



GAHC010199202018

Page No.# 1/24



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6279/2018

MRIDUL HAZARIKA AND 5 ORS.

S/O- MR. JOGEN HAZARIKA, VILL NO. 2 PITHAGURI, P.O- PITHAGURI, P.S-
BIHPURIA, DIST- LAKHIMPUR, ASSAM, PIN- 784163

2: BHUPEN DAS

S/O- MR. DULAL DAS

VILL- NAHARATI

P.O- BAHGORAH

P.S- BIHPURIA

DIST- LAKHIMPUR

ASSAM

PIN- 784161

3: MRINAL MEDHI

S/O- LATE NARAYAN MEDHI

R/O- KUNDILNAGAR

BASISTHA CHARIALI

P.O- BASISTHA

DIST- KAMRUP(M)

ASSAM

GUWAHATI- 29

4: MRIDUL KUMAR BORAH

S/O- LATE KHETESWAR BORAH

VILL- RAJKHOWA GAON

P.O- AZAD

P.S- PANIGAON

DIST- LAKHIMPUR

ASSAM

PIN- 787031

5: NASIOR RAHMAN

S/O- MD. ASHOK ALI

VILL- MOURIPAM



P.O- MANDIA
P.S- BARBHAG
DIST- BARPETA
ASSAM
PIN- 781308

6: ZAKIR HUSSAIN
S/O- LATE NURUL ISLAM
VILL- GHILAZARI
P.O- GHILAZARI
P.S- HOWLY
DIST- BARPETA
ASSAM
PIN- 78131

VERSUS

THE STATE OF ASSAM AND 13 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
HEALTH AND FAMILY WELFARE DEPTT, DISPUR, GUWAHATI- 781006

2:THE DIRECTOR
HEALTH SERVICE
HENGRABARI
GUWAHATI- 05

3:THE DIRECTOR OF MEDICAL EDUCATION
ASSAM
SIXMILE
KHANAPARA
GUWAHATI
KAMRUP(M)
ASSAM
GUWAHATI- 781006

4:THE PRINCIPAL CUM CHIEF SUPERINTENDENT
TEZPUR MEDICAL COLLEGE AND HOSPITAL
TEZPUR
ASSAM
PIN- 784153

5:KAUSHIK DAS
LABORATORY TECHNICIAN
TEZPUR MEDICAL COLLEGE AND HOSPITAL
C/O- PRINCIPAL CUM CHIEF SUPERINTENDENT
TEZPUR MEDICAL COLLEGE AND HOSPITAL
TEZPUR
ASSAM



PIN- 784153

6:SIMANTA NATH
LABORATORY TECHNICIAN
TEZPUR MEDICAL COLLEGE AND HOSPITAL
TEZPUR
ASSAM
PIN- 784153

7:PANKAJ BARUAH
LABORATORY TECHNICIAN
TEZPUR MEDICAL COLLEGE AND HOSPITAL
C/O- PRINCIPAL CUM CHIEF SUPERINTENDENT
TEZPUR MEDICAL COLLEGE AND HOSPITAL
TEZPUR
ASSAM
PIN- 784153

8:AIMONI BORAH
LABORATORY TECHNICIAN
TEZPUR MEDICAL COLLEGE AND HOSPITAL
C/O- PRINCIPAL CUM CHIEF SUPERINTENDENT
TEZPUR MEDICAL COLLEGE AND HOSPITAL
TEZPUR
ASSAM
PIN- 784153

9:MANJUMANI BORAH
LABORATORY TECHNICIAN
TEZPUR MEDICAL COLLEGE AND HOSPITAL
C/O- PRINCIPAL CUM CHIEF SUPERINTENDENT
TEZPUR MEDICAL COLLEGE AND HOSPITAL
TEZPUR
ASSAM
PIN- 784153

10:MINAKSHI BORAH
LABORATORY TECHNICIAN
TEZPUR MEDICAL COLLEGE AND HOSPITAL
C/O- PRINCIPAL CUM CHIEF SUPERINTENDENT
TEZPUR MEDICAL COLLEGE AND HOSPITAL
TEZPUR
ASSAM
PIN- 784153

11:MRINALI BHUYAN
LABORATORY TECHNICIAN
TEZPUR MEDICAL COLLEGE AND HOSPITAL



C/O- PRINCIPAL CUM CHIEF SUPERINTENDENT
TEZPUR MEDICAL COLLEGE AND HOSPITAL
TEZPUR
ASSAM
PIN- 784153

12:JITUMONI BAISHYA
LABORATORY TECHNICIAN
TEZPUR MEDICAL COLLEGE AND HOSPITAL
C/O- PRINCIPAL CUM CHIEF SUPERINTENDENT
TEZPUR MEDICAL COLLEGE AND HOSPITAL
TEZPUR
ASSAM
PIN- 784153

13:JITU DEORI
LABORATORY TECHNICIAN
TEZPUR MEDICAL COLLEGE AND HOSPITAL
C/O- PRINCIPAL CUM CHIEF SUPERINTENDENT
TEZPUR MEDICAL COLLEGE AND HOSPITAL
TEZPUR
ASSAM
PIN- 784153

14:AJANTA DEORI
LABORATORY TECHNICIAN
TEZPUR MEDICAL COLLEGE AND HOSPITAL
C/O- PRINCIPAL CUM CHIEF SUPERINTENDENT
TEZPUR MEDICAL COLLEGE AND HOSPITAL
TEZPUR
ASSAM
PIN- 78415

Advocate for the Petitioner : MR. T J MAHANTA

Advocate for the Respondent : SC, HEALTH AND F W

BEFORE

THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellants : Mr. PK Deka, Advocate

For the Respondents : Mr. B Gogoi, Mr. U Dutta, Mr. JM Choudhury,
Advocates

Date of Hearing : 09.05.2022, 30.06.2022

Date of Judgement :27.09.2022

JUDGEMENT & ORDER (CAV)

Heard Mr. PK Deka, learned counsel for the petitioners. Also heard Mr. B Gogoi, learned counsel for the respondent Nos. 1 to 4, Mr. U Dutta, learned counsel for the respondent Nos. 5 to 9 and Mr. JMA Choudhury, learned counsel for the respondent Nos. 10 to 14.

2. At the very outset Mr. PK Deka, learned counsel representing all the petitioners has submitted that the petitioner Nos. 2 & 4 are not interested to pursue the writ petition. Accordingly, their names may be deleted as writ petitioners. As none objected to such prayer, same is allowed. Registry to delete the name of petitioner Nos. 2 & 4 from the array of parties as well as from the CIS.

3. The present writ petition is filed assailing the selection and appointment of the respondent Nos. 5 to 14 as Laboratory Technician in the Tezpur Medical College and Hospital, Tezpur, Assam.

4. The further prayers of the petitioners are for a direction to the respondent authorities to appoint the petitioners in place of the private respondent Nos. 5 to 14 by considering the petitioners' merit, work experience and age.

5. The respondent No. 4 issued an advertisement on 19.02.2011 for appointment of 48 numbers of posts of Laboratory Technician under the establishment of Tezpur Medical College and Hospital, Tezpur (hereinafter referred to as TMC). Minimum qualification for the said posts was determined as Laboratory Technician Certificate Course or above/ equivalent from only medical college of Assam/ recognized institute of Government of Assam. The said advertisement further stipulates that the last date of submission of the applications in the office of Director of Medical Education, Assam, Sixmile, Khanapara, Guwahati is 11.03.2011. It was further mandated that application received either by post or by hand after last date of submission of forms shall not be accepted under any circumstances. The petitioners herein being eligible and having experience applied for the aforesaid posts, they were called for interview amongst many other candidates.

6. Subsequent to such selection, a select list was published wherein the roll number of the petitioners did not appear. The respondent authorities completed the process of appointment within 07.12.2013 and appointed the private respondent Nos. 5 to 14 and they joined their duties with other selected candidates.

7. The petitioners preferred an RTI before the Public Information Officer, Office of the respondent No. 3, seeking details of the candidates. However, such information was not given within the period of one month and accordingly yet another application under RTI Act was filed on 25.06.2015. The first RTI application was filed on 08.03.2014. The information sought were furnished by

communication dated 10.08.2015. Subsequent to this, the petitioners came to learn that out of 44 candidates, who were appointed after the selection the private respondent Nos. 5 to 14 are not eligible for the said post of Laboratory Technician as they were not qualified in terms of the eligibility criteria laid down in the advertisement.

8. Being situated thus, the petitioners preferred a representation on 01.10.2015 before the respondent No. 3 with a prayer to enquire into the matter and take necessary action. When nothing was forthcoming, the petitioners continued to file several representations including on 02.05.2016 and 07.12.2016, however, of to no avail. Thereafter, the petitioners filed a representation before the Hon'ble Chief Minister of Assam on 21.06.2017 for necessary action. Subsequent to this, the respondent No. 3 by its letter dated 21.09.2017, asked the respondent No. 4 to submit a comprehensive report regarding the issued raised by the petitioner by annexure 9. When nothing was forthcoming, the petitioners preferred a writ petition before this court by way WP(C) 4791/2018. However, the said writ petition was withdrawn on the ground that same was defective and certain grounds were not properly explained. Thereafter, the petitioners filed the present writ petition on 17.08.2018.

9. The affidavit of the respondent No. 3 reflects that an enquiry committee was constituted by the respondent No. 4, which submitted its report on 14.10.2015. The details shall be discussed at later part of this judgment. However, the relevant portion on the finding of the committee is quoted herein below.

“But, on verification we have found that the following 6 (six) nos of

Lab Technician namely, 1. Ajanta Deori, 2. Mrinali Bhuyan, 3. Minakshi Borah, 4. Jitumoni Baishya, 5. Jitu Deori, 6. Barsha Deka passed from Government institution (AMC, SMC and GMC). And they had produced their provisional pass certificate and mark sheet during the time of interview on 3rd October to 9th October, 2013 and their result was out before the last date of submission of forms i.e. 11.03.2011.

But, the other five candidates had passed from private institution and they were 1. Kaushik Das, 2. Simant Nath, 3. Pankaj Borah, 4. Aimoni Borah Roy, and 5. Manjumoni Borah.”

10. The arguments of the learned counsel for the petitioners:

Mr. PK Deka, learned counsel for the petitioners contends the following:

- I. The petitioner Nos. 1,2 and 4 completed their Laboratory Technician Course from Assam Medical College, Dibrugarh, and the petitioner Nos. 3 and 6 from Guwahati Medical College, Guwahati and petitioner No. 5 from the Silchar Medical College, Silchar, under the Directorate of Medical Education, Assam, the respondent No. 3.
- II. They completed their course in the year 2007 and all of them have been working under National Rural Health Mission (NRHM) on contractual basis for a considerable period and they have gathered sufficient experience.
- III. Therefore, they did very well in the interview and were expecting for selection.

- IV. The learned counsel contends that they are eligible as per the eligibility criteria laid down in the advertisement.
- V. The RTI reply discloses that the private respondent Nos. 5 to 14 are not eligible for the posts in question as none of them obtained their certificates of Laboratory Technician from any Medical College of Assam or recognized institute of Government of Assam as laid down in the advertisement dated 19.02.2011.
- VI. It is also contended that the respondent No. 5 and 6 appeared in their final examination of Diploma in Medical Laboratory Technician in the month of August, 2012 and July, 2011 respectively whereas the advertisement the last date of submission of application/ form was fixed on 11.03.2011.
- VII. The respondent Nos. 10,11,12 and 14 submitted their provisional certificates along with the application form before the last date i.e. on 11.03.2011 but such certificates were issued on 26.07.2013, 26.05.2011 and 14.06.2011 i.e. after the last date of submission of form fixed on 11.03.2011.
- VIII. Accordingly, the private respondent Nos. 5 to 14 did not possess minimum requisite qualification as per advertisement dated 19.02.2011 on the last date of submission of applications i.e. on 11.03.2011 and therefore, their selection and appointment are illegal and liable to be cancelled.
- IX. The certificates of private respondent Nos. 5 to 14 clearly shows that the said respondents have not passed their courses from any Institution which are recognized by the Government of Assam.

- X. Relying on the affidavit filed by the respondent No. 4, it is contended that the respondents themselves have admitted that the respondent Nos. 10,11,12,13 and 14 had produced their certificates/ mark-sheets etc. at the time of their personal interview.
- XI. Relying on such affidavit, it is contended that the respondent Nos. 5 and 6 acquired Laboratory Technician Certificate from private Institute and their final examination was held after the last date for submission of the application to the posts and accordingly they produced their pass certificate/ mark-sheet at the time of personal interview.
- XII. It is now an admitted fact as reflected from the affidavit of the respondent No. 4 that respondent Nos. 7,8 and 9 also acquired Laboratory Technician Certificate from private institute and they could produce their pass certificate/ mark-sheet etc at the time of their application to the posts.
- XIII. The selection and appointment of the respondent in the given fact and circumstances are bad since its inception. The authority, more particularly the respondent No. 3 and 4 are not having any competence or authority to validate their appointment. The respondents cannot claim any adverse possession of lien on the posts or holding over in the service jurisprudence. Therefore, their continuations in the post to where they were wrongly appointed does not create any right in their favour. In support of such contention, Mr. Deka relies on the judgment of the Hon'ble Apex Court reported in ***M.S. Patil (Dr.) vs Gulbarga University reported in (2010) 10 SCC 63.***

- XIV. The employer cannot accept an appointment of a person who is not having the qualification as mandated in the advertisement.
- XV. The petitioners must be qualified as on the last date for making application for the posts in question or on the date to be specifically mentioned in the advertisement/ notification for the purpose. In support of his contention, Mr. Deka, learned counsel relies the decision of the Hon'ble Apex Court in ***JP Kulshreshtha Doctor Vs Allahabad University reported in (1980) 3 SCC 418.***
- XVI. Mr. Deka also relies on the judgment of this court reported in ***2004 (2) GLT 316 (Guruprasad Chakraborty vs Tripura University and Others)*** to contend that a person who did not have the required qualification in term of the advertisement is not eligible for consideration for selection in the selection process.
- XVII. Mr. Deka further relies on the judgment of the Hon'ble Apex court in ***State of Orissa and another vs Mamata Mohanty reported in (2011) 3 SCC 436*** to contend that necessary possession of prescribed qualification for a Laboratory Technician is having immense importance as lack of qualification and experience may hamper the general public including the patients who visit such hospital inasmuch as the citizen cannot get proper service from un-qualified and under-qualified Laboratory Technician. Therefore, the matter should be eyed from the point of public interest also.

11. The contention of the State respondents:

The state respondent has filed affidavit through the respondent No. 4 i.e. the

Principal cum Chief Superintendant, TMC. The said respondent raises an objection regarding delay in filing the writ petition. It is contended that the selection for the post of Laboratory Technician was held in 2013 and the appointment of the selected candidates were made in 2013 and the writ petition is filed after five years of completion of the selection. Accordingly, it is contended that the present writ petition is not maintainable for delay and laches on the part of the writ petitioners in raising their grievances and therefore same is liable to be dismissed.

12. The specific stand regarding the private respondent and their qualifications, the State respondent took the following stand:

“B) i) One set includes 5 numbers of similarly situated incumbents, namely, Minakshi Borah, Mrinali Bhuyan, Jitumoni Baishya, Jitu Deori and Ajanta Deori (private respondent Nos. 10,11,12,13 and 14) who acquired the Laboratory Technician Certificate Course or above from Govt. institution the result of which was declared just few days back before closing of the last date for application to the post. They produce their pass certificate/ mark sheet etc. at the time of their personal interview.

ii) Other set includes 2 (two) numbers of similarly situated incumbents, namely kaushik Das and Simanta Nath (private respondent Nos. 5 and 6) who acquired the Laboratory Technician Certificate from private institution. Moreover, their final examination for the Laboratory Technician Certificate Course was held after closing of the last date for application to the post. Accordingly, they

produced their pass certificate/ mark sheet etc. at the time of personal interview.

iii) The another set includes 3 (three) numbers of similarly situated incumbents, namely, Pankaj Baruah, Aimoni Borah and Manjumoni Borah (private respondent Nos. 7,8 and 9) who acquired the Laboratory Technician Certificate Course from private institution. They could produce their pass certificate/ mark sheet etc. at the time of their application to the post. The issue of belated submission of documents like pass certificate/ mark sheet etc does not arise for them."

13. It is also contended by the State respondent, that there was an enquiry and the enquiry committee found that certain persons are qualified from recognized Universities but they had produced provisional pass certificate and mark-sheet during the time of interview on 3rd to 9th October and their result was out before the last date of submission i.e. 11.03.2011. Regarding the other five candidates, who passed from private Institution, the enquiry committee opined that whether those institutions are institution as per mandate of Assam Laboratory Technician Service Rule, 2012 is to be determined by the Director of Medical Education of Assam.

14. Mr. B Gogoi, learned counsel for the Health Department produced the record and supported the contentions raised in the affidavit.

15. The stand of respondent Nos. 5,6,7,8 and 9:

The respondent Nos. 5,6,7,8 and 9 have jointly filed an affidavit-in-opposition. The said respondents have also raised the question of delay and maintainability for the reason of delay and laches on the part of the petitioners. They are also evasive to the allegation that their final examination was held after closing of last date of application. They are also evasive to the stand of the petitioners as well as the stand of the respondent No. 4 that they could not produce their pass certificate and mark-sheet at the time of their application to the post.

16. The stand of respondent Nos. 10, 11, 12, 13 and 14:

The respondent Nos. 10, 11, 12, 13 and 14 have filed their affidavit-in-opposition jointly. Their specific stands are that they obtained their certificates of Laboratory of Technician from Guwahati Medical College and Hospital, Silchar Medical College and Hospital and Assam Medical College and Hospital. It is their further contention that they appeared in their respective examination held in December, 2010 and result of the said examination was declared on 05.03.2011 by the Controller of Examination, Srimanta Sankardev University of Health Services. Therefore, they contend that though in respect of respondent No. 14, the certificate was issued on 20.06.2011, the result was declared by a common result by the Controller of Examination of Srimanta Sankardev University on 05.03.2011 much prior to the last date of submission of application. Therefore, the date of obtaining qualification is important not the date of certificate inasmuch as issuance of certificate depends upon the authority, and the petitioners are having no control over it. The said respondents also contend that in view of the fact that they were qualified prior to the last date of submission of application and they being qualified from the Institution owned by the State of Assam, their appointments cannot be faulted with.

17. I have given anxious consideration to the arguments advanced by the learned counsel for the parties. Perused the material available on record and selection records. From the aforesaid, certain undisputed fact emerges which can be summarized as follows:

- I. The last date of submission of applications was 11.03.2011 and the date of advertisement was 19.02.2011.
- II. The essential qualification was Laboratory Technician Certificate Course or above/ equivalent from any Medical College of Assam/ recognized Institute of Government of Assam.
- III. The respondent No. 10, 11 and 12 obtained the required certificates from Institute of Paramedical Sciences, Gauhati Medical College. Their certificates were issued on 11.03.2011 and result was declared on 05.03.2011.
- IV. The respondent No. 13 obtained the required certificate from the Institute of Paramedical Sciences, Silchar Medical College and Hospital and provisional certificate was issued on 05.03.2011.
- V. The result of respondent No. 14 was declared though on 05.03.2011, the Principal of Assam Medical College and Hospital issued the certificate on 20.06.2011.
- VI. The respondent no. 5 obtained the qualification from an Institution, namely Institute of Medical & Technology Research, which is under Monomaniam Sundaranar University, Tamilnadu. The sessions relates to September 10 to August, 2012. The perusal of the said certificate relating to the respondent no. 5 shows that the examination was held in the month of August, 2012. Thus, the

respondent no. 5 appeared in the qualifying examination in the month of August, 2012. Neither the certificates nor the mark-sheet bear any date.

VII. The respondent No. 6, had also passed the final year examination for the session July, 2009 to June, 2011 from the same Institute as that of respondent No. 5. The certificate discloses that the exam was held in the month of July, 2011. Similar is the case in respect of this respondent also, as neither the mark-sheet nor the certificate bear any date.

VIII. The mark-sheet and certificate of respondent No. 5 and 6, who have passed from Institution of Medical and Technology Research discloses that the same is registered by Government of Assam based on Central Government Act, however, it is not discernable under which Central Government Act same is recognized by the State Government inasmuch as the respondent authorities are also silent whether they recognize this.

IX. The respondent No. 7 had obtained the qualification from an Institution called Rural Institution of Medical Technology, Jhargram, Midnapur, West Bengal. The mark-sheet shows that the examination was held on 28th of August, 1999 and the mark-sheet is dated 15th of September, 1999. However, nothing is disclosed in the mark-sheet that said Institution is recognized by the State of Assam.

X. No specific stand has been taken in the affidavit by the respondent No. 4 regarding reorganization of such Institution by State of Assam.

- XI. The respondent No. 8 has produced one admit card from an Institute called Northeast Board of allied Health Studies and one registration certificate dated 30.04.2007 from the same Institution and one certificate dated 15.03.2008, which discloses that she has passed diploma of Medical Laboratory Technology in the examination held on September, 2007. The certificate shows the similar language that the Institution is registered by the Government of Assam, based on Central Government Act.
- XII. The respondent No. 9 passed one year Technician Training in Anatomy, Physiology, Hematology, Blood Bank, Clinical Pathology, Micro-biology, Serology, Clinical, Bio-chemistry, Histo-Pathology, Perasicology, Lab-management and Health Education theory and Practical Training and passed the same in the final examination conducted by the Medical Examination Board from 12.12.2003 to 30.12.2003 and such certificate is issued by Saraighat Institute of Medical Technology and it discloses that it is under IP Act Section XXI or 1860 and 36 Act 1971. However, it is not discernable from any material whether such Institution is registered as mandated in the advertisement, nor the State respondent has taken any stand.

18. Though the court has come to the aforesaid finding, this court is of the considered opinion that before dealing with the matter further, this court should first consider the issue of delay on the part of the petitioners in approaching this court as both the state respondents as well as the private respondents, have strenuously urged such point.

19. The maker of Constitution while incorporating Article 226 of the Constitution of India have empowered, the High Court to issue writs in the nature of mandamus, certiorari etc. or to issue any direction or to pass any such other order or orders. However, it has not been provided any time frame within which such an application for such writ or direction ought to be filed. By now it is well settled that the Limitation Act, 1963 is not applicable to a petition under Article 226 of the Constitution of India. Law is further well settled that Writ Courts may refuse to grant relief in cases, where writ petitions are filed after long, unreasonable and inordinate delay. The Hon'ble Apex Court in the case of ***Veerayeeammal vs. Seenimmal*** reported in **2002 1 SCC 134** explained the word reasonable time. The paragraph 13 of the said judgment can be quoted gainfully, which is as follows:

“13. The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its conclusion according to ideosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means as soon as circumstances permit. In Law Lexicon it is defined to mean "A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstance will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space that 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea.”

20. The delay in the present case in the considered opinion of this court arose due to inaction on the part of the respondent authorities. Select list was published on 07.12.2013 and the petitioners filed application under RTI seeking detail of the selected candidates on 08.03.2014 and information was given on 10.08.2015. Then only, the petitioners could learn the illegality. Then they filed representation, the Hon'ble Chief Minister directed for necessary action on 21.06.2017 and respondent No. 3 wrote his letter to respondent No. 4 asking a comprehensive report on 21.09.2017. However, it is not discernable whether such report was submitted or not. The respondent State took a stand in the affidavit that in the year 2015 itself a committee was constituted, which submitted its report on 14.10.2015. The Report of the said Enquiry Committee reveals that the committee could not ascertain whether the five candidates i.e. the respondent Nos. 5, 6, 7, 8 and 9, who had passed from private institution are recognized by the State of Assam and the same is to be ascertained by the Director of Medical Education of Assam. However, the State respondents have conveniently remained silent what action have been taken regarding verification of the institution as recommended by the committee.

21. In view of the aforesaid facts, this court is the considered opinion that the delay in filing the writ petition by the present petitioners was reasonable and therefore it is held that the writ petition cannot be dismissed on the sole ground of delay in approaching this court, more particularly in view of the indifferent approach of the State authority in redressing the grievances of the petitioner inasmuch as the report was given in the year 2015 itself.

22. The Hon'ble Apex Court in ***Ashok Kumar Sharma and Other Vs.***

Chandar Shekhar and another, reported in (1997) 4 SCC 218 has held that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone. It was further held that a person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. Such conclusion was based on the principle that an advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. It was also held that the reason behind such proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied, notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Finally, the Hon'ble court held that such application ought to have been rejected at the inception itself.

23. Similar principle was laid down by the ***Hon'ble Apex court in Rakesh Kumar Sarma Vs. State (NCT) of Delhi and Others*** reported in ***1997 4 SCC 18***. The Hon'ble Apex court also held that such defect of lacking eligibility on the last date cannot be cured at any stage and appointing such person amount to serious illegality and not mere irregularity.

24. In the backdrop of settled proposition of law, now let this court examine the present case. The undisputed fact as discussed and summarised herein

above leads to the conclusion that the respondent Nos. 10, 11 and 12 obtained the required qualification as per the advertisement dated 19.02.2011 from recognized institute, results were declared on 05.03.2011 though their certificates were issued on 11.03.2011. Thus these respondents obtained their required qualification before the last date of submission from a recognized institute. However, certificates were issued on 11.03.2011. Therefore, in the considered opinion of this court these respondents became eligible prior to last date of submission of the applications. Therefore, in the considered opinion, their appointment cannot be interfered with on the ground that their certificates were issued on 11.03.2011 and accordingly, the appointment of respondent Nos. 10, 11 and 12 are upheld.

25. The respondent No. 13 obtained the qualification from a recognized institute under Silchar Medical College and provisional certificate was issued on 05.03.2011. Accordingly, the respondent No. 3 also acquired the prescribed qualification prior to the last date of submission of application i.e. 11.03.2011 and such appointment cannot be interfered with and accordingly, the appointment of respondent No. 13 is upheld.

26. Similar is the case of respondent No. 14 as that too of respondent Nos. 10, 11 and 12. Respondent No. 14's result also declared on 05.03.2011 from a recognized institute i.e. from Assam Medical College & Hospital though the certificate was issued on 20.06.2011. This court is of the considered opinion that though the certificate was issued after last date of examination such certificate relates back to the result declared on 05.03.2011, wherein the respondent No. 14 qualified. Therefore, the selection of the respondent No. 14

cannot be interfered with and accordingly the appointment of respondent No. 14 is upheld.

27. The material available on record discloses that the respondent No. 5 appeared in the qualifying examination in the month of August, 2012. The certificate issued by the Institution namely, Institute of Medical Technology Research, Tamilnadu bears no date nor in the mark-sheet issued by the said institution. Accordingly, this court is of the considered opinion that the selection and appointment of the respondent no. 5 is illegal for the reason that the said respondent acquired the qualification subsequent to the last date of submission of application and therefore such selection and appointment is liable to be set aside. Accordingly, the same is set aside.

28. Certificate of respondent No. 6 discloses that the qualifying examination was held in the month of July, 2011 and neither the mark-sheet nor the certificate bears any date. He also passed the examination as that from the institution where from the respondent No. 5 acquired the qualification. Accordingly, this court is of the considered opinion that the selection and appointment of the respondent no. 6 is illegal and therefore such selection and appointment is liable to be set aside. Accordingly, same is set aside.

29. Though the respondent No. 7 obtained the qualification from Rural Institute of Medical Technology, Jhargram Midnapur in the year 1999 the certificate do not disclose that it is an recognized Institute inasmuch as the State authorities are absolutely silent whether such institution is reorganized by Government of Assam. Though the silence speaks volume, however, in view of

the silence of the State respondent and in view of absence of positive assertion that the said institute is a recognized institute as mandated in the advertisement in question and also balancing the claim of the respondent No. 7, this court is of the considered opinion that a chance should be given to the State respondents to verify the certificate and institution from where the respondent No. 7 had obtained the certificate and if after verification it is found that on the last date of submission of application by the said respondent pursuant to advertisement dated 19.02.2011 i.e. on 11.03.2011 the said institution was not recognized as per the advertisement, the appointment of the respondent No. 7 to the post in question shall be treated as illegal and respondent No. 7 be terminated from service inasmuch as it was the bounded duty of the employer to verify such fact before appointing the respondent No. 7. Such exercise shall be carried out by the Director of Medical Education, Assam within a period of four weeks from the date of the judgment as suggested by the Enquiry Committee.

30. Similar is the case of respondent Nos. 8 and 9. Respondent No. 8 had produced two certificates one dated 30.04.2007 and other dated 15.03.2008, which discloses that she had qualified diploma in Medical Laboratory Technology in the examination held on September, 2007 from North East Board Allied Health Studies and the respondent No. 9 from Saraighat Institute of Medical Technology. Similar is the stand of the state respondent in respect of these two respondents inasmuch as the state is silent regarding the acceptance and validity of such certificates and the institute. Accordingly, State respondents are directed to verify the certificate and institution from where the respondent No. 8 and 9 had obtained the certificate and if after verification it is found that on the last date of submitting application pursuant to advertisement dated 19.02.2011



i.e. on 11.03.2011 the said institution were not recognized, the appointment of the respondent Nos. 8 and 9 to the post in question shall be treated illegal and respondent Nos. 8 and 9 be terminated inasmuch as it was the bounded duty of the employer to verify such fact before appointing the respondent Nos. 8 and 9.

31. Having decided the writ petition in the aforesaid manner, it is directed that the vacancies that have arisen and may arise shall be filled up by recasting the select list in question, on the basis of marks obtained by the candidates in the selection process and appoint those candidates who are found to be eligible on the basis of the qualification as per the advertisement dated 19.02.2011, including the petitioners, except the petitioner Nos. 2 & 4 who have withdrawn their names from the present petition.

32. The entire exercise shall be carried out within a period of six weeks from today including the determination in respect of the respondent Nos. 7, 8 and 9.

33. In the aforesaid term, this writ petition stands disposed of.

JUDGE

Comparing Assistant