

GAHC010008292012



2024:GAU-AS:8361

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

1. WP(C) 4325/2012

HIRANYA KUMAR NATH and 2 ORS

S/O GAMBHIR CH. NATH, R/O MEDICAL COMPLEX, BHANGAGARH, GHY-

32.

2: ANUP HAZARIKA

S/O BHADRA HAZARIKA

R/O NILACHAL HOUSING SOCIETY

NANDAN PATH

BHETAPARA

GUWAHATI-28

3: DIP DAKSHINA KAKATI

S/O LT. UMAKANTA KAKATI

R/O P. BORO PATH

RUPNAGAR

GUWAHATI-3

.....Petitioners

VERSUS

THE STATE OF ASSAM AND 5 ORS

REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
DEPTT. OF SECONDARY EDUCATION, ASSAM, DISPUR, GHY-6.

2: THE ASSAM PUBLIC SERVICE COMMISSION

REP. BY ITS CHAIRMAN

JAWAHAR NAGAR

KHANAPARA

GUWAHATI-22

3: THE DIRECTOR OF SECONDARY EDUCATION

ASSAM

KAHILIPARA

GHY-19

4: ANJAN KR. DEKA

S/O NAGENDRA NATH DEKA

5:SEMINA YASMIN ARA RAHMAN
D/O LT. KUTUBUR RAHMAN
6:ANUP KR. DAS
S/O LT. RAJEN DA

....Respondents

Advocates for the Petitioners: Mr. B. D. Das, Sr. Advocate,
Ms. R. Deka

Advocates for the respondents : Mr. K. N. Choudhary, Sr. Advocate, R. Singha

2. WP(C) 7378/2013

DIPAN KANTI SUKLABAIDYA
S/O- LT. KRIPAMAY SUKLABAIDYA
R/O VILL.- NAYAGRAM
P.O.- GIRISHGANJ BAZAR
DIST.- KARIMGANJ
ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
THROUGH THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
DEPTT. OF EDUCATION SECONDARY
ASSAM
DISPUR
GHY- 6.
2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY- 19.
3:THE ASSAM PUBLIC SERVICE COMMISSION
THROUGH ITS CHAIRPERSON
ASSAM PUBLIC SERVICE COMMISSION
KHANAPARA
GUWAHATI.
4:ANUP KUMAR DAS
S/O- RAJEN DAS
PRESENTLY SERVING AS DIST. ELEMENTARY EDUCATION OFFICER
BONGAIGAON
ASSAM
R/O- VILL. and P.O.- KULHATI
DIST.- KAMRUP R
ASSAM
PIN- 781104.

....Respondents

Advocates for the Petitioner: Mr. I. H. Saikia

Advocates for the respondents : Mr. K. N. Choudhary, Sr. Advocate, R. Singha;
Mr. M. Nath, Sr. Advocate; Mr. A. Bhattacharjee

B E F O R E
HON'BLE MR. JUSTICE KARDAK ETE

Date of hearing : 24.07.2024

Date of Judgment : 27.08.2024

JUDGMENT & ORDER (CAV)

Heard Mr. B. D. Das, learned Senior Counsel assisted by Ms. R. Deka, learned counsel for the petitioners in WP(C) No.4325/2012 and Mr. I. H. Saikia, learned counsel for the petitioner in WP(C)No. 7378/2013. Also heard Mr. K. N. Choudhury, learned Senior Counsel assisted by Mr. R. Singha, learned counsel for the respondent Nos. 4 & 17 in both the writ petitions and Mr. M. Nath, learned Senior Counsel, assisted by Mr. A. Bhattacharjee, learned counsel for the respondent No. 12 in WP(C) No.4325/2012.

2. Having regard to the similarity of the factual background and the issue raised, both the writ petitions were heard analogously and the same are disposed of by this common judgment and order.

3. By filing the present writ petitions, the petitioners have challenged the advertisement dated 17.11.2011 issued by the Assam Public Service Commission

(hereinafter referred to as APSC in short) pertaining to the educational qualification and experience and the selection process for recruitment to the post of Deputy Director/Inspector of Schools/District Elementary Education Officer under the Education (Secondary) Department, Government of Assam.

4. The facts of the case, in brief, are that the APSC issued an advertisement No. 10/2011 vide No. 365 PSC/DR-5/1/2000-2001, dated 17.11.2011, inviting applications for selection to various posts including 16 (sixteen) numbers of Deputy Director/Inspector of Schools/District Elementary Education Officer under the Education (Secondary) Department, Government of Assam. In terms of the advertisement, the candidates should have Second Class Master Degree with 10(ten) years of teaching experience in School or College or administrative experience for 10 (ten) years of which 5 (five) years must be in teaching.

5. Pursuant to the above advertisement, the petitioners, being eligible to be appointed in the post of Deputy Director/Inspector of Schools/District Elementary Education Officer, have applied for the said posts. The petitioner no. 1 in WP(C) 4325/2012, claims to be an MA, B.Ed., degree holder with Hindi Prabin and a Diploma holder in 3 (three) years Computer Science and engineering course. He was appointed in the substantive post of Hindi teacher and has served in Asom Sarba Siksha Abhijan Mission, a Government of India Scheme, as Programme Officer (teacher training and pedagogy) for 2 (years) on deputation. The petitioner no. 2 is an M.Sc., M. Phil, M. Ed. Degree holder with Hindi Bisharad and Diploma in Computer and was also appointed as Assistant Teacher and served as State Consultant (teacher training and pedagogy) on deputation and is still serving in the same capacity. The petitioners claims that they have brilliant academic careers and are fully eligible to be appointed in the post of Deputy Director/Inspector of Schools/District Elementary Education

Officer under the Education (Secondary) Department, in terms of the above advertisement.

6. It is contended that since very large number of candidates applied for the post of Deputy Director/Inspector of Schools/District Elementary Education Officer, pursuant to the above advertisement, a list of candidates was prepared after scrutiny of the applications. In the said list, the name of petitioners were included having been found eligible. Accordingly, the petitioners were called for interview, which was conducted on 21.05.2012 upto 02.06.2012 in the Office of the APSC. It is contended that the Selection Board consisted of only 2 (two) members, one APSC member and the other one an expert. Total 3 (three) Selection Boards were constituted and 30 (thirty) candidates were allotted to each Board every day. It is the contention of the petitioners that the candidates were asked easy and simple questions by which it is not at all possible to assess the merit of the candidates as it hardly took three to four minutes by the Board to interview the candidate.

7. The APSC published a list of 16 (sixteen) selected candidates for the post of Deputy Director/Inspector of Schools/District Elementary Education Officer under the Education (Secondary) Department, Government of Assam on 30.08.2012. It is contended that the petitioners remained dumb founded looking at the select list as the candidates whose candidatures were rejected by the APSC due to non-fulfillment of eligibility criteria had been selected, as the APSC had allowed such rejected candidates to participate in the interview and not only that, but have selected those candidates for the said posts, which reflects its arbitrary, *malafide* and illegal action. The petitioners contended that they have brilliant academic career and had adequate experience in teaching as well as in administrative side as required for the said post. It is contended that the

petitioners have performed brilliantly in the *viva-voice* test and were confident to get selected for the said post, however, they are just baffled at the select list published by the APSC as the APSC has selected candidates on some extraneous considerations by giving a complete go by to the merits, experience and performance of the candidates in the interview.

8. It is to be noted that though the petitioners have challenged the selection and appointment of as many as 16 (seventeen) candidates and they have been arrayed as party respondent Nos. 4 to 19, the petitioners have finally restricted to the selection and appointment of respondent Nos. 4, 12 & 17, namely, *Shri Anjan Kumar Deka*, *Ms. Semina Yasmin Ara Rahman* and *Shri Anup Kumar Das*.

9. It is contended that the age of the respondent no. 4, *Shri Anjan Kumar Deka*, who got 1st position in the select-list was 31 years 10 months and 28 days as on 01.01.2011 and his qualification is M.Sc. and B.Ed. Since, 10 (ten) years experience is mandatory for the post, so he will have to enter into service at the age of 21. But a person hardly completes its Bachelor's Degree at the age of 21 years. Looking at the age of respondent no. 4, he could not have completed his Bachelor's Degree and Master's Degree at the same time as a regular student which is not possible at all. Moreover, the respondent no. 4 was working as District Quality Manager under Naba Padakshep Project from 2006-2008 and this experience does not count either for teaching or administrative experience. He was appointed as Multipurpose Worker under the Health Department in 2010, as such, by no means the respondent no. 4 could have acquired 10 (ten) years of teaching experience as his age does not commensurate with his experience and it gives rise to a *bonafide* doubt about the veracity of his experience certificate.

10. It is contended that respondent No. 12, namely, *Ms. Semina Yasmin Ara Rahman*, who is selected at 9th position in the select-list, do not have the necessary work experience as she has worked for some time in Sarva Siksha Abhiyan Mission but released from the service due to various irregularities and she does not have any teaching experience either. Similarly, the petitioners have challenged the selection of the respondent No. 17, namely, *Shri Anup Kumar Das* of having submitted fake documents on the basis of which he was selected.

11. It is contended that on what count a candidate is selected and on fulfillment of what conditions such candidature is made regular is not clear. The selection of all the respondents to the post of Deputy Director/Inspector of Schools/District Elementary Education Officer, whose very candidature is either rejected or they do not fulfil the eligibility criteria and on the basis of false documents of experience under some extraneous consideration is illegal and the entire selection process is vitiated.

12. The petitioners have also questioned the advertisement dated 17.11.2011 for recruitment of 16 (sixteen) posts of Deputy Director/Inspector of Schools/District Elementary Education Officer of being ambiguous, vague and self-contradictory, inasmuch as, it simply states that candidates should have 10 (ten) years teaching experience in School or College, whereas, for the post of Assistant Inspector of Schools, which is of same cadre with that of Inspector of Schools is made mandatory to have teaching experience only in Government/Provincialised School or Government/Government aided college. This ambiguous requirement of experience has led to opening of a plethora of forgery and manipulation of experience certificates since most of the selected candidates does not have any teaching experience of 10 (ten) years as required for the said post. The petitioners contend that the select-list dated 30.08.2012 selecting

unqualified candidates who does not even fulfill the eligibility criteria and on the basis of forged and manufactured experience certificates depriving the petitioners from getting selected for the said post is liable to be set aside and quashed.

13. In WP(C) No.7378/2013, the petitioner has challenged the selection and appointment of the respondent No. 4 (respondent no. 17 in WP(C) 4325/2012) on the ground that the respondent No. 4 do not possess requisite teaching experience as required under the Rules and the advertisement dated 17.11.2011 for the post of Deputy Director/Inspector of Schools/District Elementary Education Officer and for a direction to set aside their selection and appointment and to appoint the petitioner.

14. Mr. B. D. Das, learned Senior Counsel, appearing in WP(C) 4325/2012, at the very outset, submits that the petitioners are not pressing any grievance against the private respondents, except respondent Nos. 4, 12 & 17 due to lapse of time. The learned Senior counsel, has submitted that in the WP(C)No. 4325/2012, though initially there were 3 (three) writ petitioners, the petitioner no. 3 is not interested to pursue the present writ petition. Accordingly, he is appearing for the petitioner no. 1, namely, *Shri Hiranya Kumar Nath* and petitioner no. 2, *Shri Anup Hazarika*. In view of the above, the name of the petitioner no. 3 is deemed struck-off.

15. Mr. B. D. Das, learned Senior Counsel, submits that the selection and appointment of the private respondents have been made on the basis of the forged/fake documents pertaining to teaching experience, which is a clear case of fraud on the part of the private respondents. He submits that the teaching experience certificate allegedly obtained from Tihu College by the respondent No. 4, clearly shows that the same is a fraudulent one as the Principal of Tihu

College has clearly stated that the said certificate is a fraudulent one. The teaching experience is shown to be 5 years 10 months 21 days from Tihu College and the experience certificate from J. M. Bujarbarua High School is for the period of 05.01.2000 to 31.03.2005. It is fortified by the Charge-sheet filed by the CID, Assam, which clearly reflects that the certificates submitted by the respondent No. 4 are fake.

16. Mr. B. D. Das, learned Senior counsel, submits that as regard respondent No.12, she does not have proper teaching experience certificate. The experience certificate of respondent No. 12 of Purnadar Sarma Memorial High School as shown in the affidavit-in-opposition filed by the APSC, shows that she is having 5 (five) years of teaching experience. He submits that as per the Inspection Report in the year 1994, in which year the respondent No. 12 has shown to have been teaching, her name does not figure. He submits that the Charge-sheet filed by the CID clearly stated that the name of the respondent No. 12 was not found in the Inspection Report among the list of teachers prepared by the Inspector of Schools in the year 1994, 1996 and 1997. Further, 2 (two) teachers have also stated that the respondent No. 12 have never worked in the Purnadar Sarma Memorial High School.

17. Mr. B. D. Das, learned Senior counsel further submits that as regards respondent No. 17, the Head Teacher of Tiwanagar High school had cancelled the experience certificate issued to the respondent No. 17 for the period of September, 2002 to April, 2010. The Head Teacher stated that Anup Kumar Das did not work in the said school. The report of Assistant Inspector, dated 08.12.2011, fortifies the same. The 2 (two) years experience certificate from Prachya Bharati academy is also fake one. In the Charge-sheet of CID, it is clearly stated that the 3 (three) teaching experience certificates submitted by

the respondent No. 17 are fake.

18. Mr. B. D. Das, learned Senior counsel submits that the petitioner Nos. 1 & 2 have obtained marks of 63 and 68 out of 100 total marks. Since the respondent No. 4 and one candidate who have scored 81 and 68, have opted not to join the service, the petitioner Nos. 1 & 2, who were otherwise eligible and qualified may be appointed in those posts. He submits that this Court may direct the respondent authority to consider the case of petitioners for appointment considering the petitioners' teaching experience as well as marks obtained in the interview and the fraud committed by the respondents regarding the teaching experience certificates. The appointment of private respondents may be cancelled and in their place, appoint petitioners as they have obtained 63 and 68 marks out of 100 marks, which is just below the marks obtained by the 16th position holder, particularly, considering the fact that both the petitioners belong to OBC. He has made this prayer in alternate.

19. Mr. B. D. Das, learned Senior Counsel having submitted above, has also submitted that since the teaching experience certificates submitted by the respondents are found to be fake, which is writ large, the entire selection process is otherwise vitiated, therefore, he prays that a direction may be issued to the Commissioner, Education Department, Govt. of Assam to cause an enquiry and take consequential action against the respondents.

20. In support of his submissions, Mr. B. D. Das, learned Senior Counsel has placed reliance on the judgments of the Hon'ble Supreme Court and the High Courts, which are as follows:

(i). **Union of India vs. Dattatray S/o Namdeo Mendhekar and Ors.**, reported in **(2008) 4 SCC 612**.

In this case, the Hon'ble Supreme Court found that the respondent therein had

been admitted in medical course in ST category, more than 15 years back; that though his admission deprived a Scheduled Tribe student of a medical seat, the benefit of that seat could not be offered to Scheduled Tribe student at that distance of time even if the respondent's admission was to be annulled; and that if his admission was annulled, it will lead to depriving the services of a doctor to the society on whom the public money had already been spent. In such peculiar circumstances, the Hon'ble Supreme Court has held that the decision will not affect the degree secured by the respondent or his practice as a doctor but made it clear that he could not claim to belong to a Scheduled Tribe. But the said decision has no application to a case which does not relate to an admission to an educational institution, but relates to securing employment by wrongly claiming the benefit of reservation meant for Scheduled Tribes. It has further observed that when a person secures employment by making a false claim regarding caste/tribe, he deprives a legitimate candidate belonging to Scheduled Caste/Tribe, of employment. In such a situation, the proper course is to cancel the employment obtained on the basis of the false certificate so that the post may be filled up by a candidate who is entitled to the benefit of reservation.

(ii). Mahender Singh vs. State of Haryana and Ors., CWP No. 16882 of 2009.

In this case High Court of Punjab and Haryana has referred and relied the judgement of the Hon'ble the Supreme Court in the case of **Regional Manager, Central Bank of India vs. Madhulika Guruprasad Dahir**, wherein, the Hon'ble Supreme Court, while reversing the judgment of the Bombay High Court, has observed that that when selection of an employee was conceived in deceit, the same could not be saved by equitable consideration. Even delay in verification of the certificate in such cases is not fatal and the same will not validate the

certificate and consequential illegal appointment. In that case, the employee had worked on a fake caste certificate for a period of 20 years, but still the Hon'ble Supreme Court observed that sympathy, equity or generosity have no place where the original appointment rests on a fake certificate, as the same results in depriving a genuine candidate of appointment. Relevant paragraph is reproduced herein below:

"15. An act of deliberate deception with a design to secure something, which is otherwise not due, tantamounts to fraud. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter."

(iii). Krishna Hare Gaur vs. Vinod Kumar Tyagi and Ors., reported in (2015) 11 SCC 355.

In this case, issue pertains to selection and appointment of respondent no. 1 as headmaster in the school. Based on the information obtained through RTI, the appellant made a representation dated 4-10-2010 to all the authorities concerned including the District Magistrate alleging that Respondent 1 had obtained appointment by using forged experience certificates along with his application. Since no action was taken by any of the authorities, the appellant filed Writ Petition raising objections to the said appointment. The learned Single Judge of the High Court, directed the District Basic Shiksha Adhikari to pass a reasoned order within a period of six weeks. The District Basic Shiksha Adhikari, rejected the representation of the appellant. Aggrieved by the said order, the appellant preferred Writ Appeal which was also dismissed, holding that the District Basic Shiksha Adhikari has recorded a categorical finding that he inspected the original records and found that Respondent 1 has requisite five years' teaching experience. In the meantime, the District Magistrate took cognizance of the appellant's representations and directed the Additional District

Magistrate to conduct an inquiry and submit a report. The Additional District Magistrate submitted his report stating that the experience certificates filed by Respondent 1 were bogus and obtained with the collusion of the Principal of respective institutions. The District Magistrate forwarded the report to the Basic Shiksha Adhikari, directing him to take appropriate action in the matter and report at the earliest. Pursuant to the finding and the report, the appointment of Respondent 1 was cancelled by the Basic Shiksha Adhikari.

Based on the materials on record, it was held that Respondent 1 did not possess the requisite experience of five years and his appointment is in contravention to Rule 4(2)(c) read with Rule 2(h) of the 1978 Rules, and therefore, the appointment of Respondent 1 is not valid in law and the earlier Writ Appeal No. was dismissed mainly on the ground that the District Basic Education Officer has recorded a finding that Respondent 1 has the requisite five years' teaching experience. The Additional District Magistrate, observed that the District Basic Education Officer did not thoroughly conduct the inquiry, and therefore, dismissal of the earlier writ appeal cannot be taken as res judicata. In that context it was held that when the appointment is made dehors the rules, the same is a nullity. In such an eventuality, the statutory bar like doctrine of res judicata is not attracted. Even in judicial proceedings, once a fraud is proved, all advantages gained by playing fraud can be taken away. In such an eventuality the questions of non-executing of the statutory remedies or statutory bars like doctrine of res judicata are not attracted. Suppression of any material fact/document amounts to a fraud on the court. Every court has an inherent power to recall its own order obtained by fraud as the order so obtained is non-est.

(iv). **Samash Deen v. State of H.P.**, reported in **2012 SCC OnLine HP 4125**.

This case has been relied to project that even after finding on enquiry that the private respondents had produced a fake certificates and yet further action could not be taken by the State authorities and that this Court may direct for causing inquiry. A direction may issued to conduct the inquiry, and bring to its logical conclusion and appropriate action be taken against the erring officials and in case the writ petitioners are the next available candidate in the merit list, they may be appointed forthwith in the resultant vacancies.

(v). ABL Internation Ltd. and Anr. vs. Export Credit Guarantee Corporation of India Ltd. And Ors., reported in (2004) 3 SCC 553.

This case has been relied to project that merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule. Therefore, present writ petition is maintainable.

(vi). Haryana Staff Selection Commission vs. Priyanka and Ors. Etc., Case No. M.A. Nos. 539-569 of 2022 in Civil Appeal Nos. 5065-5095 of 2021.

Same is relied to show that appointment can be directed which shall be available only to the candidates who had approached this Court and on being appointed after the judgment of this Court, their appointment ought to relate back to the original date of selection. The appointment shall be deemed to be notionally from the date of appointment of other candidates who were earlier appointed in response to the advertisement and would not be entitled to any salary for the period they had not worked but shall be entitled for due seniority and increment, if any.

21. Mr. I. H. Saikia, learned counsel for the petitioner in WP(C)No. 7378/2013, submitted that he is endorsing and subscribe to the submissions of Mr. B. D.

Das, learned Senior Counsel.

22. *Per-contra*, Mr. K. N. Choudhry, learned Senior Counsel for the respondent No. 17 in the WP(C) No. 4325/2012 and respondent No. 4 in WP(C) No. 7378/2013, strenuously submits that there is no allegation against the respondent Nos. 4 & 17 and no pleadings in the writ petitions questioning the eligibility as well as any allegation of fake certificates submitted by the respondent No. 17. The allegation is sought to be made out by filing the additional-affidavit that too based on the statements in the Charge-sheet filed by the CID.

23. He submits that the writ petitions are filed by misrepresenting and concealing the material facts. The petitioners had failed in the selection process, whereas, the respondent Nos. 4/17 had qualified in the selection process and thereafter, selected and is presently serving. He submits that the present writ petitions are not maintainable in view of the fact that the unsuccessful candidates have challenged the appointment of the successful candidates, who are otherwise eligible and qualified in all respect and are better and suitable as compared to the petitioners. The petitioners have no *locus standi* to file the present writ petitions as they have failed to qualify the selection process and therefore, as a counter-blast had challenged the selection process. The petitioners are estopped to assail the selection of the respondents. Therefore, he submits that the writ petitions are liable to be dismissed on this count alone.

24. He further submits that the writ petitions involve disputed question of facts and therefore, cannot be adjudicated by this Court under Article 226 of the Constitution of India. It involves appreciation of evidence by the appropriate Court and the aforesaid exercise cannot be undertaken by the Hon'ble High Court as the contentions so raised in the writ petitions, are all disputed question

of facts. He submits that the writ petitions also suffer from vice of non-joinder and misjoinder of necessary parties as the petitioners are relying on the averments and contentions of the 3rd parties, who have not been arrayed as party respondents. He also submits that the petitioners have been inserting new facts by way of additional-affidavit, which is not permissible in law. Furthermore, the facts so narrated in the additional-affidavits are disputed question of facts, which requires appreciation of evidence by the Trial Court. Therefore, the petitioners by way of additional-affidavits have brought on new facts, which is impermissible in law, in view of the fact that the petitioners cannot improve their case by way of additional facts, which are disputed and does not stand the scrutiny of law.

25. Mr. K. N. Choudhury, learned Senior Counsel submits that the complainant who had lodged the FIR is neither a petitioner nor a party respondent and the Charge-sheet so filed by the investigating agency is based on statements so made by various people under Section 161 of Cr.P.C. and such statement cannot be used against an individual to punish or to arrive at a conclusion to punish any person. It is no longer *res integra* that the statement before the Police Officer under Section 161 of Cr.P.C. has no application in a civil proceeding and in a proceeding under Article 226 of the Constitution of India and the statement made before the Police Officer in the course of investigation cannot be used as evidence in such proceeding provided that it is relevant under the Indian Evidence Act.

26. He submits that the primary allegation of the petitioners is that the appointment of the private respondents are questionable in view of the said allegations. There is no dispute that the allegations have been investigated by the Police and the Charge-sheet has been filed before the competent Criminal

Court. However, laying of Charge-sheet is not conclusive, inasmuch as, the accused is presumed to be innocent until proven guilty. Until and unless, the respondent is proven guilty by the competent Court, the petitioners cannot draw any presumption against the purported guilt of the respondents. He submits that even the Departmental authorities should not proceed on the same set of evidence and witnesses, inasmuch as, the Departmental authorities should also await the outcome of criminal case. He submits that it is a settled position of law that the Court cannot make or direct for any roving enquiry. There is no mention as to how the petitioners had obtained the documents so produced by them. Having regard to the aforesaid propositions and the facts being disputed, he submits that the present writ petitions are not maintainable in the eye of law and the same are liable to be dismissed.

27. Mr. K.N. Choudhury, learned Senior Counsel submits that the petitioners having participated in the selection process and being fully aware of the same, had challenged the selection process after having found themselves failed to qualify. Therefore, such challenge is impermissible in law. The allegation so leveled by the petitioners against the respondents have not been proven before any Court of law and these are mere allegations, which have to be proved by way of an evidence before the appropriate Trial Court and hence, the claim of the petitioners is not tenable in the eye of law and has no legs to stand. He submits that the respondents cannot be held to be guilty unless proven before the Court. No foundational facts have been laid in the present writ petitions against the respondent No. 4/17. That being the position, the claim of the petitioners are unjustified and liable to be rejected and accordingly, prays for the dismissal of the writ petitions.

28. Mr. K.N. Choudhury, learned Senior Counsel has referred to the provisions

of Section 33 of the Indian Evidence Act to project the relevancy of the evidence in the proceedings under Article 226 of the Constitution of India.

29. Mr. K.N. Choudhury, learned Senior Counsel has placed reliance on the following judgments of the Hon'ble Supreme Court: (i). **Dhananjay Malik and Ors vs. State of Uttaranchal and Ors.**, reported in **(2008) 4 SCC 171**, wherein, the Hon'ble Supreme Court has observed which is reproduced herein under:

"...7. It is not disputed that the respondent-writ petitioners herein participated in the process of selection knowing fully well that the educational qualification was clearly indicated in the advertisement itself as BPE or graduate with diploma in Physical Education. Having unsuccessfully participated in the process of selection without any demur they are estopped from challenging the selection criterion inter alia that the advertisement and selection with regard to requisite educational qualifications were contrary to the Rules.

8. In Madan Lal v. State of J&K this Court pointed out that when the petitioners appeared at the oral interview conducted by the members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned, the petitioners took a chance to get themselves selected at the said oral interview. Therefore, only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed writ petitions. This Court further pointed out that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted.

9. In the present case, as already pointed out, the respondent-writ petitioners herein participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been done."

(ii). **Sadananda Haloi vs. Momtaz Ali Sheikh**, reported in **(2008) 4 SCC 619**,

wherein, the Hon'ble Supreme Court has held which is reproduced herein under:

“...58. It is settled law that in such writ petitions a roving inquiry on the factual aspect is not permissible. The High Court not only engaged itself into a non-permitted fact-finding exercise but also went on to rely on the findings of the amicus curiae, or as the case may be, the scrutiny team, which in our opinion was inappropriate. While testing the fairness of the selection process wherein thousands of candidates were involved, the High Court should have been slow in relying upon such microscopic findings. It was not for the High d Court to place itself into a position of a fact-finding commission, that too, more particularly at the instance of those petitioners who were unsuccessful candidates. The High Court should, therefore, have restricted itself to the pleadings in the writ petition and the say of the respondents. Unfortunately, the High Court took it upon itself the task of substituting itself for the Selection Committee and also in the process assumed the role of an appellate e tribunal which was, in our opinion, not proper. Thus, the High Court converted this writ petition into a public interest litigation without any justification.”

(iii). **Khatris vs. State of Bihar**, reported in **(1981) 2 SCC 493**.

In this case the Hon'ble Supreme Court has held that although statements made before the police officer can be used as an evidence under Article 32 and 226 of the constitution, however, same is hedged with rider, that such statements can only be used provided it is otherwise relevant under the Evidence Act. Learned Sr. Counsel submits that in view of the law laid down above, the statements alleged to have been made before the police cannot be formed the basis to declare that documents submitted by the respondents are fake before it is established after full trial. It is also submitted that statements before the police cannot be acted upon to the detriment of the respondents in view of the clear bar under sections 25 and 26 of the evidence Act, 1872.

30. Mr. M. Nath, learned Senior Counsel for the respondent No. 12, while subscribing and endorsing the submissions made by the learned Senior Counsel, Mr. K.N. Choudhury, learned Senior Counsel, submits that in the writ petitions

neither there is any pleading nor prayer made by the petitioners, claiming appointment in the post of Deputy Director/Inspector of Schools/District Elementary Education Officer. Therefore, the petitioners are not entitled for any relief for appointment. The petitioners have raised the question regarding the constitution of Selection Board and the manner in which interview was conducted by which it was not at all possible to assess the merit of the candidates as hardly three or four minutes were taken by the Board for interview of the candidates. He submits that the advertisement was published on 17.11.2011, result was declared on 30.08.2012 and it was only after declaration of result, when the petitioners found themselves unsuccessful, they filed the present writ petitions on 11.09.2012. If the petitioners had any grievance regarding constitution of Selection Board and the manner of interview of candidates, they ought to have filed the writ petitions before declaration of the result. Having failed in the interview, they have approached this Court and as such, they are not entitled for any relief.

31. Mr. M. Nath, learned Senior Counsel, submits that even if the prayer made in the writ petitions is allowed, cancelling the impugned select-list dated 30.08.2012 and fresh advertisement is made with certain modifications, in that case the petitioners will not be eligible to apply for the said post since they have crossed the age bar i.e. presently, they are 54 and 57 years old for applying for Government Job. Further, if the entire select-list is set aside/cancelled by this Court, in that case, it will unsettle 16 numbers of appointees including the respondent No. 12, who has by now put on about 12 years of unblemished service and on the other hand, the petitioners will not derive any benefit out of such cancellation of the select-list. Hence, he prays that relief may not be granted to the petitioners.

32. Mr. M. Nath, learned Senior Counsel, submits that so far Charge-sheet filed by the Investigating Officer against the respondent No.12 and the other accused persons are concerned, the same cannot be termed as a substantive piece of evidence but a collective opinion of the Investigating Officer as held by the Hon'ble Apex Court in its judgment dated 04.02.2022 passed in **Criminal Appeal Nos. 339-340 of 2014 (Rajesh Jadav and anr. etc. Vs. State of UP)** reported in **2022 Live Law (SC) 137**. Further, it is also not obligatory on the learned Magistrate to accept the Report/Charge Sheet filed by the Investigating Officer. In appropriate case, the learned Magistrate may under section 190 (1)(b), Cr.PC, either accept the report of the Investigating Officer and take cognizance of the Offence and issue process or may disagree with the report and drop the proceeding or may direct further investigation and require the police to make a final report as held by the Hon'ble Apex Court in the case of **Minu Kumari &Anr. Vs State of Bihar &Ors**, reported in **2006 (4) SCC 359**.

33. Mr. M. Nath, learned Senior Counsel for the respondent No. 12, has placed reliance on the case of **Kaptan Singh Vs State of M.P.**, reported in **1997 (6) SCC 185**, wherein, the Hon'ble Supreme Court has held that the result of investigation under Chapter XII of the Criminal Procedure Code is a conclusion that an investigating officer draws on the basis of materials collected during investigation and such conclusion can only form the basis of a competent Court to take cognizance thereupon under section 190(1)(b) Criminal Procedure Code, 1973 and to proceed with the case for trial, where the materials collected during investigation are to be translated into legal evidence. The trial Court is then required to base its conclusion solely on the evidence adduced during the trial; and it cannot rely on the investigation or the result thereof. Since this is an elementary principle of criminal law, we need not dilate on this point any

further. Hence, he submits that filing of a Charge-sheet is not a conclusive proof of offence committed by the accused till he/she is found to be guilty on conclusion of trial by the Trial Court.

34. Mr. M. Nath, learned Senior Counsel, submits that additional facts brought before this Court by way of two additional-affidavits without amending the writ petition may not be taken into consideration by this Court. He submits that considering the aforesaid facts and in view of the law laid down by the Hon'ble Apex Court, this Court may not interfere with the Selection as well as appointment of the respondent No.12 and dismiss the writ petition being devoid of any merit and the service of the respondent No. 12 may not be disturbed.

35. Mr. M. Nath, learned Senior Counsel, in support of his submissions, has further relied on the following judgments:

(i). Krishna Priya Ganguly etc. vs. University of Lucknow and Ors., reported in (1984) 1 SCC 307.

In this case, the Hon'ble Supreme Court has observed that the respondent, had merely prayed for a writ directing the State or the college to consider his case for admission yet the High Court went a step further and straightway issued a writ of mandamus directing the college to admit him to the M.S. course and thus granted a relief to the respondent which he himself never prayed for and could not have prayed for. Such a gross discrimination made in the case of a person who had obtained lowest aggregate and lowest position seems to us to be extremely shocking. Although much could be said against the view taken by the High Court yet we would not like to say more than this that the High Court had made a very arbitrary, casual and laconic approach to the case and based its judgment purely on speculation and conjectures swept away by the consideration that Dr. Sinha possessed a diploma when in fact other candidates also had obtained diploma but that could not be taken into

consideration, because the rules did not so provide.

(ii). Manish Kumar Shahi vs. State of Bihar and Ors. reported in (2010) 12 SCC 576.

In this case, the Hon'ble Supreme Court has observed that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition.

(iii). Rajesh Jadav and Anr. vs. State of UP, passed in Criminal Appeal Nos. 339-340 of 2014, dated 04.02.2022, reported in LiveLaw (SC) 137.

The Hon'ble Supreme court, in the above case, on the Evidentiary Value of a Final Report, has observed that Section 173(2) of the CrPC calls upon the investigating officer to file his final report before the court. It being a report, is nothing but a piece of evidence. It forms a mere opinion of the investigating officer on the materials collected by him. He takes note of the offence and thereafter, conducts an investigation to identify the offender, the truth of which can only be decided by the court. The aforesaid conclusion would lead to the position that the evidence of the investigating officer is not indispensable. The evidence is required for corroboration and contradiction of the other material witnesses as he is the one who links and presents them before the court.

(v). Dahunshisha Rynjah&Ors. Vs Meghalaya Public Service Commission, reported in 2021 (1) GLT 746.

In this case, the High Court of Meghalaya has observed which is reproduced herein under:

“26. By the application of the settled law as it pertains to the instant case, the scope of taking effective cognizance of the subsequent facts is severely limited, more so, taking Into account the fact that the challenge as it stood in the petition, i.e. to the preliminary results and the changed modality having been answered by the Division Bench of this Court, and upheld by the Hon'ble Supreme Court, these points, are therefore not open for re-appreciation at this juncture. Without doubt, the subsequent points raised such as (i) there was no official notification that the respondents had decided to amend the method of selection whereby they Introduced minimum qualifying marks of 35% in Paper-II and that the aggregate marks secured in Paper-I and Paper-II would be calculated and considered for the purpose of cutoff marks. (II) 156 (One Hundred Fifty-Six) candidates whose total marks after tabulation of Paper-I and Paper-II, were less than the marks obtained by some of the writ petitioners, were permitted to sit for the Main Examinations held on 18.01.2020. (iii) though the advertisement had proclaimed that the reservation of vacancies would be as per Government Policy, separate cutoff marks to qualify for the Main Examinations for different categories was applied by the respondents, are germane and vital in the larger perspective which governs the conduct of such selection processes, and beg for answers, but these issues cannot however, be taken cognizance of, and adjudicated upon in the present proceedings, as they were not part of the original pleadings or brought by amendment by adoption of proper procedure, but had been brought on record by way of an additional affidavit.”

36. Due consideration has been extended to the rival submissions advanced by the learned counsel for the parties and perused the materials available on record.

37. The APSC issued an advertisement No. 10/2011 vide No. 365 PSC/DR-5/1/2000-2001, dated 17.11.2011, inviting applications for selection to various

posts including 16 (sixteen) numbers of Deputy Director/Inspector of Schools/District Elementary Education Officer under the Education (Secondary) Department, Government of Assam. As per the advertisement, the candidates should have Second Class Master Degree with 10(ten) years of teaching experience in School or College or administrative experience for 10 (ten) years of which 5 (five) years must be in teaching.

38. After the selection process/interview, APSC published a select list of 16 (sixteen) candidates for the post of Deputy Director/Inspector of Schools/District Elementary Education Officer under the Education (Secondary) Department, Government of Assam on 30.08.2012.

39. It is noted that the though the petitioners, initially, have challenged the selection and appointment of as many as 16 (seventeen) candidates and they have been arrayed as party respondent Nos. 4 to 19, the petitioners have finally restricted to the selection and appointment of respondent Nos. 4, 12 & 17, namely, *Shri Anjan Kumar Deka*, *Ms. Semina Yasmin Ara Rahman* and *Shri Anup Kumar Das*.

40. It is the contention of the petitioners that the candidates whose candidatures were rejected due to non-fulfilment of eligibility criteria has been selected, as the APSC had allowed such rejected candidates to participate in the interview and selected those candidates for the said posts, which reflects its arbitrary, *malafide* and illegal action as well as on some extraneous considerations by giving a complete go by to the merit, experience and performance of the candidates in the interview.

41. As noted above, the petitioners have contended that the age of the

respondent no. 4, *Shri Anjan Kumar Deka*, who got 1st position in the select-list was 31 years 10 months and 28 days as on 01.01.2011 and his qualification is M.Sc. and B.Ed. Since, 10 (ten) years experience is mandatory for the post of Inspector of Schools, so he will have to enter into service at the age of 21. But a person hardly completes his Bachelor's Degree at the age of 21 years could not have completed his Bachelor's Degree and Master's Degree at the same time as a regular student which is not possible at all. Moreover, the respondent no. 4 was working as District Quality Manager under Naba Padakshep Project from 2006-2008 and this experience does not count either for teaching or administrative experience. He was appointed as Multipurpose Worker under the Health Department in 2010, as such, by no means the respondent no. 4 could have acquired 10 (ten) years of teaching experience as his age does not commensurate with his experience and it gives rise to a *bonafide* doubt about the veracity of his experience certificate.

42. It is contended that respondent No. 12, namely, *Ms. Semina Yasmin Ara Rahman*, who is selected at 9th position in the select-list, do not have the necessary work experience as she has worked for some time in Sarva Siksha Abhiyan Mission but released from the service due to various irregularities and she does not have any teaching experience either. Similarly, the petitioner has challenged the selection of the respondent No. 17, namely, *Shri Anup Kumar Das* of having submitted false documents on the basis of which he was selected.

43. It is further contended that the selection of all the respondents to the post of Deputy Director/Inspector of Schools/District Elementary Education Officer, whose very candidature is either rejected or they do not fulfil the eligibility criteria and on the basis of false documents of experience under some

extraneous consideration is illegal and therefore, entire selection process is vitiated.

44. The petitioners have also questioned the advertisement dated 17.11.2011 for recruitment of 16 (sixteen) posts of Deputy Director/Inspector of Schools/District Elementary Education Officer of being ambiguous, vague and self-contradictory, According to the petitioners such ambiguous requirement of experience has led to opening of a plethora of forgery and manipulation of experience certificates since most of the selected candidates does not have any teaching experience of 10 (ten) years as required for the said post.

45. The petitioners by filing additional affidavits have brought on record certain additional facts indicating alleged forged and fake certificates regarding teaching experience in respect of the respondents. Though the learned counsel for the respondents have strenuously argued that without amending the writ petition said additional facts are brought, therefore, same may not be taken into consideration by this Court, I am of the view that since the materials have been brought on record, this court cannot shut its eye as the document placed on record is the charge-sheet filed by the CID against the 6 (six) accused persons including the 3 (three) private respondents herein.

46. It is not disputed that an Ejahar was lodged by one Shri Rajesh Chakraborty on 17.10.2013 alleging that the 6 (six) accused persons including the present 3 (three) private respondents, submitted forged documents to the APSC fraudulently and deprived the complainant in getting selection in the posts in question. Upon receipt of Ejahar, a case was registered being PS CID No. 72/2013 under sections 120(B)/468/471/474 IPC, 1860. After completion of investigation, CID has laid the charge-sheet on 31.12.2021 before the CJM, Kamrup (Metro) against the 6 (six) accused persons including the present 3

(three) private respondents, under sections 120(B)/468/471/474 IPC, 1860.

47. Perusal of the charge-sheet, go to show that the respondent no. 4 submitted two experience certificates from two different educational institutions which are found to be fake, Respondent no. 12 is found to have submitted a fake experience certificate from one institute and Respondent No. 4/17 had submitted 3 (three) fake experience certificates from different educational institutions, the details of which are clearly reflected in the charge-sheet of CID, Assam.

48. On careful consideration of the matters in its entirety, this court is of the view that, although the guilt or otherwise of the private respondents would be a matter of trial, such serious allegation of submission of fake experience certificates followed by filing of charge-sheet by the CID, cannot be easily brushed aside on technicality as the private respondents have secured the selection and appointments purely on the basis of said experience certificates which in turn had deprived the genuine candidates. Thus, I am of the view that same warrants proper inquiry by the appropriate Departmental authority as it appears that the departmental authorities have ignored rather closed their eyes for the reason best known to them and had made a casual and laconic approach to such a serious case which is impermissible under law.

49. Having observed above, it is nonetheless true as held by the Hon'ble Supreme Court that Section 173(2) of the Cr. PC calls upon the investigating officer to file his final report before the court. It being a report, is nothing but a piece of evidence. It forms a mere opinion of the investigating officer on the materials collected by him. He takes note of the offence and thereafter, conducts an investigation to identify the offender, the truth of which can only be decided by the court. The aforesaid conclusion would lead to the position that

the evidence of the investigating officer is not indispensable. The evidence is required for corroboration and contradiction of the other material witnesses as he is the one who links and presents them before the court.

50. Having regard to the challenge/assailment of the petitioners to the advertisement and its terms and conditions as well as the procedure adopted by the respondent authority, other than the allegation of submission of fake experience certificates to which has been already dealt with herein above, this court finds no substance as the petitioners have failed to show any tangible ground supported by materials that the same are contrary to the law.

51. Having considered the submissions of learned Senior Counsels appearing for the private respondents and after careful perusal of the case laws relied upon by them on the *locus standi*, this Court is of the view that it is no doubt that the settled position of law is that the candidates having knowing fully participated in the selection process of its terms and conditions and thereafter challenge the said selection process on the ground that same is bad if the result is not palatable to him/her or after he/she failed, would not be permissible. A reference may be made to the case of **Rekha Sharma vs. Rajasthan High Court, Jodhpur**, reported in **2024 SCC Online SC 2109**, wherein the Hon'ble Supreme Court has reiterated the said proposition. However, equally the Hon'ble Supreme Court in other case, has held that if there is glaring illegality on the facts and circumstances of the given case, the petitioner cannot be non-suited or he/she cannot be told off at the gate.

52. Regard being had to maintainability of the present writ petitions on the ground of existence of disputed question of fact, in the facts of the present case, I am of the view that there is no absolute bar to entertain the writ petition

as the relevant consideration to such proposition is to the effect that whether in a given case, the facts is so disputed which requires taking of evidence to establish the case. In the present case, the facts are not disputed and the allegations of submission of fake experience certificates to secure appointment are prima facie established on bare perusal of the charge-sheet. Thus, it would not be appropriate to non-suit the petitioners and hence, writ petitions are maintainable. However, as the charge-sheet being a report, is nothing but a piece of evidence and it forms a mere opinion of the investigating officer on the materials collected by him, the truth of which can only be decided by the trial court after full trial, it would not be appropriate to interfere with the selection and appointment of the private respondents basing on the said charge-sheet. Therefore, in my view it may not be safe to declare that the private respondents have submitted fake experience certificates to secure their appointments basing on the said charge-sheet. But, considering the attending facts situation, certainly, the respondents authorities ought to have caused an inquiry on the entire matter.

53. The other case laws relied upon by the learned Senior counsels are settled proposition of law and some are rendered and observed by the Hon'ble Supreme Court and High Courts on the attending facts of those cases, which in my view, cannot have universal application, therefore, all the cases do not come to their aid in the contextual facts of the present case.

54. In view of the discussion made herein above, I am of the considered view that the writ petitions are maintainable as the materials brought on record creates doubt on the experience certificates submitted by the private respondents. At the same time, in view of the proposition of law laid down by Hon'ble Supre Court in my view it would not be appropriate to declare that

experience certificates submitted by the private respondents as fake basing on the charge-sheet filed by the CID against the private respondents as the guilt or otherwise of the private respondents is a matter of trial before the trial court. Thus, I am of the view that, at this stage, without interfering with the selection and appointment of the private respondents, it would be appropriate in the interest of justice to direct the respondent authorities to cause an inquiry.

55. Accordingly, it is directed that the Commissioner, Department of Education, Govt. of Assam, shall cause an inquiry into the matter and pass consequential order (s) thereafter in accordance with law within a period of not later than 2 (two) months from the receipt of the copy of this order.

56. It is further provided that the respondent authorities may consider the appointment of the petitioners in view of the fact that the petitioners have secured marks which positioned them just below the last selected candidate and 2 (two) selected candidates have opted not to join the posts in question.

57. Both the writ petitions are disposed of in terms of the above directions. No order as to costs.

JUDGE

Comparing Assistant