secondary or equivalent exam from a recognized Board/Organization.

3. What was, however, important is the fact that a candidate, for appointment as Sikshya Mitra, ought to have been from the concerned Gaon Panchayat.

4. On selection, a Sikshya Mitra (education volunteer) was required to enter into an agreement with the VEC. Each of these agreements provided that the contract agreement would stand terminated on completion of a period of eleven months unless renewed. One of the stipulations, under the agreement, was that any service, rendered under the agreement, should not, under any circumstances whatever, vest, in the Siksha Mitras, any right to claim absorption in regular vacancies that existed then, or to be arisen in future, in the said area or in other educational institutions. The Sikshya Mitras were entitled to honourarium of Rs. 1,000/- per month. At a later stage, the honourarium was enhanced to Rs. 1,700/per month. In course of time, altogether 5017 EGS centres were established throughout the State of Assam and Siksha Mitras (Education Volunteers) were appointed in those EGS centres.

5. Pursuant to the grant of approval by the Project Approval Board, Government of India, Ministry of Human Resources Development Department, in its 119th meeting held on 25.02.2009, the Government of Assam upgraded altogether 1521 EGS centres to the level of Lower Primary Schools by issuing notification, in this regard, on 31.12.2009, the notification having been issued by the Secretary of Education, Elementary and Secondary Education, Government of Assam, where it was specifically mentioned that upon such up gradation of the 1521 EGS centres to Lower Primary Schools, the EGS centres shall stand abolished. The said notification was followed by another order, contained in letter, dated 06.01.2010, issued by the Commissioner & Secretary, Education-cum-Mission Director, SSA, wherein it was stated that upon up gradation of EGS centres, the newly formed LP schools would come under the purview of Education (Elementary) Department and the Director of Elementary Education. In the said letter, it was also stated that the academic supports provided by the volunteers (Sikshya Mitras) would be accepted and they shall be allowed to continue until alternative arrangements were made by the Government in this regard. It was accordingly decided to provide financial support by SSA upto March, 2010, for the services to be rendered by the Sikshya Mitras (education volunteers).

6. On 31.12.2010, the Commissioner & Secretary, Education (Elementary) Department, issued a notification, whereby the remaining 3496 EGS centres were upgraded to LP Schools and, consequent thereupon, the EGS centres were abolished. However, no budgetary provision was made for re-engagement of the Sikshya Mitras beyond 31.12.2010. Thus, all the 5017 EGS centres have been upgraded as provincialised LP Schools.

7. Pursuant to the promulgation of the Right of Children to Free and Compulsory Education Act, 2009, the National Council for Teacher Education (NCTE) issued a notification, on 23.08.2010, prescribing the minimum educational qualification for person to be eligible for appointment as Teacher in LP Schools (for Class I to VIII). As per the notification, dated 23.08.2010, the minimum qualifications for appointment as teachers, in LP school, are as follows :

1. Minimum qualification:

(i) Classes I-V

(a) Senior Secondary (or its equivalent) with at least 50% marks and 2 year Diploma in Elementary Education (by whatever name known),

Or

Senior Secondary (or its equivalent) with at least 45% marks and 2 year Diploma in Elementary Education (by whatever name known), in accordance with the NCTE (Recognition Norms and Procedure) Regulations, 2002,

Or

Senior Secondary (or its equivalent) with at least 50% marks and 4-year Bachelor Elementary Education (B.EI.Ed.),

Or

Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Education (Special Education)

And

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the guidelines framed by the NCTE for the purpose.

8. It, now, becomes clear that the educational qualifications, required for appointment as Sikshya Mitra, in CGS centers, were distinct and different from the educational qualifications prescribed for appointment as teachers in LP Schools; more particularly, the requirement of Teachers Eligibility Test was not adhered to, while appointing Sikshya Mitras. The Sikshya Mitras were basically appointed in terms of the criteria embodied in the scheme meant there for. [No fund has been provided by the SSA for maintenance of EGS centers beyond 31.12.2010]

9. It is imperative to note here, in this regard, that paragraph 2.4.1. of the policy document of the Central Government for up gradation of EGS centers and Alternative and Innovative Education (in short,' 'AIE'), read as under:

In the past SSA has supported alternate schooling facilities in the form of centres under the Education Guarantee Scheme (EGS) and Alternative and Innovative Education (AIE). EGS and AIE centres across the country have been invaluable in reaching education to children from disadvantaged groups and weaker sections, especially children in unserved habitations. However, EGS centres were, since inception, envisaged as transitory measures to provide schooling till such time as regular, full time schooling faculties could be provided in the area concerned. AIE centres catered to the bridging needs of out of school children till they were mainstreamed into regular schools. Indeed, the RTE mandate for full time schooling facilities for all children implies that EGS centres will now have to be upgraded to regular primary schools and all children availing AIE will need to be mainstreamed into full time schools in a time bound manner. Therefore, in keeping with the RTE mandate:

(i) EGS centres: Existing EGS centres will continue to be supported for a period of two years (2010-11, 2011-12) during which period States would take steps to convert the EGS centres into regular primary schools. No new EGS centres will be sanctioned under SSA with effect from the financial year 2010-2011. In case, the existing EGS centre is not required to be converted into a regular school, on account of an existing neighbourhood school, the EGS centre would be closed down and children mainstreamed in the neighbourhood school.

(ii) In place of AIE centres facilities for 'Special Training' will be provided to out-of-school children, who have been admitted to school, to enable them to cope with age-appropriate enrolment and participation in regular elementary schools.

10. What can be gathered from the above document is that the EGS and the AIE centres, across the country, were envisaged as a transitory measure to provide schooling to children till such time as regular full time school faculties could be provided in the areas concerned. No new EGS centres were to be sanctioned under SSA with effect from the financial year 2010-2011. In the event an existing EGS centre was not required to be converted into a regular school on account of any existing neighbourhood school, the EGS center was to be closed down and the children mainstreamed into the neighbourhood school.

11. In the backdrop of the above noticeable features of the cases of the petitioners, in the present set of writ petitions, which all have been heard together on the request made by the Learned Counsel for the parties concerned inasmuch as all these writ petitions have raised common issues, based on substantially identical facts, all these three writ petitions are being disposed of by this common judgment and order.

12. With effect from 19-03-1979, teaching of Elementary Education, in Assam, was provincialised by the Assam Elementary Education (Provincialisation) Rules, 1977, framed in exercise of powers conferred on the Governor by the proviso to Article 309 of the Constitution of India. The said Rules divided the Elementary Education into two parts, lower primary school and upper primary school, the lower primary school being required to impart education upto Class-IV, whereas upper primary school was required to impart education upto Class-VII including ME schools or MV schools or ME Madrassa or Senior Basic School individually or in combination of any two or three of or all the four categories of these institutions.

13. The conditions of recruitment of Assistant Teachers, constitution of Selection Committee, procedure for selection and appointment have all been provided for in the said Rules, which are hereinafter referred to as the 'Provincialisation Rules, 1977'. In terms of the Provincialisation Rules, 1977, the age of a candidate of general category ought to be between 18 years and 36 years on 1st January of the year of the advertisement, but the upper age limit, in the case of candidates of Scheduled Castes and Scheduled Tribes, ought to be as per rules made by the Government. As far as qualification is concerned, the Provincialisation Rules, 1977, provide the minimum qualification for Assistant Teacher, the qualification being Higher Secondary or any other examination of equivalent standard having 45% marks in anyone of the qualifying examination (Higher Secondary of HSLC) for candidates of general categories and minimum 40% marks for candidates of reserved categories. The Provincialisation Rules, 1977, further provide for reservation in favour of Scheduled Caste, Scheduled Tribe, Other Backward Class, More Other Backward Class, etc. Thus, the Provincialisation Rules, 1977, were a set of comprehensive rules for selection and appointment of Assistant Teachers in lower primary as well as upper primary schools, which impart elementary education, the effect of the provincialisation being that the salary and allowances of a provincialised teacher became the responsibility of the State by deeming them to be public servants.

14. On coming into force of Provincialisation Rules, 1977, with effect from 19-03-1979, the sole mode of recruitment, for Assistant Teachers, in lower primary as well as upper primary schools, in order to treat them as validly appointed teachers, were required to made, and ought to have been made, in terms of the Provincialisation Rules, 1977.

15. The National Council for Teachers Education (hereinafter referred to as 'NCTE,) came to be set up, in the year 1973, by the resolution of Government of India as a national expert body to advise the Central and the State Governments on all matters pertaining to education of teachers. As the role assigned to the NCTE was purely advisory in nature, it did not have desired impact on standardization of teachers' training institutions in the country and led to unplanned growth. In order to empower the NCTE to make qualitative improvement in the system of teachers' training, National Council for Teachers Education Act, 1993 (hereinafter referred to as 'the NCTE Act, 1993') was enacted by the Parliament by bestowing statutory recognition on the NCTE, the Preamble to the NCTE Act, 1993,) making it clear that the Act was enacted with a view to attaching plan and coordinated development and proper maintenance of norms and standards in the teachers' education system, etc., throughout the country.

16. Section 32 of the NCTE Act, 1993, confers on the NCTE the power to make regulations inasmuch as Section32 provides that NCTE may lay down minimum qualifications for a person to be employed as a teacher under Clause (d) of Section 12.

17. In exercise of its power conferred by Section 32 of the NCTE Act, 1993, the NCTE made a set of Regulations, namely, National Council for Teacher Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (hereinafter referred to as 'the 2001 Regulations). In the schedule to the Regulations, so framed by NCTE, the minimum academic and professional qualifications for recruitment of teachers, at different levels, have been stipulated. The qualifications prescribed for selection and appointment of a teacher, in an elementary/primary school, being as under:

(i) Senior Secondary School Certificate, (ii) Diploma of certificate in basic teachers training of a duration of not less than two years, or bachelor of Elementary Education (B.E.Ed.)

18. On the insistence of the NCTE that its Regulations be adhered to in respect of appointments of teachers in schools in Assam, the State of Assam had amended, with effect from 10-11-2005, the Provincialised Rules, 1977, the amended Rules being called the Assam Elementary Education (Provincialization) (Amendment) Rules, 2005 (hereinafter referred to as 'Amended Rules, 2005'), whereunder instead of making the requirement of a diploma in teachers training mandatory, as stipulated in the Regulations framed by the NCTE, the Amended Rules 2005, provided the preference to trained candidates would be given. Schedule-I to the Amended Rules, 2005, stipulated that such preference would be in the form of 10 additional marks to trained teachers in the selection process for the recruitment of teachers. Having carried out the said amendments, an employment notice, dated 2nd December, 2005, was issued, in the newspapers, inviting applications for filling up of 5372 posts of Assistant Teachers. The prescribed minimum educational qualification was higher secondary with preference to trained candidates.

19. Aggrieved by the amendments introduced by the help of the Amended Rules, 2005, waiving thereby the requirement of diploma for selection of teachers, a set of writ petitions were filed seeking quashing of the Amended Rules, 2005, on the ground, inter alia, that the amendments were not in conformity with the statutory Regulations framed by the NCTE. In the writ petitions, the writ petitioners also sought for setting aside and quashing the advertisement, dated 02-12-2005, aforementioned. A Division Bench of this Court, while dealing with the said writ petitions, took the view that the requirement of adherence to the statutory Regulations, framed by the NCTE, cannot be left to be determined at the discretion of the authorities of the State Government of Assam. That apart, the Regulations, framed by the NCTE, have the effect of enhancing the quality of education at the primary level and, in the absence of any compelling reasons to justify a departure therefrom, the Court would lean in favour of an interpretation that would advance the cause of quality education in the State. The Division Bench accordingly set aside the Amended Rules, 2005, by holding the same as illegal. However, while holding the Amended Rules, 2005, as ultra vires the NCTE Act, 1993, and setting aside the Amended Rules, 2005, the Division Bench allowed the State to complete the recruitment process already initiated pursuant to the advertisement, dated 02-12-2005, aforementioned.

20. Aggrieved by the fact that the Division Bench had allowed the recruitment of teachers, to proceed, as mentioned above, pursuant to the advertisement, dated 02-12-2005, while the Amended Rules, 2005 have been held to be ultra vires, the NCTE Act, 1993, the writ petitioners carried the matter, in appeal, to the Supreme Court, the Supreme Court, which agreed with the conclusions reached by the Division Bench of this Court to the effect that the Regulations, framed by the NCTE, had to be adhered to by the State Government for making selection and appointment and, hence, when the Amended Rules, 2005, had been nullified by holding the same to be ultra vires the Provincialised Rules, 1977, the recruitment, pursuant to the advertisement, dated 02-12-2005, could not have been allowed to be continued, because this would amount to perpetuating and encouraging an illegality. The Supreme Court accordingly allowed the appeal and set aside the selection process, which had been set into motion by the advertisement, dated 02-12-2005. This decision has come to be reported in the case of Ranu Hazarika and Ors. v. State of Assam and Ors., reported in 2001 (1) GLT 52. In the face of the decision of Ranu Hazarika (supra), there can be no escape from the conclusion that the Regulations, framed by the NCTE, are mandatory in nature and the appointments of teachers, in schools, including the primary schools, have to be in terms of the prescriptions of the Regulations so framed by the NCTE.

21. In the backdrop of the above facts, let me set out, in substance, as to what the case of the writ petitioners is and what reliefs they have sought for and in the light of the objections raised by the State respondents and the provisions of law relevant thereto, whether the petitioners are entitled to the reliefs, if any. The case of the petitioners is, in a nutshell, thus:

(i) The petitioners herein were, upon selection by Village Education Committee (VEC), engaged as Siksha Mitras (Education Volunteers) pursuant to the Education Guarantee Scheme (EGS). Each of the writ petitioners were engaged as Siksha Mitras and entered, in this regard, into an agreement with the VEC, which provided, inter alia, that the contract agreements, appointing the petitioners, as Sikshya Mitras, would stand terminated on completion of a period of 11 months unless renewed and also that any service, rendered under the agreement, should not, under any circumstances whatsoever, would give a Sikshya Mitra the right to claim absorption in regular vacancies that existed then or to be arisen, in future, in the State or in any other educational institution, the Sikshya Mitras being, however, entitled to an honorium of Rs. 1,000/- pm, which was, later on, enhanced to Rs. 1,700/- pm. The terminations and re-engagements of the petitioners as Sikshya Mitras, on completion of 11 months, were, according to the writ petitioners, artificial in nature inasmuch as the agreements, re-appointing the writ petitioners as Sikshya Mitras, were renewed after lapse of every 11 months. In consequence thereof, the writ petitioners have, in effect, continued to work as Sikshya Mitras since the introduction of the EGS.

(ii) By virtue of orders issued, on 31-12-2009 and 31-12-2010, of the State Government, the EGS Centres have been upgraded to LP Schools and the Government has disengaged the petitioners as Sikshya Mitras; whereas the writ petitioners, having worked for almost a decade as Sikshya Mitras and having acquired the experience of teaching, ought to have been continued. The disehgagement of the petitioners as Sikshya Mitras is also artificial inasmuch as some of them are still working in X EGS Centres, which have been upgraded to LP Schools, but they are not being paid their dues. The State has the obligation of absorbing the writ petitioners, particularly, those, who have the minimum qualifications required for being appointed as teachers in the sense that those, who have passed higher secondary examination with requisite percentage of marks.

22. In effect, thus, contending that with the up gradation of the EGS Centres to LP Schools, the services of the writ petitioners ought to have been provincialised or regularized, the writ petitioners have filed a set of writ petitions, under Article 226 of the Constitution of India, seeking, inter alia, following reliefs;

1. Issuance of a writ of Mandamus directing the respondents to upgrade/ provincialise the services of the petitioners along with the up gradation of their EGS Centres into LP Schools within a stipulated time period.

2. Issuance of a Writ of Mandamus directing/restraining the respondents from attachment of teachers from nearby LP Schools with the petitioners upgraded EGS Centres.

23. I have heard Mr. A.K. Bhattacharjee, learned Senior counsel, Mr. N Dutta, learned Senior Counsel, Mr. B.C. Das, learned Senior Counsel, and Mr. M.K. Choudhury, learned Senior Counsel/ appearing on behalf of the writ petitioners. As far as the remaining Learned Counsel for the writ petitioners are concerned, they have adopted the arguments advanced by the learned Senior counsel. I have also heard Mr. D. Saikia, learned Additional Advocate General, Assam, and Mr. M.R. Pathak, learned Standing counsel, Education Department, Government of Assam, appearing on behalf of the State respondents.

24. The case of the State respondents is, in brief, as under:

(i) EGS was introduced in, the year 2002-03, as Centrally sponsored scheme and was executed by Sarva Siksha Abhiyan, commonly known as SSA, Assam. The basic objective of the scheme was to assist the local community of schoolless habitation to establish EGS Centres to achieve the goal of universalisation of elementary education. Under the scheme, one Sikshya Mitra was engaged in each EGS Centre. The selection was limited and kept confined to the candidates coming from the Gaon Panchayat concerned and the selection of Sikshya Mitra was, thus, made by the Village Education Committee (VEC) from the candidates belonging to a given Gaon Panchayat. The minimum educational qualification for Sikshya Mitras was higher secondary passed and he was to get Rs. 1,000/- per month as honorium and this amount was, later on, enhanced to Rs. 1,700/per month.

(ii) The appointment of Sikshya Mitra was, thus, under a given scheme and at the time, when this scheme was implemented, the appointment of Sikshya Mitras were not in keeping with the conditions of recruitment, as prescribed by the Provincialisation Rules, 1977, inasmuch as the minimum educational qualification, prescribed by the Provincialisation Rules, 1977, had not been adhered to, while appointing Sikshya Mitras. As the appointment of the Sikshya Mitras were not in tune with the conditions of recruitment, as contained in the Provincialisation Rules, 1977, it becomes crystal clear that the Sikshya Mitras, even if treated as teachers, they cannot be treated to have been appointed as teachers in terms of the relevant recruitment rules, in force, in the State at the relevant point of time and they were mere appointees, as Sikshya Mitras, under an inherently temporary scheme, namely EGS, and they all along knew the actual nature of their respective appointments.

(iii) What cannot and must not be ignored is that the agreement, which the petitioners, as Sikshya Mitras had entered into with VEC, clearly stipulated, inter alia, that the contract agreements, appointing the petitioners, as Sikshya Mitras, would not, under any circumstances whatsoever, would give a Sikshya Mitras the right to claim absorption in regular vacancies that existed then or to be arisen, in future, in the State or in any other educational institution.

(iv) Thus, at the time of their appointments as Sikshya Mitras, the writ petitioners knew that they cannot claim absorption/regularization of their services into the mainstream of Assistant Teachers in lower or upper primary schools. In other words, the Sikshya Mitras knew, at the time of their appointment, that their appointments were not in tune with the Provincialization Rules, 1977, and that they would not be, therefore, entitled to claim absorption/regularization of their services into main stream as teachers. Moreover, absorption or regularization of the petitioners, as Assistant Teachers in LP schools, would be contrary to constitutional mandate inasmuch as the selections and appointments of Sikshya Mitras were not open to all eligible candidates, because selection had been kept confined to the candidates at the level of the Gaon Panchayats concerned; whereas a regular teacher has to be appointed, in the light of the fundamental guarantees enshrined in Articles 14 and 16 and in terms of the relevant recruitment rules, by making available the opportunities of selection to all eligible candidates of Assam and not by restricting the selection process confined to the level of Gaon Panchayats.

(v) With the Regulations, framed by the NCTE, having come into force, no appointment of a person to teach, in Class-I to VIII, can be made by violating the minimum educational qualification, which the NCTE Regulations prescribe. That apart, a candidate has to pass Teachers Eligibility Test (popularly known as TET) to be conducted by appropriate Government in accordance with the guidelines framed by the NCTE for that purpose and in order to become eligible to participate in the selection process for appointment as a teacher in Class-I to VIII.

(vi) Before, therefore, seeking their selections and appointments as teachers of LP Schools, the writ petitioners ought to pass the TET. A TET has already been held on 10.01.2012, wherein as many as 3,30,927 candidates have already appeared and the results have already been announced on 25.01.2012, wherein the total number of candidates, who have qualified is 52,722 and many of them may have been earlier Sikshya Mitras.

(vii) The total number of Sikshya Mitras appointed was 7979 and out of them, as many as 977 Sikshya Mitras had merely passed HSLC, though the EGS had stipulated passing of Higher Secondary examination as the minimum qualification for appointment as Sikshya Mitra. The said 977 Sikshya Mitras do not, therefore, satisfy the minimum requirement of having passed Higher Secondary examination. In fact, 4 (four) of the Sikshya Mitras are even non-matriculate; whereas NCTE's Regulations prescribe 50% marks, in Senior Secondary or its equivalent examination and two years of diploma in elementary education, as mandatory for being able to participate in the process of selection for appointment as teachers in LP Schools. The State of Assam had already framed the Amended Rules, 2005, for reducing the standards of recruitment by not adhering to the requirement of NCTE's Regulations. These amendments have been struck down by the High Court and the same has been upheld by the Supreme Court in Ranu Hazarika (supra). No appointment can, therefore, be made by the State Government by ignoring and/or defeating the very NCTE's Regulations, which prescribe the minimum qualification.

25. In support of his submission that the appointment of the writ petitioners as Sikshya Mitras were under a given scheme, the scheme does not satisfy the requirement of the NCTE's Regulations, which have to be adhered to by the State Government, the writ petitioners cannot claim to be absorbed/regularized as regular teachers in the LP Schools, which have been formed as a result of upgradation of the EGS Centres to LP Schools, Mr. Saikia, learned Advocate General, has placed reliance on Ranu Hazarika and Ors. v. State of Assam and Ors., reported in 2001 (1) GLT 52; Surindar Prasad Tiwari v. U.P. Rajya Krishi Utpadan Mandi Parishad & Ors., reported in: 2006 (7) SCC 684; Ram Sukh & Ors. v. State of Rajasthan & Ors.,   : AIR 1990 SC 592; Andhra Kesari Education Society v. Director of School Education & Ors., AIR 1989 SC 183; Secretary, State of Karnataka & Ors. v. Uma Devi & Ors., reported in   : (2006) 4 SCC 1; Kameswar Prasad Bodoni & Anr. v. ONGC & Ors., reported in 2003 (2) GLT 493; and Md. Abdul Kadir & Anr. v. Director General of Police, Assam & Ors., (2009) 3 SCC 611.

26. Other than Mr. N. Dutta, learned Senior counsel, the remaining Learned Counsel for the writ petitioners have contended that since the writ petitioners have been serving for almost a decade as Sikshya Mitras by teaching students at the primary level, their services ought to be regularized by the Government, when the Government has chosen to upgrade the EGS Centres to LP Schools.

27. However, as far as Mr. Dutta is concerned, he has taken this Court extensively through various provisions of the Right of Children to Free and Compulsory Education Act, 2009 (in short 'the Act of 2009') and, more particularly, Section 23 thereof. Relying on the proviso to sub-section (2) of Section 23 of the Act of 2009, Mr. Dutta has contended that with the upgradation of EGS Centres to LP Schools, the Sikshya Mitras, particularly, those, who had satisfied the requirements for appointment as Sikshya Mitras under the EGS, ought to be treated as teachers, rendering service in LP Schools, and they must be allowed to continue as teachers on upgradation of EGS Centres to LP Schools subject to the condition that they must acquire, minimum qualifications, within a period of 5 (five) years as prescribed by the proviso to sub-section (2) of Section 23, especially, when the Central Government has already, points out Mr. Dutta, dispensed with the requirement of obtaining diploma in elementary education till 31-03-2015. In this regard, Mr. Dutta has also referred to the definition of ('school' as contained in Section 2 (n) of the Act of 2009 and contended that the EGS Centres, on its upgradation to LP Schools, fall within the definition of ('school' as given in Section 2(n).

28. Let me, first, determine the correctness of the above submissions by Mr. Dutta. While determining the correctness of the above submissions of Mr. Dutta, it is imperative to bear in mind that, under the NCTE's Regulations, the minimum educational qualification for appointment of teachers, in elementary schools, is senior secondary with, at least, 50% marks and 2 years of diploma in elementary education. Coupled with this, one has to pass, in order to become eligible for selection and appointment as a teacher, TET to be conducted by the appropriate Government.

29. Bearing the above aspects of the requirements of the Regulations of the NCTE in mind, let me, now, turn to Section 23, which, I find, reads as under:

23. Qualifications for appointment and terms and conditions of service of teachers (1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorized by the Central Government, by notification, shall be eligible for appointment as a teacher.

(2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period not exceeding five years, as may be specified in that notification:

Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years.

(3) The salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be prescribed.

30. sub-section (1) of Section 23 makes it clear that any person, possessing such minimum qualification as prescribed by the academic authority, that is, NCTE, shall be eligible for appointment as a teacher, meaning thereby that a person, in order to be appointed as a teacher, must satisfy the minimum eligibility criteria fixed by NCTE's Regulations. Section 23(2), however, introduces an exception to this, mandatory requirement by laying down that a teacher, who, at the commencement of the Act of 2009, does not possess minimum qualifications as laid down under sub-section (1) of Section 23 thereof, shall acquire such minimum qualifications within a period of five years. This shows that when a State does not have adequate institutions, offering courses or training, for teachers' education or where sufficient number of teachers are not possessing the minimum qualification as laid down by Regulations, then, the Central Government may, if it deems necessary, relax, by notification, the minimum qualification required for appointment as teacher for such period as may be specified in the notification, but such relaxation cannot be for a period longer than 5 (five) years.

31. Thus, where a State does not have either adequate institutions offering courses or training in teachers education or where sufficient number of persons, having minimum qualifications, are not available, the Central Government may give relaxation as indicated in sub-section (2). The relaxation, thus, relates to two defined parts inasmuch as sub-section (2) covers two definite areas, namely, (i) the area of teachers training and (ii) the minimum qualification of teachers.

32. As far as the State of Assam is concerned, persons, with minimum educational qualification of 50% in higher secondary, are available. On this aspect, there is no dispute. What is not available is the sufficient number of persons, who have diploma in elementary education, because there is dearth of institutions offering teachers' education.

33. What the Central Government has, therefore, done is that it has not dispensed with the minimum educational qualification of a candidate having 50% marks in higher secondary examination; but it has relaxed the requirement of having diploma, in education, for a period of 5 (five) years. What has also not been relaxed is the requirement of a candidate passing TET.

34. Thus, a person, having minimum educational qualification as prescribed by the Regulations of NCTE and having passed TET, can only participate in the process of selection for appointment as a teacher of LP School, in Assam, even if he does not have diploma in elementary -, education this relaxation will remain in force till 31-03-2015 and within 31-03-2015, such a candidate, if selected and appointed, would have to obtain the diploma in elementary education.

35. Now, what the proviso to sub-section (2) of Section 23 relates to is the question. In this regard, it needs to be noted that the proviso states that a teacher who, at the commencement of the Act of 2009, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years, meaning thereby that a person, who is teaching in lower primary school, may not have the minimum qualification as laid down by sub-section (1) of Section 23, but he must acquire such minimum qualification within a period of 5 years. This would obviously apply to teachers, who were recruited in terms of the relevant recruitment rules of the State concerned. Considering the fact that, in the State of Assam, the recruitment rules, in the form of the Provincialisation Rules, 1977, were in place, a person, in order to obtain the benefit of the proviso to sub-Section (2) of Section 23, must be a teacher who must have been, otherwise, appointed in tune with the essential conditions of recruitment, as provided by the Provincialisation Rules, 1977, though he may not have had the diploma in elementary education and may not have passed TET.

36. The proviso to sub-Section (2) of Section 23 cannot be applied to a person, who has been working under a scheme, which required limited minimum qualification contrary to, and inconsistent with, the conditions of recruitment, as provided for in the Provincialisation Rules, 1977. It needs to be noted, in this regard, that the minimum educational qualification for appointment, as an Assistant Teacher, in LP School, under the Provincialisation Act, 1977, was Higher Secondary or any other examination of equivalent standard having 45% marks in any of the qualifying examination for general category candidates and minimum 40% marks for reserved category candidates; whereas under EGS, the minimum educational qualification was merely passing of Higher Secondary Examination with no minimum marks.

37. Thus, the recruitment of the petitioners, as Sikshya Mitras, were contrary to, and inconsistence with, the relevant recruitment rules regards appointment of Assistant Teachers in LP School. Such Sikshya Mitras cannot be said to be recovered by the proviso to sub-section (2) of Section 23 inasmuch as the proviso would relate to a person, who, in accordance with the relevant recruitment rules, for appointment as Assistant Teachers in LP Schools, has been serving in a LP School, but did not satisfy the complete requirement of the Regulations of NCTE on the Regulations coming into force and, in such circumstances, such a teacher is required to obtain the requisite minimum qualification within the period of relaxation, which would come to an end on 31-03-2015.

38. Turning to the authorities, which the learned Additional Advocate General has relied upon, it needs to be pointed out that while considering the case of Surinder Prasad Tiwari (supra), the Supreme Court, in Surinder Prasad Tiwari (supra), has held that in the backdrop of Constitutional philosophy, it would be inappropriate for the Courts to give directions for regularization of services of persons, who are working as daily wage earner or who are working as ad hoc, temporary or casual employees and not appointed following the procedures laid down under Article 14, 16 and 309 of the Constitution of India. The Supreme Court, in Surinder Prasad Tiwari (supra), pointed out that, while deciding the right of a casual employee to seek regularization in a public employment, it is the duty of the Court to determine if the appointment had been made according to the Constitutional scheme. The Constitutional scheme would obviously include the Rules of recruitment framed by taking recourse to the proviso to Article 309 of the Constitution and/or any other law relevant thereto.

39. In the present case, the Constitutional scheme of recruitment would include the conditions of recruitment, as embodied by the Provincialisation Rules, 1977, at the time, when the 'Sikshya Mitras' were appointed. The Supreme Court, in Surinder Prasad Tiwari (supra), has pointed out that directions for regularization of a person, who has not been appointed in accordance with the Constitutional scheme, would amount to perpetuating the illegality in the matter of public employment and would negate the Constitutional scheme of public employment. Referring to the case of Secretary, State of Karnataka and ethers v. Umadevi (3) and others, reported in (2006) 47 SCC 1, the Supreme Court, in Surinder Prasad Tiwari (supra), has held that when the recruitment rules are made, the employer would be bound to comply with the same and any appointment, in violation of such rules, would render the recruitment a nullity in law.

40. In the present case, the 'Sikshya Mitras' were appointed under a scheme and they cannot be equated with the regularly appointed teachers, in terms of the provisions of the Provincialisation Rules, 1977, particularly, when, at the time of their recruitment, the conditions of recruitment, as embodied in the Provincialisation Rules, 1977, had not been followed. Yet another hurdle, in the way of absorption or regularization in the vacancies of the duly sanctioned teachers, is the fact that they do not satisfy the requirements of the Regulations framed by the NCTE, when they have not passed the TET, because it is only on the passing of the Teachers Eligibility Test (TET) that they would become eligible to participate in the selection process for appointment to the post of Assistant Teachers in LP Schools.

41. The reference, made by the learned Additional Advocate General, Assam, to the case of Ram Sukh & Ors. v. State of Rajasthan & Ors., reported in   : AIR 1990 SC 592, is also not misplaced inasmuch as the Supreme Court, in Ram Sukh & Ors. (supra), pointed out, while deciding the issue of removal of untrained primary teachers in Rural schools under Panchayat Samities, that inspire of being sympathetic to the petitioners, who are out of job, the Court cannot forget the welfare of those, who are not before the Court inasmuch as those, who are not before the Court, are tiny tots, who require proper handling by well-trained teachers. Thus, when the 'Sikshya Mitras' are not qualified and yet to fulfill the prescribed eligibility norms, their services cannot be regularized nor can they be directed to be absorbed as against the existing vacancies of Assistant Teachers.

42. In Andhra Kesari Education Society v. Director of School Education and others, reported in AIR 1989 SC 183. which has also been relied upon by Mr. Saikia, the Supreme Court has pointed out that a teacher alone can bring out the skills and intellectual capabilities of a student, who is the engine of educational system, and, in this regard, ill trained or sub- standard teachers would be detrimental to the educational system, if not a punishment to the children.

43. Thus, when the NCTE has framed the Regulations, prescribing the minimum qualifications of a teacher, which are mandatory in nature and when the 'Sikshya Mitras' do not satisfy the mandatory qualifications, their services cannot be directed to be regularized, particularly, when they had not been recruited in terms of the relevant recruitment rules, namely, the Provincialisation Rules, 1977, which were in force at the given point of time.

44. The Supreme Court, in Uma Devi (supra), has noted that when a person enters a temporary appointment or gets engaged as a contractual or casual worker and the engagement is not preceded by a proper selection process, as recognized by the Rules or procedures, and when the person is aware of the consequences of his appointment being temporary, casual or contractual in nature, such a person cannot invoke the theory of legitimate expectation for being confirmed in the post. The relevant observations, appearing at Para 47 of Uma Devi (supra), reads as under:

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only be following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

(Emphasis supplied)

45. In the case at hand, the 'Sikshya Mitras' were engaged and worked under a given scheme and, at the time of their engagement, they knew that they cannot claim absorption or regularization in regularly sanctioned posts of teacher. Thus, when the petitioners, as 'Sikshya Mitras', worked with their eyes open and with the full knowledge of the fact that their appointments were under a scheme, their engagements as Siksha Mitras, were inherently temporary in nature and not in tune with the conditions of recruitment, embodied in the relevant recruitment rules, namely, the Provincialisation Rules, 1977, they cannot, now, invoke the theory of legitimate expectation for seeking absorption/regularization as teachers.

46. In the case of Md. Abdul Kadir & Anr. v. Director General of Police, Assam & Ors., reported in : (2009) 6 SCC 611, the Supreme Court has reiterated that when the petitioners therein were appointed on temporary or ad hoc basis in connection with a particular project or scheme, they cannot, when threatened with discontinuation of the scheme, claim absorption/regularization of their services. The Supreme Court further pointed out, in Md. Abdul Kadir (supra), that an ad hoc appointment, under any scheme, is, normally, co-terminus with the scheme. The relevant observations/ appearing in the case of Md. Abdul Kadir (supra), at paragraph 13, 14 and 15, laying down the law on the subject succinctly. The relevant observations read as under:

13. The fact that the appellants were employed under the PIF Additional Scheme is not disputed. The duration of the PIF Additional Scheme under which they are employed was initially two years, to be reviewed for continuation along with the original PIF Scheme. The said Scheme is being extended from time to time and is being continued. If the temporary or ad hoc engagement or appointment is in connection with a particular ' project or a specific scheme, the ad hoc or temporary service of the persons employed under the project or scheme would come to an end, on completion/closure/cessation of the project or the scheme.

14. The fact that the Scheme had been in operation for some decades or that the employee concerned has continued on ad hoc basis for one or two decades would not entitle the employee to seek permanency or regularisation. Even if any posts are sanctioned with reference to the Scheme, such sanction is of ad hoc or temporary posts coterminous with the Scheme and not of permanent posts.

15. On completion of the project or discontinuance of the scheme, those who were engaged with reference to or in connection with such project or scheme cannot claim any right to continue in service, nor seek regularisation in some other project or service. [See Bhagwan Dass v. State of Haryana, Delhi Development Horticulture Employees' Union v. Delhi Admn., Hindustan Steel Works Construction Ltd. v. Employees' Union, U.P. Land Development Corpn. v. Amar Singh, Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra, State of Karnataka v. Umadevi (3), Indian Council of Medical Research v. K. Rajyalakshmi and Lal Mohammad v. Indian Railway Construction Co. Ltd. In view of this settled position, the appellants will not be entitled to regularisation.

47. The decision, in Md. Abdul Kadir (supra), laying down the law on the subject of appointment under a scheme or project, squarely applies to the case at hand. From the decision, in Md. Abdul Kadir (supra), it becomes more than clear that on completion or discontinuation of the EGS, the petitioners, who were engaged as 'Sikhsya Mitras', in connection with the said scheme, cannot claim any right to continue in service, they can also not seek regularization under the provisions of the Act of 2009 nor can they be heard to contend that they are covered by the proviso to sub-Section (2) of Section 23 of the Act of 2009, when their appointments were on contract basis under a scheme, which was inherently temporary in nature, and when their appointments were not made by following the conditions of recruitment, covering the field of appointment of teachers, as evidenced by the Provincialisation Rules, 1977.

48. Because of what have been discussed and pointed out above, this Court does not find that the petitioners have been able to make out any case for obtaining the reliefs, which they have sought for. These writ petitions, therefore, I am constrained to hold, fail and the same shall accordingly stand dismissed. No order as to costs.