GAHC010195242020

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

Case No. : WP(C)/58/2021

DR. PRANAB PRASAD BORAH
S/O- DULU BORAH, R/O- MOHBHETI, P.O. SRIRAM BONAMALI, DIST.- MAJULI (ASSAM), PIN- 785105

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, HIGHER EDUCATION DEPTT., DISPUR, GHY-6

2:DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GHY-19

3:PRINCIPAL AND SECRETARY
DHUPDHARA COLLEGE
DIST.- GOALPARA
ASSAM
PIN- 783123

4:BIKALI COLLEGE
DHUPDHARA REP. BY PRINCIPAL
DIST.- GOALPARA
ASSAM
PIN- 783123

5:SELECTION COMMITTEE CONSTITUTED BY THE BIKALI COLLEGE
DHUPDHARA ON 23-12-2020 FOR INTERVIEW FOR SELECTION OF ASSTT. PROFESSOR OF IN BIKALI COLLEGE
DHUPDHARA REP. BY ITS PRINCIPAL
DHUPDHARA- 783123

6:DR. JAYASHREE KALITA
W/O- SRI RANJAN KALITA
R/O VILL.- NABAPUR
P.O. AND P.S.- BOKO
DIST.- KAMRUP (R)
ASSAM
PIN- 781123

Advocate for the Petitioner : MR D MAHANTA

Advocate for the Respondent : SC, HIGHER EDU

Linked Case : WP(C)/989/2021

PRANAB JYOTI PARASHAR AND ANR
S/O BHABESH CH. SARMAH
RESIDENT OF VILLAGE BAREDELA
PO KENDUA
DIST KAMRUP 781121

2: DR. SYED HAMIDUL ISLAM
S/O SYED ABDUL LATIF
RESIDENT OF VILLAGE KUMARAPATA
PO PUTHIMARI
DIST KAMRUP R ASSAM 781380
VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HIGHER EDUCATION DEPARTMENT
DISPUR GUWAHATI 06

2:DIRECTOR OF HIGHER EDUCATION ASSAM

KAHILIPARA
GUWAHATI 19
3:PRINCIPAL AND SECRETARY
BAPUJEE COLLEGE SARUKSHETRI
BARPETA
ASSAM 781307
4:BAPUJEE COLLEGE

SARUKSHETRI REPRESENTED BY PRINCIPAL
DIST BARPETA
ASSAM 781307
5:SELECTION COMMITTEE
CONSTITUTED BY THE BAPUJEE COLLEGE
SARUKSHETRI ON 27.01.2021 FOR INTERVIEW FOR SELECTION OF
ASSISTANT PROFESSOR OF MATHEMATICS IN BAPUJEE COLLEGE
SARUKSHETRI REPRESENTED BY ITS PRINCIPAL BAPUJEE COLLEGE
781307
6:DR. ANAMIKA SARMA
W/O- SRI KABIN SARMA
R/O VILL.- BANGAON
P.S.- BELSOR
DIST.- NALBARI
ASSAM.

Advocate for : MR D MAHANTA
Advocate for : SC
HIGHER EDU appearing for THE STATE OF ASSAM AND 4 ORS

Linked Case : WP(C)/5576/2020

DR. NIRMALA DEVI
D/O KAMINI MOHAN SHARMA

RESIDENT OF RAZGARH
PO HUALKUCHI
DIST KAMRUP ASSAM
781103

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
HIGHER EDUCATION DEPARTMENT
DISPUR
GUWAHATI 6

2:THE DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GUWAHATI 19
3:PRINCIPAL AND SECRETARY

SUREN DAS COLLEGE
HAJO
DIST KAMRUP ASSAM
781102
4:SUREN DAS COLLEGE

HAJO
REPRESENTED BY PRINCIPAL
KAMRUP
ASSAM
781102
5:SELECTION COMMITTEE.
CONSTITUTED BY THE SUREN DAS COLLEGE
HAJO ON 10.12.2020 FOR INTERVIEW OF ASSISTANT PROFESSOR OF ECONOMICS IN SUREN DAS COLLEGE
HAJO
REPRESENTED BY ITS PRINCIPAL
HAJO
781102
6:BANDITA DEKA
D/O SRI DILIP DEKA
R/O- RANGIA TOWN
WARD NO. 4
RANGIA
P.O AND P.S- RANGIA
DISTRICT- KAMRUP (R)
PIN 781354.

Advocate for : MR D MAHANTA
Advocate for : SC
HIGHER EDU appearing for THE STATE OF ASSAM AND 5 ORS

Linked Case : WP(C)/952/2021

DR NIRMALA DEVI
D/O- KAMINI MOHAN SHARMA
R/O- RAZGARH
P.O.- SUALKUCHI
DIST.- KAMRUP (ASSAM)
PIN- 7851103

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM

HIGHER EDUCATION DEPTT.
DISPUR
GHY-6

2:DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GHY-19
3:PRINCIPAL AND SECRETARY
BAPUJEE COLLEGE
SARUKSHETRI
DIST- BARPETA
ASSAM
PIN- 781307
4:BAPUJEE COLLEGE
SARUKSHETRI REP. BY PRINCIPAL
DIST.- BARPETA
ASSAM
PIN- 781307
5:SELECTION COMMITTEE CONSTITUTED BY THE BAPUJEE COLLEGE
SARUKSHETRI ON 2-2-2021 FOR INTERVIEW FOR SELECTION OF ASSTT.
PROFESSOR OF ECONOMICS IN BAPUJEE COLLEGE
SARUKSHETRI REP. BY ITS PRINCIPAL
BAPUJI COLLEGE
DIST.- BARPETA
ASSAM
PIN- 781307

Advocate for : MR D MAHANTA
Advocate for : SC
HIGHER EDU appearing for THE STATE OF ASSAM AND 4 ORS

Linked Case : WP(C)/69/2021

DIPTI SIKHA NATH
D/O MANABENDRA NATH
R/O VILL. CHAKABAUSHI
P.O. BHULUKADOBA
DIST. BARPETA
ASSAM
PIN 781317

VERSUS

THE STATE OF ASSAM AND 4 ORS

REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
HIGHER EDUCATION DEPTT.
DISPUR
GUWAHATI 6

2:DIRECTOR OF HIGHER EDUCATION
ASSAM KAHILIPARA
GUWAHATI 19
3:PRINCIPAL AND SECY.

MANKACHAR COLLEGE
DIST. MANKACHAR
ASSAM
PIN 781317
4:MANKACHAR COLLEGE

MANKACHAR REPRESENTED BY PRINCIPAL
DIST. MANKACHAR
ASSAM
PIN 781317
5:SELECTION COMMITTEE CONSTITUTED BY THE MANKACHAR COLLEGE

MANKACHAR ON 12-12-2020 FOR INTERVIEW FOR SELECTION OF ASSTT. PROFESSOR OF IN MANKACHAR COLLEGE
MANKACHAR REPRESENTED BY ITS PRINCIPAL
DHUPDHARA 781317

Advocate for : MR D MAHANTA
Advocate for : SC
HIGHER EDU appearing for THE STATE OF ASSAM AND 4 ORS

Linked Case : WP(C)/57/2021

DR. ANURADHA DAS
D/O NILA DAS
R/O BELTOLA
SOURAV NAGAR
P.O. BELTOLA
DIST. KAMRUP (ASSAM)
PIN 781028

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
HIGHER EDUCATION DEPTT.
DISPUR
GUWAHATI-6

2:DIRECTOR OF HIGHER EDUCATION

ASSAM KAHILIPARA
GUWAHATI 19
3:PRINCIPAL AND SECY.

MANGALDAI COLLEGE
MANGALDAI
DIST. MANGALDAI
ASSAM
PIN 784125
4:MANGALDAI COLLEGE

MANGALDAI
REPRESENTED BY PRINCIPAL
DIST. KAMRUP
ASSAM
PIN 784125
5:SELECTION COMMITTEE CONSTITUTED BY THE MANGALDAI COLLEGE

MANGALDAI
ON 16-12-2020 FOR INTERVIEW FOR SELECTION OF ASSTT. PROFESSOR OF BOTANY IN MANGALDAI COLLEGE
MANGALDAI
REPRESENTED BY ITS PRINCIPAL
MANGALDAI
PIN 784125
6:RAHUL MALAKAR
S/O- SRI DILIP KUMAR MALAKAR
R/O- HOUSE NO. 6
LUIT PATH
JYOTI NAGAR
P.O.- BAMUNIMAIDAN
PIN- 781021.

Advocate for : MR D MAHANTA
Advocate for : SC
HIGHER EDU appearing for THE STATE OF ASSAM AND 5 ORS

Linked Case : WP(C)/5578/2020

DR. RUHUL AMIN BEPARI
S/O M U BEPARI

RESIDENT OF LAKHIMARI
DIST DHUBRI ASSAM
78334

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HIGHER EDUCATION DEPARTMENT
DISPUR
GUWAHATI 6

2:DIRECTOR OF HIGHER EDUCATION
ASSAM

KAHILIPARA
GUWAHATI 19
3:PRINCIPAL
BHOLANATH COLLEGE
DHUBRI

4:BHOLANATH COLLEGE.
DHUBRI
REPRESENTED BY ITS PRINCIPAL AND SECRETARY
DIST DHUBRI
ASSAM
5:SELECTION COMMITTEE

CONSTITUTED BY THE BHOLANATH COLLEGE
DHUBRI FOR INTERVIEW HELD ON 10.12.2020 FOR SELECTION OF ASSISTANT PROFESSOR OF CHEMISTRY IN BN COLLEGE
DHUBRI
REPRESENTED BY ITS PRINCIPAL
DHUBRI

Advocate for : MR D MAHANTA
Advocate for : SC
HIGHER EDU appearing for THE STATE OF ASSAM AND 4 ORS

Linked Case : WP(C)/159/2021

PRANAB JYOTI PARASHAR
S/O- SHRI BHABESH CHANDRA SARMAH
R/O- VILL- BAREDALA
P.O. KENDUA
P.S. BAIHATA CHARIALI
DIST.- KAMRUP
ASSAM
PIN- 781121

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HIGHER EDUCATION DEPTT.
DISPUR
GHY-6

2:THE DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GHY-19
3:THE SELECTION COMMITTEE/BOARD FOR SELECTION OF ASSTT.
PROFESSOR OF MATHEMATICS
ADP COLLEGE
NAGAON
P.O. HAIBORGAON
DIST.- NAGAON
ASSAM
PIN- 782002 (REP. BY ITS CHAIRMAN)
4:THE PRINCIPAL AND SECRETARY
ADP COLLEGE
NAGAON
P.O. HAIBORGAON
DIST.- NAGAON
ASSAM
PIN- 782002

Advocate for : MR. N HAQUE
Advocate for : SC
HIGHER EDU appearing for THE STATE OF ASSAM AND 3 ORS

Linked Case : WP(C)/1022/2021

SYED HAMIDUL ISLAM AND ANR
S/O. SYED ABDUL LATIF
VILL. KUMARAPATA
P.O. PUTHIMARI
DIST. KAMRUP (R)
PIN-781380.

2: PRANAB JYOTI PARASHAR
S/O. BHABESH CH. SARMA
R/O. VILL. BAREDELA
P.O. KENDUA
DIST. KAMRUP
PIN-781121.
VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HIGHER EDUCATION DEPTT.
DISPUR
GUWAHATI-06.

2:DIRECTOR OF HIGHER EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-19.
3:PRINCIPAL AND SECRETARY

NORTH GAUHATI
COLLEGE
KAMRUP
DIST. KAMRUP
ASSAM
PIN-781031.
4:NORTH GAUHATI
COLLEGE
KAMRUP

REP. BY PRINCIPAL
DIST. KAMRUP
ASSAM
PIN-781031.
5:SELECTION COMMITTEE CONSTITUTED BY THE PRINCIPAL

NORTH GAUHATI COLLEGE
KAMRUP
ON 31.01.2021 FOR INTERVIEW FOR SELECTION OF ASSTT. PROFESSOR OF MATHEMATICS IN NORTH GAUHATI COLLEGE

REP. BY ITS PRINCIPAL
NORTH GAUHATI COLLEGE
DIST. KAMRUP
ASSAM
PIN-781031.

Advocate for : MR D MAHANTA
Advocate for : SC
HIGHER EDU appearing for THE STATE OF ASSAM AND 4 ORS

Linked Case : WP(C)/50/2021

DR. DHANJIT BARMAN AND ANR
S/O- GHANAKATA BARMAN
R/O- PUB BHAGABATIPARA
P.O. PUB BHAGABATIPARA
DIST.- KAMRUP (R)
PIN- 781132

2: DR. SYED HAMIDUR ISLAM
S/O- SYED ABDUL LATIF
R/O- VILL- KUMARAPATA
P.O. PUTHIMARI
DIST.- KAMRUP (R)
PIN- 781380
VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HIGHER EDUCATION DEPTT.
DISPUR
GHY-6

2:DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GHY-19
3:PRINCIPAL AND SECRETARY
PANDIT DEENDAYAL UPADHYAYA ADARSHA MAHAVIDYALAYA
AMJONGA
DIST.- KAMRUP
ASSAM
PIN- 783124
4:PANDIT DEENDAYAL UPADHYAYA ADARSHA MAHAVIDYALAYA
AMJONGA
REP. BY PRINCIPAL

DIST.- GOALPARA
ASSAM
PIN- 783124
5:SELECTION COMMITTEE CONSTITUTED BY THE PANDIT DEENDAYAL UPADHYAYA ADARSHA MAHAVIDYALAYA
AMJONGA
ON 22-12-2020 FOR INTERVIEW FOR SELECTION OF ASSTT. PROFESSOR OF MATHEMATICS IN PANDIT DEENDAYAL UPADHYAYA ADARSHA MAHAVIDYALAYA
AMJONGA
REP. BY ITS PRINCIPAL
GOALPARA- 783124

Advocate for : MR D MAHANTA
Advocate for : SC
HIGHER EDU appearing for THE STATE OF ASSAM AND 4 ORS

Date(s) of hearing : 24.02.2022
Date of judgment : 09.03.2022

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

I have heard Shri TJ Mahanta, learned Senior Counsel assisted by Shri D Mahanta, learned counsel appearing for the petitioners in WP(C) Nos.5576/2020, 5578/2020, 50/2021, 57/2021, 58/2021, 69/2021, 952/2021, 989/2021 and 1022/2021 and Shri K Uddin, learned counsel for the petitioner in WP(C)/159/2021. The Higher Education Department, Assam is represented by its Standing Counsel, Shri K Gogoi. Also heard Shri UK Nair, learned Senior Advocate assisted by Shri MP Sarma, learned counsel for the respondent no. 6 in WP(C)/5576/2020; Shri PD Nair, learned counsel for the respondent no. 4 in WP(C)/159/2021; Shri SP Sharma, learned counsel for the respondent nos. 3, 4 and 5 in WP(C) Nos. 5576/2020, 952/2021 and 989/2021; Shri R Goswami, learned counsel for the respondent nos. 3, 4 and 5 in WP(C)/58/2021 and

respondent no. 6 in WP(C)/57/2021; Ms. L Devi, learned counsel for the respondent no. 6 in WP(C)/58/2021.

2. The issue involved pertains to a recruitment process for the post of Assistant Professor in various subjects in different Colleges across the State of Assam. The primary contention is that the mode of selection has been changed midway which is not permissible in law. However, before adverting to the issue which has arisen for determination in the present cases, the facts of each case are required to be stated in brief.

WP(C)/58/2021 (Dr. Pranab Prasad Bora)

3. An advertisement dated 18.02.2020 was published by the Bikali College, Dhupdhara for filling up of various posts of Assistant Processor, including that of Assamese. The petitioner, who claims to be eligible and qualified, submitted his application whereafter the interview was scheduled on 23.12.2020. While appearing in the said interview, the petitioner could realize that the procedure for conducting the interview was not as per the Government OM dated 08.11.2018 which was prevalent at the time of initiation of the recruitment process but in accordance with a new OM dated 25.11.2020. It is the case of the petitioner that the said move is, *per se* illegal and accordingly not sustainable in law.

WP(C)/5576/2020 (Dr. Nirmala Devi)

4. An advertisement dated 13.08.2020 was published by the Suren Das College, Hajo for filling up of various posts of Assistant Processor, including that of Economics. The petitioner, who claims to be eligible and qualified, submitted her application whereafter the interview was scheduled on 10.12.2020. While appearing in the said interview, the petitioner could learn that the procedure for conducting the interview will be as per OM dated 25.11.2020 which was not

contemplated in the advertisement. It is the case of the petitioner that the said move is, *per se* illegal.

WP(C)/50/2021 (Dr. Dhanjit Barman and Ors.)

5. An advertisement dated 01.01.2020 was published by the Pandit Deendayal Upadhyaya Adharsha Mahavidyalaya, Amjonga for filling up of various posts of Assistant Processor, including that of Mathematics. The petitioners, who claim to be eligible and qualified, submitted their applications whereafter the interview was scheduled on 22.12.2020. While appearing in the said interview, the petitioners could realize that the procedure for conducting the interview was not as per the Government OM dated 08.11.2018 which was prevalent at the time of initiation of the recruitment process but in accordance with a new OM dated 25.11.2020. It is the case of the petitioners that the said move is, *per se* illegal.

WP(C)/57/2021 (Dr. Anuradha Das)

6. An advertisement dated 13.02.2020 was published by the Mangaldai College for filling up of various posts of Assistant Processor, including that of Botany. The petitioner, who claims to be eligible and qualified, submitted her application whereafter the interview was scheduled on 16.12.2020. While appearing in the said interview, the petitioner could realize that the procedure for conducting the interview was not as per the Government OM dated 08.11.2018 which was prevalent at the time of initiation of the recruitment process but in accordance with a new OM dated 25.11.2020. It is the case of the petitioner that the said move is, *per se* illegal.

WP(C)/69/2021 (Ms. Dipti Sikha Nath)

7. An advertisement dated 07.03.2020 was published by the Mankachar College for filling up of various posts of Assistant Processor, including that of Assamese. The petitioner, who claims to be eligible and qualified, submitted her application whereafter the interview was scheduled on 12.12.2020. While appearing in the said interview, the petitioner could realize that the procedure for conducting the interview was not as per the Government OM dated 08.11.2018 which was prevalent at the time of initiation of the recruitment process but in accordance with a new OM dated 17.11.2020. It is the case of the petitioner that the said move is, *per se* illegal.

WP(C)/159/2021 (Pranab Jyoti Prasar)

8. An advertisement dated 09.09.2020 was published by the ADP College, Nagaon for filling up of two posts of Assistant Processor in Mathematics. The petitioner, who claims to be eligible and qualified, submitted his application whereafter the interview was scheduled on 24.12.2020. While appearing in the said interview, the petitioner could realize that the procedure for conducting the interview was not as per the Government OM dated 08.11.2018 which was prevalent at the time of initiation of the recruitment process but there was a change by two notifications, namely, 17.11.2020 and 25.11.2020. It is the case of the petitioner that the said move is, *per se* illegal.

WP(C)/952/2021 (Dr. Nirmala Devi)

9. An advertisement dated 13.08.2020 was published by the Bapujee College, Sarukhetri for filling up of various posts of Assistant Processor, including that of Economics. The petitioner, who claims to be eligible and qualified, submitted her application whereafter the interview was scheduled on 02.02.2021. While appearing in the said interview, the petitioner could realize that the procedure for conducting the interview was not as per the Government OM dated

08.11.2018 which was prevalent at the time of initiation of the recruitment process but in accordance with a new OM dated 25.11.2020. It is the case of the petitioner that the said move is, *per se* illegal.

WP(C)/989/2021 (Pranab Jyoti Parashar and Anr.)

10. An advertisement dated 13.08.2020 was published by the Bapujee College, Sarukhetri for filling up of various posts of Assistant Processor, including that of Mathematics. The petitioners, who claim to be eligible and qualified, submitted their applications whereafter the interview was scheduled on 27.01.2021. While appearing in the said interview, the petitioners could realize that the procedure for conducting the interview was not as per the Government OM dated 08.11.2018 which was prevalent at the time of initiation of the recruitment process but in accordance with a new OM dated 25.11.2020. It is the case of the petitioners that the said move is, *per se* illegal.

WP(C)/1022/2021 (Dr. Sayed Hamidul Islam and Anr.)

11. An advertisement dated 23.08.2020 was published by the North Gauhati College for filling up of various posts of Assistant Processor, including that of Mathematics. The petitioners, who claim to be eligible and qualified, submitted their applications whereafter the interview was scheduled on 30.01.2021. While appearing in the said interview, the petitioners could realize that the procedure for conducting the interview was not as per the Government OM dated 08.11.2018 which was prevalent at the time of initiation of the recruitment process but in accordance with a new OM dated 25.11.2020. It is the case of the petitioners that the said move is, *per se* illegal.

12. The learned Senior Counsel for the petitioners, Shri TJ Mahanta (except

in WP(C)/159/2021) submits that the impugned process of recruitment is not in accordance with law inasmuch, as it deviates from the settled position that recruitment must be done as per the law prevailing at the time of advertisement which is the initiation of the process. To be more specific, the learned Senior Counsel argues that at the time of issuance of the advertisements for filling up of the posts, as indicated above, the guidelines contained in the OM dated 08.11.2018 was applicable. Therefore, it is that OM dated 08.11.2018 which has to be followed in the recruitment process. However, by deviating from the established principles of law, the recruitment has been done by following the guidelines of subsequent OMs dated 17.11.2020 and 25.11.2020. The crux of the argument is that the Rules of the game cannot be changed after the game has begun and in the instant case, the process of recruitment which is the game had begun after publication of the advertisement on various dates and admittedly, on those dates, it was the OM dated 08.11.2018 which was governing the field. Therefore, any subsequent change in the policy, leading to the change in the OM cannot be made applicable in the recruitment process which had already started. In other words, it is submitted that the same would amount to change the Rules of the game. It is further submitted on behalf of the petitioners that the interview should be held as per the OM dated 08.11.2018 prevailing at the relevant time and the selected candidate be offered the appointment.

13. The learned Senior Counsel has also stated that the Department has filed affidavit in one of the writ petitions, namely, WP(C)/952/2021 in which the petitioner had also filed rejoinder. By referring to paragraph 10 of the said rejoinder, it is submitted that the explanation **sought** to be made was wholly inadequate. For ready reference, the averments made in paragraph 10 of the rejoinder affidavit dated 17.03.2021 is extracted hereinbelow-

> "*10. That, in anyhow, the action of the respondent authorities are bias in nature due to the fact that the O.M. dated 18-11-2018 was changed after*

beginning of selection process and in fact, in the same advertisement similarly situated persons have been already appointed but some of the petitioners subjects were left out due to the in action of the respondent authority to conduct interview in time. As example in WP(C) No.5576/2020, the college authority had advertised more than 15 post and other posts were already conducted interview and they are getting appointments as per O.M. dated 8-11-2018 but petitioner post is conducted as per O.M. dated 25-11-2020. It is complete violation of article 14 of the Constitution of India."

14. Shri K Uddin, learned counsel for the petitioners in WP(C)/159/2021 endorses the submissions of the learned Senior Counsel, Shri Mahanta.

15. In support of the submissions on behalf of the petitioners, the following decisions have been relied upon:

i) (2008) 3 SCC 724, Madan Mohan Sharma Vs. State of Rajasthan;

ii) (2010) 7 SCC 560, Mohd. Raisul Islam and Others Vs. Gokul Mohan Hazarika and Ors.;

iii) (2011) 12 SCC 85, Bedanga Talukdar Vs. Saifudaullah Khan and Others;

iv) 2018 (4) GLT 626, Chandana Deka Vs. State of Assam;

v) Judgment dated 28.11.2019 in Civil Appeal No. 9100/2018 (APSC & Ors. Vs. Pranjal Kumar Sharma & Ors.);

vi) (2019) 3 SCC 672, High Court of Hyderabad Vs. P. Murali Mohan Reddy and Others.

16. In the case of ***Madan Mohan Sharma (Supra)*** it has been laid down that once the advertisement was issued on the basis of the circular operating at that particular time, the selection process should continue on the basis of the criteria which was laid down and it cannot be on the basis of the criteria which has been made subsequently.

17. In the case of ***Md. Raisul Islam (Supra)***, it has been held that once a process of selection is started on the basis of the existing Rules, the said Rules continue to govern the selection process, notwithstanding any amendment in the Rules, in the meantime.

18. In the case of ***Bedanga Talukdar (Supra)***, it has been held that there should be no relaxation in the terms and conditions contained in the advertisement of competitive examinations unless, power of relaxation is duly reserved.

19. In the case of ***Chandana Deka (Supra)***, this Hon'ble High Court has relied upon the case of ***Madan Mohan Sharma (Supra)***.

20. In the case of ***Pranjal Kumar Sarma (Supra)***, the Hon'ble Supreme Court reversed the direction of the High Court to hold the recruitment process initiated by the APSC through the advertisement dated 28.12.2018 under the 2010 Rules and not as per the procedure laid down in 2019. The case of ***Murali Mohan Reddy (Supra)*** has been cited to bring home the same proposition regarding adhering to the existing Rules.

21. Broadly speaking, the aforesaid judgments have been cited to bring home the contention that selection be held on the basis of the criteria / guidelines prevailing on the date of advertisement and cannot be on the basis of the criteria / guidelines which have been made subsequently.

22. The learned Senior Counsel further submits that the UGC Regulations are mandatory in nature and that there should not be any conflict between the State

Laws and the Central Laws and in this connection, the following citations have been relied upon

i) (2009) 4 SCC 590, Annamali University Vs. Secretary to the Govt., Information and Tourism Department;

ii) (2015) 3 GLT 211, Banashree Bharddash Vs. State of Assam and Others.

23. Considering the submissions questioning the *locus* of the petitioners, who are unsuccessful candidates to maintain the present challenge, it is submitted that the embargo laid down by the Hon'ble Supreme Court in the case of ***Madan Lal Vs. State of Jammu and Kashmir*** reported in ***(1995) 3 SCC 486*** is not an absolute bar and in this connection, the petitioners have relied upon the case reported in ***AIR 1997 SC 2110 (Raj Kumar and Others Vs. Shakti Raj)***.

24. *Per contra,* Shri K. Gogoi, learned Standing Counsel, Higher Education Department submits that the present bunch of litigations should not be treated in the manner projected by the petitioners and rather, the reasons necessitating such change should be looked into by this Court. The learned Standing Counsel submits that there is no dispute that at the time of issuing the advertisement, the OM dated 08.11.2018 was holding the field. The actual interview for the recruitment in question was however after coming into force the OM dated 17.11.2020 and in one case, the OM dated 25.11.2020. The learned Standing Counsel fairly submits that normally the contention of the petitioners would have merited consideration but in these cases, there is a requirement to lift the veil and examine what is the nature of change in the Office Memorandum. The major change between the earlier OM dated 08.11.2018 and later OMs are that the marks allotted for *viva-voce* (5 marks) have been done away with. The learned Standing Counsel submits that in the segment of *viva-voce* where 5 (five) marks were earlier allotted, there was a scope of nepotism / favouritism / bias

inasmuch, as marks could be obtained at the discretion of the Selection Committee Members and these 5 (five) marks which have been replaced by making a slight increase in the marks allotted against the qualification of HSSLC, Degree and Master Degree. Further, 3 (three) marks have been allotted for NCC (C) Certificate holder, Gold Medal obtained in any event of the University / Youth Festival and 1 (one) mark for representing Assam in any Olympic Sports Event at the National Level. After publication of the OM dated 17.11.2020 it was detected that there was an error in the marks under the Head for Research Contribution and Experience which should have been 18 instead of 20 and for this reason, the corrective OM dated 25.11.2020 has been issued.

25. On the conduct of the petitioners, Shri Gogoi, learned Standing Counsel submits that the petitioners, knowing fully well regarding the OM under which the selection would be held took part in the same without any objection. In this connection, he has referred to the affidavit-in-opposition dated 02.03.2021 and he submits that the date of consideration is the relevant date and not the date of the initiation of the recruitment process. He further submits that no right of the petitioners are affected by the said change and therefore, no prejudice caused.

26. Shri Gogoi further submits that the change in the guidelines governing the selection is based on the conscious decision of the Government with the objective to bring more transparency and fairness in the selection processes.

27. In support of his submissions, Shri Gogoi, learned Standing Counsel places reliance upon the following judgments-

i) (2011) 6 SCC 725, Deepak Agarwal and Another Vs. State of U.P. and Others;

ii) (1997) 3 SCC 59, Dr. K Ramulu & Anr. Vs. Dr. S Suriya Prakash Rao & Anr.;

iii) (2017) 3 SCC 646, State of Tripura & Ors. Vs. Nikhil Ranjan

Chakraborty;

iv) Civil Appeal No. 1970/2009 (D Raghu Vs. B Basaveswarudu).

28. The case of ***Deepak Agarwal (Supra)*** has been pressed into service to bring home the contention that amendment in the Rules is permissible if it is based on the conscious decision of the Government. The said case further lays down that the Rules prevalent at that time when the consideration took place would be relevant.

29. The case of ***Dr. K. Ramulu (Supra)*** has been cited for the said purpose that a conscious decision may be taken to change the Rules in the public interest.

30. The case of ***Nikhil Ranjan Chakraborty (Supra)*** has taken into consideration the case of ***Deepak Agarwal (Supra)*** and has laid down that it is the date of consideration which is crucial with regard to the issue as to which Rules would be operative.

31. In the case of ***D. Raghu (Supra)***, it has been laid down that it would be the Rules existing on the date of filling up of the vacancies that would be applied.

32. Shri R. Goswami, learned counsel appearing for the respondent no. 6 in WP(C)/57/2021 and the respondent nos. 3 to 5 in WP(C)/58/2021 (Bikali College, Goalpara) submits that no relief is entitled to by the petitioners as they were well aware about the change in the Rules and could not demonstrate any prejudice by such change. He submits that 12 numbers of candidates have already been appointed pursuant to the said selections which were done as per the new guidelines. Shri Goswami, the learned counsel has also appeared for the newly impleaded respondent no. 6 in WP(C)/57/2021 which is in connection with the Mangaldoi College.

33. Shri U.K. Nair, learned Senior Counsel appearing for the respondent no. 6

in WP(C)/5576/2020 submits that the present challenge is not sustainable and even on a comparison by marks obtained, the said respondent no. 6 had got 433.68 and the petitioner had got 391.38. Therefore, even if 3 (three) marks are added to the score of the petitioner, she cannot steal a march over the respondent no. 6. The learned Senior Counsel has been critical about the conduct of the petitioner in waiting till the late night of 09.12.2020 which is the date prior to the interview to lodge a complaint. Subsequently, the petition has filed on 14.12.2020. By drawing the attention of the Court to the affidavit-in-opposition filed by the College authorities, adequate pleadings are there regarding participation of the petitioner in the selection process without any objection.

34. Shri S.P. Sarma, learned counsel for the respondent nos. 3 to 5 in WP(C)/5576/2020 as well as in WP(C)/952/2021 supports the case of the Department and has submitted that all actions taken were *bona fide* in nature.

35. Shri P.D. Nair, learned counsel for the respondent nos. 3 and 4 in WP(C)/159/2021 concerning the post of Mathematics has submitted that the case of the petitioners have to be tested from the point of view of prejudice suffered and there is no pleadings, whatsoever regarding prejudice suffered. By referring to the affidavit-in-opposition dated 22.03.2021, it is submitted that in the interview held on 01.12.2020, 17 candidates had participated and it is only the petitioner, who is an unsuccessful candidate had made the present challenge by taking a calculated risk.

36. The learned counsel, Shri Nair has presented before this Court a comparative chart to demonstrate the difference between the Office Memoranda. He submits that the deduction of 5 (five) marks which was fixed for the interactive session and addition of 3 (three) marks for NCC (C), Gold Medal, representing Assam in any National Level Sports are all *bona fide* and in the interest of public service. He also submits that the element of bias which might

crept in if marks are allotted for *viva-voce* has been done away with for which the petitioners cannot have any grievance.

37. Shri P.D. Nair, the learned counsel places reliance in the following judgements-

i) (2017) 4 SCC 357, Ashok Kumar and Others Vs. State of Bihar and Another;

ii) (2013) 4 SCC 40, Tez Prakash Pathak and Others Vs. Rajasthan High Court and Others.

38. In the case of ***Ashok Kumar (Supra)***, it has been laid down that a candidate who participates in a selection without any protest would be estopped from challenging the result by filing a writ petition.

39. In the case of ***Tez Prakash Pathak (Supra)***, the Hon'ble Supreme Court had doubted the proposition as to whether in all cases changing the Rules of the game would amount to an illegality.

40. Ms. L. Devi, learned counsel for the newly impleaded respondent no. 6 in WP(C)/58/2021 concerning the post of Assamese endorses the submissions of the learned counsel for the respondents. She has also appeared for the respondent nos. 3 to 5 in WP(C)/952/2021 (Bapuji College) and WP(C)/981/2021 (Sarthebari College) and has defended the selection made.

41. The contentions raised by the learned counsel for the parties have been duly considered and the materials before this Court have been carefully examined.

42. The issue which arises for determination is that whether the Department is justified in holding the selection as per the new Office Memorandum dated 25.11.2020 which came into existence after publication of the advertisement for the recruitment. In other words, whether any illegality has been committed by

the Department in not relying upon the earlier Office Memorandum dated 08.11.2018 which was existing at the time of publication of the advertisement.

43. Though, the sheet-anchor of the petitioners is the proverbial "Rules of the game cannot be changed after the game has begun", to answer the issue, this Court is required to go to the depth of the issue to the extent of examining what is the change in the Rules which has been brought in. The question of sufferance of prejudice by the petitioners would also be relevant factor to be decided to answer the issue.

44. The Office Memoranda in question governs the allotment of marks for the purpose of selection of Assistant Professors in various Colleges. The discernible change in the Office Memorandum dated 08.11.2018 which was existing at the time of publication of the advertisement and the one which came into operation by the time when the interview was held is mainly the marks allotted for the Head ***"Interaction with the Selection Committee"***. The OM dated 08.11.2018 had allotted 5 (five) marks for the said Head. It is needless to state that the said 5 (five) marks were subjective in nature and left to the total discretion of the Selection Committee members. Once, the concept of discretion is there, bias and nepotism cannot be totally ruled out from the public perception. The conscious decision of the Government to remove the said aspect was to delete the said 5 (five) marks and include 3 (three) marks for NCC (C) certificate holder (1 mark), Gold Medal in any event of University / Youth Festival (one mark) and representing the State in any Olympic Sport Event at the National Level (1 mark). A negligible change for the marks in the HSSLC, Degree and Master Degree has also been made. Since, in the intermediate Office Memorandum dated 17.11.2020, there was a mistake in the total marks under the Head of Research Contribution and Experience which was wrongly calculated as 20 instead of 18, the further rectification was made in the form of Office Memorandum dated 25.11.2020.

45. For ready reference, a broad categorization to compare the Office Memoranda is given hereinbelow-

COMPARATIVE CHART OF THE OFFICE MEMORANDA DATED 08/11/2018, 17/11/2020 AND 25/11/2020

Sl. No.	Category	OM dated 08/11/2018	OM dated 17/11/2020	OM dated 25/11/2020
1.	Distribution of Marks	**Academic record 70 marks** i. HSLC 10 marks ii. HSSLC 13 marks iii. Degree 22 marks iv. Master degree in concerned subject 25 marks	**Academic Record 79 marks** i. HSLC 10 marks ii. HSSLC 14 marks iii. Degree 25 marks iv. Master degree in concerned Subject 30 marks	**Academic Record 79 marks** i. HSLC 10 marks ii. HSSLC 14 marks iii. Degree 25 marks iv. Master degree in concerned Subject 30 marks
2.	Research Contribution and Experience	**Research contribution and Experience 25 marks** **i.** Ph. D. 9 marks **ii.** M. Phil 3 marks **iii.** Research paper/article in ISSN/ISBN 1 mark for each, maximum 2 marks **iv.** Research paper/article in data base of Scopus, Web of Science/Web of Knowledge 2 marks for each maximum 4 marks **v.** 1 mark for each chapter/ article published in research/text book with ISBN subject to maximum of 2 marks	**Research contribution and Experience 20 marks** **i.** Ph. D. 9 marks **ii.** M. Phil 2 marks **iii.** Research paper/article in ISSN/ISBN 0.5 mark for each, maximum 1 mark **iv.** Research paper/article in data base of Scopus, Web of Science/Web of Knowledge 1 mark for each maximum 3 marks **v.** 0.5 mark for each	**Research contribution and Experience 18 marks** **i.** Ph. D. 9 marks **ii.** M. Phil 2 marks **iii.** Research paper/article in ISSN/ISBN 0.5 mark for each, maximum 1 mark **iv.** Research paper/article in data base of Scopus, Web of Science/Web of Knowledge 1 mark for each maximum 3 marks **v.** 0.5 mark for each chapter/article published in research/ text book with ISBN subject to maximum of 1 mark **vi.** Teaching / Library

		vi. Presentation of research paper in International/ national/ regional level seminar/ workshop 2 marks **vii.**Teaching / Library Management Experience 3 marks	chapter/ article published in research/text book with ISBN subject to maximum of 1 mark **vi.** Teaching / Library Management Experience 2 marks	Management Experience 2 marks
3.	Others	**Interaction with Selection Committee 5 Marks** **a.** 5 minutes presentation in a class room situation using latest technology 2 marks **b.** Very brief interaction in concerned subject 3 marks	**NCC (C) Certificate holder** **1 Mark** **Gold medal in any event of University /youth festival** **1 Mark** **Representing Assam in any Olympic Sports event at the National level 1 Mark**	**NCC (C) Certificate holder 1 Mark** **Gold medal in any event of University /youth festival 1 Mark** **Representing Assam in any Olympic Sports event at the National level 1 Mark**
	Total Marks	**70+25+5= 100 Marks**	**79+20+1+1+1= 102 Marks**	**79+18+1+1+1=100 Marks**

46. On a careful consideration of the aforesaid OMs, this Court is of the opinion that deletion of 5 (five) marks from the Head of Interaction with Selection Committee which is wholly subjective in nature cannot be faulted with and rather such deletion is *prima facie* in the interest of a public service to cast aside the scope of any nepotism or bias in the selection process. This Court is further of the opinion that allotment of 3 (three) marks under the Heads of NCC (C) certificate, Gold Medal and representing the State in any Olympic Sport at the National Level (one mark each) are relevant factors which have been brought under consideration.

47. At this stage, this Court is also required to deal with the submissions made by Shri Gogoi, learned Standing Counsel that the date of consideration is the relevant date and not the date of the initiation of the recruitment process and had cited certain decisions. This Court is however unable to accept the said contention as the general law, as indicated above, is that there cannot be any change in the mode of recruitment after the same has started under the mode already existing. The citations relied upon by Shri Gogoi in that regard have to be read along with the facts and circumstances of each of the cases.

48. The law prohibiting change of Rules of the game after the game has begun, as indicated above is also presently pending consideration before a larger Bench in the Hon'ble Supreme Court as referred in the case of ***Tej Prakash Pathak (Supra)***. Since there is no declaration of the law by the larger Bench till date, this Court would normally follow the existing law. This Court is of the opinion that though the law regarding the aforesaid issue is general in nature, it is still the burden of the petitioner to *prima facie* establish that the change is going to cause prejudice to them. This Court also has a corresponding duty to examine what is the nature of the change sought to be brought and simply, by the jargon "Rules of the game cannot be changed", this Court cannot be swayed away with.

49. What has been noticed by this Court in the present cases is that though admittedly, there is a change in the marking pattern from the Office Memorandum existing at the time of publication of the advertisement and the new Office Memorandum which came in the operation at the time of the interview, the change is only of reduction / doing away with the marks to be given in the *viva-voce*. This Court finds force in the submissions made by the Departmental counsel that such change has been brought in to remove the scope of *bias* and nepotism and to make the selection process more transparent and fair. This Court is of the view that apart from the fact that no prejudice,

whatsoever would be suffered by the petitioners, the said change would be in the interest of public service and to usher in a sense of trust in the selection process which is wholly in objective basis.

50. In view of the above, this Court is of the considered opinion that no case for interference is made out and accordingly, the writ petitions are dismissed. Interim orders, if any, stand vacated.

51. No order, as to cost.

JUDGE

Comparing Assistant