

GAHC010284372019



2024:GAU-AS:11304

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

Case No. : WP(C)/8682/2019

KRISHNA KANTA DEBNATH
S/O HIRENDRA CHANDRA DEBNATH, ASSISTANT GRADUATE TEACHER,
MA, B.ED., VIDYAMANDIR HIGHER SECONDARY SCHOOL, PANDU, R/O-
VILL. JOYMATI NAGAR, PANDU, KAMRUP(M), GHY.- 781012, ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, DEPTT. OF
EDUCATION (SEC.), ASSAM (CIVIL) SECRETARIAT, BLOCK-C, DISPUR,
GHY., ASSAM,PIN- 781006.

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY.-781019.

3:THE NATIONAL COUNCIL FOR TEACHER EDUCATION
EASTERN REGIONAL COMMITTEE
REP. BY ITS REGIONAL DIRECTOR
15 NILAKANTA NAGAR
NAYAPALLI
BHUBANESWAR
ORISSA
PIN- 751012

Advocate for the Petitioner : MR. A K DUTTA, MR. K N CHOUDHURY,MR. U SARMA,MR. B
PURKAYASTHA,MR. B PURKAYASTHA

Advocate for the Respondent : SC, SEC. EDU., SC, N C T E

Linked Case : WP(C)/840/2018

PRABHASH KUMAR SARMA
VILLAGE GOALPARA
PO BELSOR
PS BELSOR
DIST. NALBARI
ASSAM
ASSISTANT TEACHER
KAKAYA HIGHER SECONDARY SCHOOL
NALBARI

2: NAGEN CHANDRA HALOI
VILLAGE- JHUTIKATA
PO BORI
PS BELSOR
DIST. NALBARI
ASSAM
PIN-781338
ASSISTANT TEACHER
SOLMARA HIGHER SECONDARY SCHOOL
NALBARI

VERSUS

THE STATE OF ASSAM
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-6

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPARTMENT
DISPUR
GUWAHATI-06

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

4:THE INSPECTOR OF SCHOOLS
NALBARI DISTRICT CIRCLE
NALBARI
ASSAM

Advocate for : MR A R BHUYAN
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM

Linked Case : WP(C)/5480/2019

IBRAHIM KHAN AND ANR.
MA
B.ED
ASSTT. TEACHER
PALHAZI HIGHER SECONDARY SCHOOL
P.O. PALHAZI
DIST- BARPETA
ASSAM
PIN- 781309

2: MADHURI BORTHAKUR
B.SC.
M.A
B.ED
ASSTT. TEACHER
MALLOW ALI HIGHER SECONDARY SCHOOL
P.O. DHEKARGARH
DIST- JORHAT
PIN- 785001

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE CHIEF SECY. TO THE GOVT. OF ASSAM
DISPUR
GHY-6

2:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
EDUCATION (SECONDARY) DEPTT.
DISPUR
GHY-6

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

4:THE NATIONAL COUNCIL FOR TEACHER EDUCATION (NCTE)
EASTERN REGIONAL COMMITTEE
REPRESENTED BY ITS REGIONAL DIRECTOR
15 NEELAKANTHA NAGAR
NAYAPALLI BHUBANESWAR
ORISSA PIN 751012

Advocate for : MR. S K DAS
Advocate for : SC SEC. EDU. appearing for THE STATE OF ASSAM AND 2 ORS.

Linked Case : WP(C)/5992/2019

SHAHUD AHMED BARLASKAR
S/O- LT. SHAMSUL HAQUE BARLASKAR
ASSISTANT TEACHER
MA B.ED. DN HIGHER SECONDARY SCHOOL
UDHARBOND
R/O VILL. DURGANAGAR PART-III
P.O. AND P.S. UDHARBOND
DIST. CACHAR
ASSAM
PIN- 788030.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
DEPTT. OF EDUCATION (SECONDARY)
ASSAM (CIVIL) SECRETARIAT
BLOCK-C DISPUR GUWAHATI
ASSAM. PIN- 781006.

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 781019.

3:THE INSPECTOR OF SCHOOLS
CACHAR DISTRICT CIRCLE
SILCHAR DIST. CACHAR
ASSAM. PIN- 788001.

4:THE PRINCIPAL
DN HIGHER SECONDARY SCHOOLS
UDHARBOND
DIST. CACHAR
ASSAM PIN- 788030.

5:THE NATIONAL COUNCIL FOR TEACHER EDUCATION
EASTERN REGIONAL COMMITTEE
REP. BY ITS REGIONAL DIRECTOR
15 NILAKANTA NAGAR
NAYAPALLI
BHUBANESWAR
ORRISA PIN- 751012.

Advocate for : MR. A K DUTTA
Advocate for : SC SEC. EDU. appearing for THE STATE OF ASSAM AND 4 ORS.

Linked Case : WP(C)/571/2022

CHAND MOHOMMAD ALI AND 7 ORS
S/O LATE CHAFER ALI
R/O VILL-PAHLONGPARA
P.S.-BELSOR
P.O.-CHAMATA
DIST-NALBARI
ASSAM
PIN-781304
ASSISTANT TEACHER IN SOLMARA HIGHER SECONDARY SCHOOL

2: MANOJ CHAKRABORTY
S/O RAJEN CHAKRABORTY
R/O GAMARIMURI
P.S.-BELSOR
P.O.-GAMARAMURI
DIST-NALBARI
PIN-781306
ASSISTANT TEACHER IN CHAMATA HIGHER SECONDARY SCHOOL

3: IKBAL HUSSAIN
S/O SRI ABDUL HAKIM
R/O VILL-BAHABARI
P.O.-KHARUPETIA
DIST-DARRANG
ASSAM
PIN-794115
ASSISTANT TEACHER IN BECHIMARI HIGHER SECONDARY SCHOOL

4: ANJALI DEKA
S/O LATE KHIMADHAR DEKA
R/O DARRANG
P.O.-DARRANG
DIST-DARRANG
ASSAM
PIN-784525
ASSISTANT TEACHER IN OUTALA HIGHER SECONDARY SCHOOL

5: SANTANU TALUKDAR
S/O LATE KUMUD CH. TALUKDAR
R/O VILL-PATIDOIVERELA
P.S.-MISSAMARI
P.O.-GARUBANDHA
DIST-SONITPUR
ASSAM
PIN-784506
ASSISTANT TEACHER IN MISSAMARI HIGHER SECONDARY SCHOOL

6: RABIN SARMA
S/O GOLAK CH. SARMA
R/O VILL-NO. 1 BAMUNPARA
P.O.-MANGOLDOI
P.S.-MANGOLDOI
DIST-DARRANG
PIN-784125
ASSISTANT TEACHER IN DEOMORNOI HIGHER SECONDARY SCHOOL

7: GANESH KALITA
S/O KALICHARAN KALITA
R/O BALIKURIA
P.S.-NALBARI
P.O.-NALBARI
PIN-781335
ASSISTANT TEACHER IN R.N.C H.S. MUKALMUAH

8: HARKANTA KALITA
S/O LATE SANTIRAM KALITA
VILL-KAYAHI
P.O.-SANTIPUKHURI
DIST-NAGAON
ASSAM
PIN-784144
ASSISTANT TEACHER IN BARHAMPUR H.S. SCHOOL

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
EDUCATION (SECONDARY) DEPARTMENT
DISPUR
GUWAHATI-781006

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPARTMENT DISPUR GUWAHATI-781006

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM KAHILIPARA GUWAHATI-781019

4:THE INSPECTOR OF SCHOOLS
NALBARI CIRCLE
AT NALBARI
DIST- NALBARI
ASSAM
PIN-784175

5:THE INSPECTOR OF SCHOOLS
NAGAON CIRCLE
DIST-NAGAON
ASSAM-784144

6:THE INSPECTOR OF SCHOOLS
SONITPUR CIRCLE
DIST-SONITPUR
ASSAM-784506

7:THE INSPECTOR OF SCHOOLS
DARRANG CIRCLE
DIST-DARRANG
ASSAM-784525

Advocate for : MR H BEZBARUA
Advocate for : SC SEC. EDU. appearing for THE STATE OF ASSAM AND 6 ORS

Linked Case : WP(C)/4250/2020

SYED USUF ALI
S/O- LT. ACHAD ALI
ASSTT. TEACHER
KACHARI MAHAL HIGH SCHOOL
MADHUKUCHI
R/O- VILL- ATHARA
P.O. PUTHIMARI
P.S. RANGIA
DIST.- KAMRUP
ASSAM
IN- 781380

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
DEPT. OF EDUCATION(SECONDARY)
ASSAM (CIVIL) SECRETARIAT
BLOCK-C
DISPUR
GHY
ASSAM
PIN- 781006

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM KAHILIPARA GHY-19

3:THE INSPECTOR OF SCHOOLS
KAMRUP DADARA GHY ASSAM

4:THE NATIONAL COUNCIL FOR TEACHER EDUCATION
EASTERN REGIONAL COMMITTEE
REP. BY ITS REGIONAL DIRECTOR
15 NILAKANTHA NAGAR
NAYAPALLI
BHUBANESWAR
ORISSA
PIN- 781012

Advocate for : MR. A K DUTTA
Advocate for : SC N C T E appearing for THE STATE OF ASSAM AND 3 ORS

Linked Case : WP(C)/7959/2017

PARTHA SARATHI CHOUDHURY and 3 ORS.
ASSTT. TEACHER
INDRA KUMARI GIRLS' H.S. SCHOOL
HAILAKANDI
P.O.
P.S. and DISTRICT HAILAKANDI
ASSAM.

2: AFTAB UDDIN LASKAR
ASSTT. TEACHER
ALGAPUR PUBLIC H.S. SCHOOL
ALGAPUR
P.O. KALIBARI BAZAR
P.S. ALGAPUR
DISTRICT HAILAKANDI
ASSAM.

3: ANAMUL HAQUE BARBHUIYA
ASSTT. TEACHER
PUBLIC H.S. SCHOOL
HAILAKANDI
P.O.
P.S. and DISTRICT HAILAKANDI
ASSAM.

4: NURUL ISLAM LASKAR
ASSTT. TEACHER
P.K. GIRLS' H.S. SCHOOL
LALA P.O. P.S. LALA
DISTRICT HAILAKANDI
ASSAM.

VERSUS

THE STATE OF ASSAM and 3 ORS.
TO BE REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR ASSAM GUWAHATI-06.

2:THE COMM. and SECY. TO THE GOVT. OF ASSAM
DEPTT. OF SECONDARY EDUCATION
DISPUR ASSAM GUWAHATI-06.

3:THE DIRECTOR SECONDARY EDUCATION ASSAM
KAHILIPARA GHY-19.

4:THE INSPECTOR OF SCHOOLS H.D.C. HAILAKANDI
P.O. P.S. and DISTRICT HAILAKANDI ASSAM.

Advocate for : MRA R BHUYAN

Advocate for : SC

SECONDARY EDUCATION appearing for THE STATE OF ASSAM and 3 ORS.

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 07.11.2024

Date of Judgment & Order : 20.11.2024

JUDGMENT & ORDER (CAV)

(N. Unni Krishnan Nair, J.)

Heard Mr. K. N. Choudhury, learned senior counsel, assisted by Mr. B. Purkayastha, learned counsel, as well as Mr. S. K. Das, learned counsel, appearing on behalf of their respective petitioners in these writ petitions. Also heard Mr. N. Das, learned Government Advocate, Assam; Mr. Rajesh Mazumdar, learned standing counsel, Secondary Education Department; and Mr. I. Alom, learned standing counsel, National Council for Teacher Education (NCTE), appearing on behalf of their respective respondents in all these writ petitions.

2. In WP(c)7959/2017, WP(c)840/2018, WP(c)5480/ 2019, WP(c)5992/2019, and WP(c)571/2022; a challenge was made with regard to the provisions of Rule 14(1) of the Assam Secondary Education (Provincialized) Service Rules, 2003. While in WP(c)8682/2019 and WP(c)4250/2020; the provisions of sub-rules 2(i) and 2(p) of Rule 2 and Rule 13 of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, is under challenge.

3. At the outset, it is to be noted that the provisions of Assam Secondary Education (Provincialized) Service Rules, 2003, was repealed by the provisions of Rule 35 of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, and as on date; it is the provisions of the said Rules of 2018, which is holding the field. Accordingly, the Rules of 2003, being already repealed, no further consideration would be called for in WP(c)7959/2017, WP(c)840/2018, WP(c)5480/2019, WP(c)5992/2019, and WP(c)571/2022, and consequently, all the above-noted writ petitions, would stand closed.

4. The present order is confined to the consideration of the challenge as made by the petitioners in WP(c)8682/2019, and WP(c)4250/2020, to the provisions of sub-Rules 2(i) and 2(p) of Rule 2 and Rule 13 of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018.

5. The petitioners, herein, by way of instituting the above-noted 2(two) writ petitions, have assailed the provisions of sub-rules 2(i) and Rule 2(p) of Rule 2 of the said Rules of 2018, to the extent that while defining the terms Graduate Teacher and Post Graduate Teacher in the said Rules; it

was not prescribed that for appointment against the said posts, along with the educational qualification prescribed; B.Ed. Degree was also mandatory. The petitioners have further presented a challenge to the provisions of Rule 13 of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, which relates to recruitment to the post of Vice-Principal to the effect that the qualification so prescribed for recruitment against the said post, do not mandate the incumbent to possess the B.Ed. Degree which was contended to be mandatory in terms of the National Council for Teacher Education (NCTE) guidelines.

6. The challenge of the petitioners in the above-noted 2(two) writ petitions is that B.Ed./B.T. Degree is an essential educational qualification for recruitment as Graduate Teacher and as Post Graduate Teacher under the provisions of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, and the post of Vice-Principal being a promotional post from the posts of Graduate Teacher as well as Post Graduate Teacher; the non-prescription of the qualification of B.Ed./B.T. Degree as one of the essential conditions requisite to be possessed by an incumbent in the feeder cadre for promotion to the post of Vice-Principal, is contrary to the provisions of the said Rules of 2018 as well as the prescriptions made in this connection by the National Council for Teacher Education (NCTE) authorities.

7. In the above-referred writ petitions; there is hardly any factual controversy which would require a detailed factual narration for the purpose of adjudication of these writ petitions. Accordingly, the individual particulars of the petitioners disclosed in these writ petitions, is not

reproduced herein.

8. A challenge as noticed hereinabove to the relevant provisions of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, a background leading to the enactment of the said Rules of 2018, would be called for.

9. In the year 2003; the State decided to introduce a new set of Rules to regulate the recruitment and conditions of services of persons appointed to the Assam Secondary Education (Provincialized) Service. Accordingly, in exercise of the powers conferred by the proviso to Article 309 to the Constitution of India; the Governor of Assam made the Assam Secondary Education (Provincialized) Service Rules, 2003. The relevant provisions of the said Rules of 2003 pertinent to the issue arising in the present proceedings, is extracted hereinbelow:

“3. Classes and Cadres – (1) The service in provincialized School shall consist of the teaching and non-teaching staff. The teaching staff shall consist of following classes and cadres, each one of those constituting a distinct and separate cadre as on the commencement of these rules, namely:-

(a) Class II (Senior): It includes the cadres of-

(1) Principal;

(ii) Vice-Principal;

(iii) Post-Graduate Teacher;

(w) Headmaster/Superintendent;

14. Recruitment to the Post of Vice-Principal/Head Master/Head Mistress/Superintendent/Asstt. Head Master/Asstt. Head Mistress of High/HS/HS & MP School-

(1) The Post of Vice-Principal shall be filled up by promotion on the basis of combined seniority in the School among the Graduate and Post-Graduate Teachers with minimum 10 (ten) years of teaching experience in case of Post Graduate Teachers and 12 years teaching experience, in case of Graduate Teacher subject to satisfactory Annual Confidential Report for 3(three) consecutive years. Selection shall made on the basis of recommendation of the State Selection Board. The seniority of teachers in the Schools shall be determined as per provision under Rule 24 (1).”

10. A perusal of the provisions of Rule 14 of the Assam Secondary Education (Provincialized) Service Rules, 2003, would go to reveal that the recruitment to the post of Vice-Principal was to be so effected by way of promotion on the basis of combined seniority in the school amongst the Graduate Teachers and Post Graduate Teachers with minimum 10 years of teaching experience in case of the Post Graduate Teachers and minimum 12 years of teaching experience in case of Graduate Teachers subject to satisfactory Annual Confidential Reports for three consecutive years. The provisions of the said Assam Secondary Education (Provincialized) Service Rules, 2003, does not mandate possession by an incumbent in the feeder cadre of a B.Ed./B.T. Degree for recruitment to the post of Vice-Principal.

11. The said Rules of 2003, was further amended vide the Assam Secondary Education (Provincialized) Service (Amendment) Rules, 2012. While the recruitment qualifications for the post of Principal in a Higher Secondary School was amended and substituted by requiring the incumbent to possess a Post Graduate Qualification with B.Ed./B.T. Degree as the minimum requisite educational qualification; the provisions for recruitment to the post of Vice-Principal in a Higher Secondary School as provided for in the original Rules of 2003, was not amended. Further, B.Ed. qualification came to be mandated as a requisite qualification for the post of Graduate Teacher/Post Graduate Teacher in a Secondary/Senior Secondary School. The said Rules of 2003, continued to hold the field till the enactment of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018. The provisions of Rule 35 of the said Rules of 2018, proceeded to repeal the Assam Secondary Education (Provincialized) Service Rules, 2003, along with any order and/or Notification corresponding to those Rules.

12. The provisions of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, under challenge in the present proceedings, being relevant, are extracted hereinbelow:

“2. Definitions – In these rules, unless there is anything repugnant in the subject or context, -

(i). "Graduate Teacher" means and includes the category of (Assistant Teacher, Classical teacher of Higher Secondary or Senior Secondary (erstwhile Junior College) or High Madrassa or a High School including amalgamated Higher Secondary and Senior Secondary and High Schools for whose appointment the minimum qualification is Graduate in Arts/Science/Commerce from recognized University including Demonstrators of a provincialised Higher Secondary School or a Senior Secondary School;

(p) "Post Graduate Teacher" means the category of Post Graduate Teachers in the Subject of Arts/Science/ Commerce stream, vocational stream including the Commercial Computer Application of a Higher Secondary School, Senior Secondary School for whose appointment the minimum qualification is Post-Graduate Degree in Arts/Science/Commerce or in vocational subject from recognized University for imparting education minimum from class IX to XII and such other classes as may be assigned by the Principal of the School;

13. Recruitment to the Post of Vice Principal and selection procedure thereof:

(1) The Post of the Vice Principal of a Higher Secondary School shall be filled up by promotion on the basis of combined seniority in the concerned School from the candidates amongst the Post-Graduate Teachers and Graduate Teachers on the recommendation of the District Promotion Committee constituted under Rule 16(4), and as per eligibility criteria under sub-rule (2).

(2) Eligibility for the Post of Vice Principal in Higher Secondary School shall be as follows:-

(a) He must be M.A/M.Sc/M.Com from any recognized University;

(b) He must have at least 10 years of teaching experience as Post Graduate Teacher or 12 years of teaching-experience as Graduate Teacher in a Higher Secondary School;

(c) In case of amalgamated Higher Secondary School, the Headmaster of ME/MV School having requisite qualification and working as ex-officio Vice-Principal in the scale of pay of substantive Post held by them and 10 years of experience as Headdmaster/Ex-officio Vice- Principal in both ME/MV and amalgamated school may also be eligible for selection as Vice Principal:

Provided that their service shall be counted from the date of getting Graduate scale of pay in their earlier school if otherwise eligible.

(d) In case of amalgamated Higher Secondary School, the Assistant Teacher of ME/MV School having requisite qualification and 15 years of teaching experience in both ME/MV and amalgamated school, may also be eligible for selection as Vice Principal;

(e) In case of a Higher Secondary School having amalgamation with LP School, the teacher of erstwhile LP school having requisite qualification and 20 years of teaching experience in both LP and amalgamated school may also be eligible for selection as Vice Principal;

(3) The selection shall be based on satisfactory Annual Confidential Report for last 3 consecutive years and seniority of service in Graduate Scale of pay as per procedure provided under sub-rule (4).

(4)(i) Before the end of the year the Inspector of Schools shall make an assessment of the number of vacancies to be occurred in the cadres of Vice Principal to be filled up by promotion in the next year;

(ii) The Inspector of Schools shall call particulars in the prescribed format from the eligible candidates/teachers of the School for filling up of the vacancies through promotion. The Member-Secretary shall receive the applications from candidates and submit them to the District Promotion Committee constituted under Rule 16(4);

(iii) The District Promotion Committee shall verify the records pertaining to seniority and merits and prepare the select list equal to the number of vacancies;

(iv) The select list so prepared by the District Promotion Committee shall be submitted to the Director who shall after necessary verification as may be required, approve the select list and publish the same in the office notice Board or in such other places as the Director may consider fit and proper;

(v) After receipt of approval of the Director on the select list, the Inspector of School shall issue promotion order from the approved select list;

(vi) The select list so prepared and approved shall be in force for one year from the date of approval.”

13. A perusal of the provisions of Rule 13 as incorporated in the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, pertaining to the recruitment to the post of Vice-Principal in a Higher Secondary School, would go to reveal that the educational qualification mandated to be possessed by a person for recruitment against the said post of Vice-Principal; does not mandate possession of a B.Ed./B.T. Degree.

14. As noticed hereinabove; the feeder cadre for promotion to the post of Vice-Principal is the cadres of Graduate Teacher and Post Graduate Teacher. The Assam Secondary Education (Provincialized Schools) Service Rules, 2018, for the purpose of recruitment to the post of Graduate Teacher and Post Graduate Teacher, prescribes the requisite educational qualification in Schedule-III of the said Rules of 2018. The requisite educational qualification as prescribed for recruitment to the posts of Graduate Teacher and Post Graduate Teacher under the provisions of Schedule-III of the said Rules of 2018, being relevant, are extracted hereinbelow:

**“Schedule-III
[See Rules 10(1)(2)]**

Minimum educational and professional qualifications for direct recruitment in the Post of:

(i) Post Graduate Teacher:- Post Graduation with at least 50% marks (or its equivalent) from recognized University and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution, but degrees obtained from off-campus and distance education institution shall not be considered as valid;

(ii) Graduate Teacher:- Graduate/Post Graduate from recognized University with at least 50% marks in either Graduation or Post Graduation (or its equivalent) and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution, but degrees obtained from off-campus and distance education institution shall not be considered as valid;”

15. A perusal of the educational qualification as prescribed for the posts of Post Graduate Teacher and Graduate Teacher reveals that along with the Post Graduate qualification and/or Graduate qualification as prescribed; an incumbent must necessarily possess the B.Ed. Degree from a National Council for Teacher Education (NCTE) recognized institution. Further, the next higher post than that of the post of the Vice-Principal, in the hierarchy, as per the provisions of Rule 3 of the said Rules of 2018, in respect of a Higher Secondary School, is the post of Principal.

16. Rule 12 of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, while providing that a post of the Principal shall be filled up by way of direct recruitment; the educational qualification prescribed for the said post under the provisions of Rule 12(3)(i), is, as under:

“12. Recruitment to Principal and procedure thereof:-

(3) The minimum qualifications for appointment to the post of Principal in Higher Secondary School and Senior Secondary School shall be as follows:-

(i) The candidate must be M.A./M.Sc./M.Com with B.T/B.Ed degree from any recognized University having uniform good academic career. In respect of Hindi Teacher having degree qualification, the Hindi 'Parangat' and 'Nishanat' shall be considered instead of B.T/B.Ed;”

17. In terms of the provisions of Rule 12(3)(i) of the said Rules of 2018; an intending candidate for recruitment to the post of Principal in addition to having the requisite teaching experience, is also required to possess a Post Graduate qualification along with the B.Ed./B.T. Degree. However, the B.Ed./B.T. qualification while being mandated for recruitment to the feeder posts for recruitment to the post of Vice-Principal as well as for recruitment to the next higher post of Principal in a Higher Secondary School, but, for the post of Vice-Principal; the requirement of possessing a B.Ed./B.T. Degree is omitted.

18. Mr. Choudhury, learned senior counsel appearing for the petitioners, has, at the outset, by referring to the provisions of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, submitted that while it is a mandatory requirement for recruitment to the posts of Graduate Teacher and Post Graduate Teacher that an intending candidate must possess along with the other educational qualifications, a B.Ed./B.T. Degree and the post of Vice-Principal in terms of the provisions of Rule 13

of the said Rules of 2018, admittedly, being a promotional post and the feeder posts being the cadres of Graduate Teachers and Post Graduate Teachers, it is incomprehensible that the said Rules of 2018, do not prescribe the B.Ed./B.T. Degree qualification as one of the mandatory qualifications for recruitment to the post of Vice-Principal.

19. Mr. Choudhury, learned Senior Counsel, by referring to the regulations issued by the National Council for Teacher Education (NCTE), has submitted that the National Council for Teacher Education (NCTE) had vide its regulations, dated 12.11.2014, mandated that for recruitment to the post of teachers in Secondary/High School and Senior Secondary School/Intermediate Schools along with the other prescribed educational qualifications; it is mandatory for an intending candidate to possess a B.Ed./B.T. Degree from a National Council for Teacher Education (NCTE) recognized institution. The learned Senior Counsel has further submitted that the National Council for Teacher Education (NCTE) being the authority entrusted with the responsibility of prescribing the requisite eligibility criteria to be possessed by teachers in the schools coming under its purview, and the prescription of a B.Ed./B.T. Degree being made mandatory as far back as on 03.09.2001, and reiterated vide the said Notification, dated 12.11.2014; has submitted that it is not open to the State Government to prescribe a qualification for recruitment to the various posts in the hierarchy of the posts figuring in a Higher Secondary School contrary to the prescriptions made in this connection by the National Council for Teacher Education (NCTE) authorities.

20. Mr. Choudhury, learned Senior Counsel, in support of his submissions,

has relied upon the decision of a Division Bench of this Court in the case of **Raju Chakraborty & ors. V. State of Assam & ors.**, reported in **2020(4) GLT 842**, to emphasize on the point that the minimum qualification as prescribed by the National Council for Teacher Education (NCTE) will have to be given primacy in the arena of qualifications laid down for the teachers and also in the process of selection of such teachers.

21. In the above premises, Mr. Choudhury, learned Senior Counsel for the petitioners; has submitted that the respondent authorities having not provided for the B.Ed./B.T. Degree as one of the mandatory qualifications required for recruitment for promotion to the post of Vice-Principal, had deviated from the prescriptions made in this connection by the National Council for Teacher Education (NCTE) authorities and accordingly, the provisions of Rule 13 of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, cannot be sustained and the same would call for an interference by this Court along with the provisions of sub-rules 2(i) and 2(p) of Rule 2 of the said Rules of 2018.

22. Mr. Alom, learned standing counsel, appearing for the National Council for Teacher Education (NCTE) authorities, by referring to the affidavit-in-opposition filed by the said authority in WP(c)8682/2019, has submitted that the National Council for Teacher Education (NCTE) had as far back as 2001, prescribed the minimum recruitment qualification for the post of teachers in High School/Higher Secondary School and B.Ed./B.T. Degree qualification was a mandatory qualification so prescribed along with other educational qualifications.

23. Mr. Alom, learned standing counsel, National Council for Teacher Education (NCTE), by referring to the various Notifications issued by the National Council for Teacher Education (NCTE) authorities including the Notifications, dated 03.09.2001, and 12.11.2014, relevant to the issue arising for adjudication in the present proceedings, has submitted that the National Council for Teacher Education (NCTE) mandates the B.Ed./B.T. Degree as an essential qualification for all categories of posts in a High School/Higher Secondary School.

24. Mr. Alom, learned standing counsel, National Council for Teacher Education (NCTE), has further submitted that the recruitment to the post of Vice-Principal being so required to be effected by way of promotion in terms of the provisions of Rule 13 of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, from the cadres of Graduate Teacher and Post Graduate Teacher of Higher Secondary School; the State Respondents ought to have included the B.Ed./B.T. Degree qualification as an essential qualification for recruitment to the post of Vice-Principal in view of the fact that the feeder posts identified for promotion to the said post of Vice-Principal mandates possession by an intending candidate so recruited to it, a B.Ed./B.T. Degree along with the prescribed educational qualifications.

25. Mr. Alom, learned standing counsel, National Council for Teacher Education (NCTE) authorities, in the above premises, has submitted that the Department of School Education, Government of Assam, is required to make appropriate amendments to the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, towards incorporating the

B.Ed./B.T. Degree for recruitment to the post of Vice-Principal.

26. Mr. Mazumdar, learned standing counsel, Secondary Education Department, at the outset, has submitted that the requirement of possessing a B.Ed./B.T. Degree qualification was not a mandatory qualification for recruitment to the posts of Graduate Teacher and Post Graduate Teacher existing in various provincialized High Schools/Higher Secondary Schools of the State prior to the year 2012.

27. Mr. Mazumdar, learned standing counsel, Secondary Education Department, has further submitted that the amendment as effected in the provisions of the Assam Secondary Education (Provincialized) Service Rules, 2003, in the year 2012, had mandated that the B.Ed./B.T. Degree would be a mandatory qualification for recruitment to the posts of Graduate Teacher as well as Post Graduate Teacher. The learned standing counsel, Secondary Education Department, has submitted that for the posts of Graduate Teacher and Post Graduate Teacher as well as for the post of Principal; the possession of B.Ed./B.T. Degree qualification was made mandatory only in the year 2012.

28. Mr. Mazumdar, learned standing counsel, Secondary Education Department, has also submitted that in view of the said position existing in the Rules holding the field at various points of time, there exists in the various provincialized Higher Secondary Schools of the State, Graduate Teachers and Post Graduate Teachers recruited prior to the year 2012, without the B.Ed./B.T. Degree qualification.

29. Mr. Mazumdar, learned standing counsel, Secondary Education Department, has, accordingly, submitted that the Government while framing the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, had omitted the requirement of possession of a B.Ed./B.T. Degree for recruitment to the post of Vice-Principal only with a view to provide an avenue of promotion to the incumbents recruited to the posts of Graduate Teacher and Post Graduate Teacher in provincialized High Schools/Higher Secondary Schools of the State prior to the year 2012, and not possessing a B.Ed./B.T. Degree.

30. Mr. Mazumdar, learned standing counsel, Secondary Education Department, has further submitted that the educational qualifications as prescribed in Schedule III of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, for recruitment to the posts of Graduate Teacher and Post Graduate Teacher, is in conformity with the prescription made in this connection by the National Council for Teacher Education (NCTE) authorities.

31. Mr. Mazumdar, learned standing counsel, Secondary Education Department, has submitted that the provisions of Rule 12 of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, for recruitment to the post of Principal, also mandates possession by an intending candidate of a B.Ed./B.T. Degree along with the other educational qualifications so prescribed.

32. Mr. Mazumdar, learned standing counsel, Secondary Education Department, in support of his submissions; has relied upon the decision of

a Division Bench of this Court in the case of **All Assam Higher Secondary Teachers & Employees Association v. State of Assam & ors.**, reported in **2014 (5) GLT 69**, to contend that on a challenge made by the Post Graduate Teachers to the prescription of possession of a B.Ed./B.T. Degree for recruitment to the post of Principal in terms of the provisions of the Assam Secondary Education (Provincialized) Service(Amendment) Rules, 2012; this Court had required the State Respondents to re-consider the said Rules and finalize the same within a period of 2(two) months from the date of receipt of a copy of the order.

33. Mr. Mazumdar, learned standing counsel, Secondary Education Department, has, therefore, submitted that in view of the directions passed by this Court in the case of **All Assam Higher Secondary Teachers & Employees Association** (supra), the State Respondents had formulated the provisions of Rule 13 as it exists in the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, with a view to provide an avenue of promotion to the incumbents existing in the cadres of Graduate Teacher and Post Graduate Teacher recruited prior to the year 2012 without a B.Ed./B.T. Degree qualification.

34. Mr. Mazumdar, learned standing counsel, Secondary Education Department, in the above premises; has submitted that the provisions of Rule 13 of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, given the object sought to be achieved behind incorporation of the same in the manner it so exists in the provisions of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018; no interference would be called for from this Court.

35. We have heard the learned counsels appearing for the parties and also perused the materials available on record.

36. The grievance of the petitioners, as noticed hereinabove, is with regard to the omission of the B.Ed. qualification while defining the terms Graduate Teacher and Post Graduate Teacher in the provisions of sub-rules 2(i) and 2(p) of Rule 2 of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, and further, the omission of B.Ed. qualification as a mandatory qualification for recruitment as Vice Principal in the provisions of Rule 13 of the said Rules of 2018.

37. The challenge as made to the provisions of Rule 13 of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, is being considered at the first instance.

38. The petitioners, herein, have contended that for recruitment to the post of Vice-Principal, prescription of B.Ed./B.T. Degree is a mandatory qualification, more particularly, in view of the prescriptions made with regard to the recruitment to the post of school teachers in Senior Secondary Schools by the National Council for Teacher Education (NCTE) under the Regulations issued by it from time to time.

39. The National Council for Teacher Education (NCTE) was so established in terms of the provisions of Section 3(1) of the National Council for Teacher Education Act, 1993. In exercise of the powers conferred by Section 32(dd) *read with* the provisions of Section 12(d) of the National Council for Teacher Education Act, 1993; the National Council for Teacher

Education (NCTE) had issued the National Council for Teacher Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools), Regulations, 2001. The said Regulations published vide Notification, dated 03.09.2001, was applicable for recruitment of teachers in all formal schools, run or aided or recognized by the central or States or other authorities for imparting education at the elementary, Secondary and Senior Secondary stages. In terms of the said Regulations of 2001; pertaining to Secondary/High School; the minimum academic and professional qualification requisite for recruitment as a teacher was prescribed as "Graduate with Bachelor of Education(B.Ed.) or its equivalent or 4 years integrated B.Sc./B.Ed. and/or its equivalent course". For recruitment as a teacher in a Senior Secondary/PUC/ Intermediate school; the minimum academic and professional qualification was prescribed as "Masters Degree in the relevant subject with Bachelor of Education(B.Ed.) or its equivalent or 2 years integrated M.Sc./B.Ed. course and/or its equivalent course".

40. Regulation 4 of the National Council for Teacher Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools), Regulations, 2001; mandated that the existing Rules for recruitment of teachers, would be required to be modified within a period of 3 years so as to bring it in conformity with the qualifications prescribed in the Schedule. It was further stipulated that the teachers appointed as per the then existing recruitment qualifications, would be required to acquire qualifications in terms of the provisions of the said Regulations of 2001 subsequent to the issuance of the same.

41. The National Council for Teacher Education Act, 1993, was amended and provisions of Section 12A was incorporated. The provisions of section 12A, being relevant, is extracted hereinbelow:

“12A. Power of Council to determine minimum standards of education of school teachers. – For the purpose of maintaining standards of education in schools, the Council may, by regulations, determine the qualifications of persons for being recruited as teachers in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate school or college, by whatever name called, established, run, aided or recognised by the Central Government or a State Government or a local or other authority:

Provided that nothing in this section shall adversely affect the continuance of any person recruited in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate schools or colleges, under any rule, regulation or order made by the Central Government, a State Government, a local or other authority, immediately before the commencement of the National Council for Teacher Education(Amendment) Act, 2011 (18 of 2011) solely on the ground of non-fulfillment of such qualifications as may be specified by the Council:

Provided further that the minimum qualifications of a teacher referred to in the first proviso shall be acquired within the period specified in this Act or under the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009).”

42. The National Council for Teacher Education (NCTE) authorities, thereafter, vide Notification, dated 12.11.2014, in exercise of the powers conferred under Clause(dd) of Sub-section 2 of Section 32 *read with* Section 12A of the National Council for Teacher Education Act, 1993, and in supersession of the National Council for Teacher Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools), Regulations, 2001; had framed the National Council for Teacher Education (Determination of Minimum Qualifications for Persons to be recruited as Education Teachers and Physical Education Teachers in Pre-Primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or colleges) Regulations, 2014.

43. In terms of the said Regulations of 2014, more particularly, Regulation 4(a) thereof; it was mandated that the qualifications for

recruitment of teachers in any of the schools covered by the said Regulations of 2014; shall be as given in the first and second Schedule annexed to the said Regulations. It was further provided under the provisions of Regulation 4(b) that for promotion of teachers; the minimum qualifications as specified in the first and second Schedule are applicable for consideration from one level to the next level.

44. The provisions of the first Schedule to the said National Council for Teacher Education (Determination of Minimum Qualifications for Persons to be recruited as Education Teachers and Physical Education Teachers in Pre-Primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges), Regulations, 2014; insofar as it concerns the prescription of qualifications for teachers in Secondary/High School (for classes IX–X) and Senior Secondary/Intermediate(for classes XI-XII), are extracted hereinbelow:

“First Schedule
{See Sub-regulation (2) of Regulation (4)}

The National Council for Teacher Education (Determination of Minimum Qualifications for Persons to be recruited as Education Teachers in Pre-Primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges) Regulations, 2014.

LEVEL	MINIMUM ACADEMIC AND PROFESSIONAL QUALIFICATIONS
4. Secondary/High School (For classes IX-X)	<p><i>(a) Graduate/Post Graduate from recognized University with at least 50% marks in either Graduation or Post Graduation (or its equivalent) and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution.</i></p> <p style="text-align: center;">Or</p> <p><i>(b) Graduate/Post Graduate from recognized University with at least 45% marks in either Graduation or Post Graduation (or its equivalent) and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution {in accordance with the National Council for Teacher Education (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 notified on 13.11.2002 and National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007 notified on 10.12.2007}</i></p> <p style="text-align: center;">Or</p> <p><i>(c) 4-years degree of B.A.Ed./B.Sc.Ed. from any National Council for Teacher Education recognized institution.</i></p>

5. Senior Secondary/ Intermediate (For classes XI-XII)	<p><i>(a) Post Graduate with at least 50% marks (or its equivalent) from recognized University and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution.</i></p> <p style="text-align: center;">Or</p> <p><i>(b) Post Graduate with at least 45% marks (or its equivalent) from recognized University and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution (in accordance with the National Council for Teacher Education (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 notified on 13.11.2002 and National Council for Teacher Education Recognition Norms and Procedure) Regulations, 2007 notified on 10.12.2007-</i></p> <p style="text-align: center;">Or</p> <p><i>(c) Post Graduate with at least 50% marks (or its equivalent) from recognized University and B.A.Ed./B.Sc.Ed. from any NCTE recognized institution.</i></p>
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45. Having noticed the provisions of the National Council for Teacher Education Act, 1993, and the Regulations framed thereunder, and by also noticing that the parties to the present proceedings, have not disputed that the prescription of eligibility criteria as mandated by the National Council for Teacher Education (NCTE), is mandatory for recruitment to the posts of teachers and is required to be followed by all concerned including the State Respondents, the stand as taken by the State respondents, in the present proceeding, is being examined.

46. The State Respondents have in the present proceedings, justified the omission of the qualification of B.Ed./B.T. Degree for recruitment to the post of Vice-Principal, by projecting that the Post Graduate Teachers/ Graduate Teachers existing in service recruited prior to the year 2012 without the B.Ed. Degree; in the event of the B.Ed. Degree being also prescribed as one of the mandatory educational qualifications for the post of Vice-Principal, would be excluded from the purview of consideration for promotion to the post of Vice-Principal.

47. As noticed hereinabove; the prescription of B.Ed. qualification for the posts of Graduate Teacher and Post Graduate Teacher was mandated only

with effect from the year 2012. Prior to 2012; the said qualification was not a mandatory qualification for recruitment as a Graduate Teacher and/or Post Graduate Teacher. Further, the said qualification was also not mandated for recruitment to the post of Principal and/or Vice-Principal. However, with the amendment of the provisions of the Assam Secondary Education (Provincialized) Service Rules, 2003, in the year 2012; the B.Ed. Degree qualification came to be prescribed as a mandatory qualification for recruitment to the posts of Graduate Teacher and Post Graduate Teacher. The said qualification was also prescribed as a mandatory qualification for recruitment to the post of Principal. The prescription of B.Ed. qualification for the post of Principal in the Assam Secondary Education (Provincialized) Service Rules, 2003, vide the amendment effected therein, in the year 2012; was challenged before this Court in the case of **All Assam Higher Secondary Teachers & Employees Association**(supra). This Court upon appreciating the issue so arising in the said case, was pleased to dispose of the same with the following directions:

“6. Learned counsel for the State says that since the matter is legal, it was not necessary to file reply and, on due consideration, the State has issued notification dated 13th September, 2012 granting relaxation in the requirement of having BT/B.Ed degree upto 1st January, 2015 for appointment in Higher Secondary School/High School/High Madrassa, subject to the condition that the candidate will have to acquire B.Ed/BT degree within five years from the date of joining. However, he has no instructions on the issue of qualification of BT/B.Ed degree for Post Graduate Teachers for eligibility for the Post of Principal.

7. On due consideration, we find merit in the grievance of the petitioners. It is clear that the amendment of qualifications required for recruitment to the Post of Principal in Clause 1(i) for the Post Graduate Teachers or Vice-Principals (appointed out of Post Graduate Teachers), no such qualification was laid down at the time of entry into service nor at any point thereafter, they could obtain such degree. Thus, eligible candidates with 15 years service will be rendered ineligible which is arbitrary and discriminatory. Graduate Teachers were being allowed to acquire these qualifications during service which Post Graduate Teachers were not and, therefore, Post Graduate Teachers could not be treated at par with Graduate Teachers in the matter of having BT/B.Ed degree.

8. In view of above, the Rule may either require to be set aside or may have to be reconsidered by the rule making authority. Accordingly, we direct that the issue may be reconsidered and finalized within two months from the date of receipt of a copy of this order and, pending such finalization, no further regular promotion be made to

the Posts of Principals in Higher Secondary/Higher Secondary & Multipurpose Schools. Any step taken in pursuance of the above amendments may be reviewed in the light of the above observation.”

48. A perusal of the directions passed by this Court in the case of **All Assam Higher Secondary Teachers & Employees Association**(supra), would go to show that the State after having prescribed the B.Ed./B.T. Degree qualification for recruitment to various posts in Higher Secondary School/High School/High Madrassa, had issued a Notification, dated 13.09.2012, granting relaxation in the requirement of a possession of a B.Ed./B.T. Degree qualification upto 01.01.2015, subject to the condition that the candidate concerned shall have to acquire the B.Ed./B.T. Degree qualification within 5 years from the date of his joining.

49. This Court, in the said decision, further noticing that for recruitment to the post of Post Graduate Teachers; the incumbents so recruited to the cadre prior to the year 2012, were not required to also possess a B.Ed./B.T. Degree and they having rendered requisite length of service for promotion to the next higher post and further, noticing that the Graduate Teachers while being allowed to acquire the B.Ed. Degree during their service tenure, such facility was not being extended to the Post Graduate Teachers; proceeded to direct the State Respondents authorities, either, to set aside, or, to re-consider the Rules. The State Respondents, however, with regard to the prescription of B.Ed. Degree qualification for the post of Principal, did not amend the provisions of the Assam Secondary Education (Provincialized) Service Rules, 2003, and the B.Ed. Degree qualification continued to be mandated as one of the mandatory qualifications requisite for recruitment to the post of Principal.

50. As noticed hereinabove; the National Council for Teacher Education (NCTE) is authorized to prescribe the requisite qualifications required to be possessed by an incumbent for recruitment to the post of teachers in schools covered by the provisions of the National Council for Teacher Education Act, 1993. Accordingly, it is to be seen as to whether the posts of Principal and Vice-Principal as existing in a provincialized Senior Secondary School, can be construed to be teaching posts, to bring it within the purview of the provisions of the National Council for Teacher Education (NCTE) Regulations issued from time to time with regard to the minimum educational and professional qualifications required to be possessed by a person for being recruited as a teacher in a Senior Secondary School and/or as to whether the said post have to be deemed to be an administrative post divorced from any teaching responsibility so as to take it outside the purview of the National Council for Teacher Education (NCTE) Regulations.

51. The said issue need not detain this Court any further in-as-much as the provisions of Rule 2(z) of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, defines "teacher" to mean all Assistant Teachers, Subject Teaches, Faculties including Principal and Vice-Principal. The provisions of Rule 2(z) being relevant is extracted hereinbelow:

"(2) "Teacher" means and includes all Assistant Teachers/ Subject Teacher, Faculties including Principal, Vice-Principal, Headmaster, Superintendent, Assistant Headmaster, Assistant Superintendent and Demonstrator of a Higher Secondary or a High School including amalgamated Higher Secondary and High Schools whose services have been provincialised under the Assam Secondary Education (Provincialisation) Act, 1977, any other subsequent Act and also includes a teacher appointed against a regular sanctioned post in a Senior Secondary, Higher Secondary or a High School/Madrassa;"

52. Further, the provisions of Rule 3 of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, constitutes the various classes and cadres existing in a provincialized school. The provisions of Rule 3(1) mandates that the service in a provincialized school shall consists of teaching and non-teaching staff as per Schedule-III. It further mandates that the teaching staff shall consist, amongst others, of the cadres of Principal, Vice-Principal, Graduate Teacher and Post Graduate Teacher. The provisions of Rule 3 of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, being relevant, is extracted hereinbelow:

“3. Classes and Cadres.- (1) The Service in provincialised School shall consist of the teaching and non-teaching staff as in Schedule-III. The teaching staff shall consist of the following classes and cadres, each one of those constituting a distinct and separate cadre as on the commencement of these rules, namely:-

(a) Class-I (Senior):- It includes the cadre of-

(i) Principal;

(a) Class-II:- It includes the cadres of-

(i) Vice Principal;

(ii) Post Graduate Teacher;

(iii) Headmaster/Superintendent;

(b) Class-III:- It includes the cadres of-

(i) Assistant Headmaster/Assistant Superintendent;

(ii) (a) Graduate Teacher;

(b) Hindi Teacher having Bachelor Degree from any recognized University;

(c) Classical Teacher (Sanskrit/Arabic/Language Teacher) having Bachelor Degree from any recognized University;

(d) Assamese Language Teacher;

(iii) Demonstrator;

(iv) Music Teacher;

(v) Under Graduate Teacher/Junior Classical Teacher/ Junior Hindi Teacher;

(vi) Craft Teacher.

(2) The non-teaching staff in provincialised School shall consist of the following classes and cadres on the date of commencement of these rules, namely:-

(a) Class-III: It includes the cadres of-

(i) Senior Assistant;

(ii) Junior Assistant;

(iii) Library Assistant;

(b) Class-IV:- It includes the cadres of-

(i) Laboratory Bearer;

(ii) Peon/Chowkidar.

(3) The service may also include:-

(i) Any post equivalent to a post in any of the cadre mentioned in sub-rule (1) and (ii) Any cadre or post declared by the Government to be cadre of the service.

(ii) Each cadre in sub-rule (2) of rule 3 shall form an independent cadre and members of any cadre shall have no claim for appointment at any cadre except in accordance with provision of these rules.

(iii) The service may also include post equivalent to post of any cadre mentioned in sub-rule (2) of rule 3 and any post that may be declared by the Government from time to time as cadre post of the service.”

53. The provisions of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, having denoted the posts of Principal and Vice-Principal to be teaching posts; it has to be held that the provisions of the National Council for Teacher Education Act, 1993, more particularly, the prescription of qualifications therein, for teachers of a Senior Secondary School, shall automatically apply for the purpose of recruitment to the posts of Principal and Vice-Principal in a Higher Secondary School, covered by the provisions of the said Rules of 2018.

54. Further, the provisions of Regulation 4(b) of the National Council for Teacher Education (Determination of Minimum Qualifications for Persons to be recruited as Education Teachers and Physical Education Teachers in Pre-Primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or colleges) Regulations, 2014, having also mandated that for promotion of teachers, the relevant minimum qualification as specified in the first and second Schedules, are applicable for consideration from one level to the next level; the post of Vice-Principal being a promotional post in terms of the provisions of Rule 13 of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, from the cadres of Graduate Teacher and Post Graduate Teacher, it has to be held that the qualifications as prescribed for recruitment to the posts of

Graduate Teacher as well as Post Graduate Teacher, would also automatically stand extended for recruitment to the post of Vice-Principal in a provincialized Higher Secondary School.

55. The post of Vice-Principal as noticed hereinabove, being a promotional post from the feeder cadres of Graduate Teacher and Post Graduate Teacher; the prescription of the qualification of B.Ed. Degree would be a mandatory qualification and the omission by the Rule making authority to incorporate the B.Ed. Degree in the provisions of Rule 13 of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, for the purpose of recruitment to the post of Vice-Principal, cannot be countenanced and the same has to be held to be in violation of the prescription of the National Council for Teacher Education (NCTE) Regulations holding the field.

56. Accordingly, we are of the considered view that the Rule making authority while framing the provisions of Rule 13 of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, could not have omitted the B.Ed. Degree as a mandatory qualification for recruitment to the post of Vice-Principal. The post of Vice-Principal being a teaching post under the provisions of the said Rules of 2018; the prescription of B.Ed. Degree for recruitment to the posts of Graduate Teacher and Post Graduate Teacher by the National Council for Teacher Education (NCTE) and also by the Rules of 2018, it has to be also understood that for recruitment to the post of Vice-Principal, the said qualification would be a mandatory qualification.

57. The Rule making authority having not made any classification specific to the Post Graduate Teachers and/or Graduate Teachers recruited before 2012 in Senior Secondary Schools for the purpose of promotion to the post of Vice-Principal by treating them to be a distinct class; we are of the considered view that the justifications advanced by the State Respondents in the matter, would not advance their case. Moreso, when the provisions of Rule 13 of the Rules of 2018 also denotes as the feeder cadre persons earlier working in Lower Primary and Upper Primary Schools coming into service of a Higher Secondary School upon amalgamation of their respective schools with a Higher Secondary School.

58. Accordingly, we are of the considered view that the omission of the B.Ed. qualification for recruitment to the post of Vice-Principal, in the provisions of Rule 13 of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, is clearly erroneous and the Rule making authority could not have omitted to prescribe the B.Ed. qualification as one of mandatory qualifications for recruitment to the post of Vice-Principal.

59. Having drawn the above conclusions with regard to the issue raised by the petitioners with regard to the omission of the qualification of B.Ed. Degree for the purpose of recruitment to the post of Vice-Principal; we would now consider the challenge so made by the petitioners to the provisions of sub-rules 2(i) and 2(p) of Rule 2 of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018.

60. It is the contention of the petitioners that while defining the terms "Graduate Teacher" and "Post Graduate Teacher"; the requirement of

possessing by such category of teachers, the qualification of B.Ed. Degree, was not incorporated.

61. As noticed hereinabove, the B.Ed. degree was prescribed as a mandatory qualification for recruitment to the posts of Graduate Teacher and Post Graduate Teacher in the Assam Secondary Education (Provincialized) Service Rules, 2003, only on its amendment effected in the year 2012. It is an admitted position that as on date, there are incumbents existing in the cadres of both Graduate Teacher and Post Graduate Teacher in the schools covered by the provisions of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, recruited prior to the year 2012 who were so recruited without insisting upon a B.Ed. Degree. The National Council for Teacher Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools), Regulations, 2001, while mandating B.Ed. Degree to be a mandatory qualification for recruitment to the posts of Graduate Teacher and Post Graduate Teacher, had required the existing incumbents to acquire the said qualification within a period of 3 years with effect from the date of coming into effect of the said Rules. However, on account of an amendment of the provisions of the National Council for Teacher Education Act, 1993, in the year 2011, and incorporation of Section 12A therein, proviso of which now mandates that the prescriptions made in terms of the provisions of Rule 12A of the National Council for Teacher Education Act, 1993, shall not adversely affect the continuance of any person recruited in a Secondary School and/or Senior Secondary School before commencement of the National Council for Teacher Education (Amendment), Act, 2011, solely, on the ground of non-fulfillment of such qualification as may be specified by the Council.

62. Further, the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, more particularly, Schedule-III thereof, having provided for the minimum educational and professional qualifications for direct recruitment to the posts of Graduate Teacher and Post Graduate Teacher and therein, amongst others; the prescription of a B.Ed. Degree being so made, we are of the considered view that the qualification as mandated for recruitment to the posts of Graduate Teacher and Post Graduate Teacher, is in consonance with the prescription made in this connection under the National Council for Teacher Education (Determination of Minimum Qualifications for Persons to be recruited as Education Teachers and Physical Education Teachers in Pre-Primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or colleges) Regulations, 2014, and accordingly, the omission to prescribe the B.Ed. qualification in the provisions of sub-rules 2(i) and 2(p) of Rule 2 of the Rules of 2018, would be of no consequence, given the fact that persons recruited prior to the year 2012, to the posts of Post Graduate Teacher and Graduate Teacher without the B.Ed. qualification, have been permitted to continue in their services in terms of the proviso to Rule 12A of the National Council for Teacher Education Act, 1993(as amended), without requiring them to acquire the qualifications coming into force through the Regulations of the National Council for Teacher Education (NCTE), after 2011.

63. In the light of the proviso to Section 12A of the National Council for Teacher Education Act, 1993; we are of the considered view that the definition of the terms "Graduate Teacher" and "Post Graduate Teacher" as laid-out in the provisions of sub-Rules 2(i) and 2(p) of Rule 2 of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, is an

inclusive definition. The said definitions also takes within its fold, the Graduate Teachers and Post Graduate Teachers existing in various Secondary Schools and Higher Secondary Schools of the State, without a B.Ed. Degree, and as such; in our considered view, the provisions of sub-rules 2(i) and 2(p) of Rule 2 of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, would not call for any interference.

64. In view of the above, we hereby direct the State Respondents to review the provisions of Rule 13 of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, in terms of the discussions and conclusions drawn, hereinabove, for inclusion of the qualification of B.Ed. Degree as one of the mandatory qualifications for recruitment to the post of Vice-Principal in the provincialized Higher Secondary School of the State. The said review be carried-out and concluded within a period of 2(two) months from the date of receipt of a certified copy of this order.

65. With the above directions and observations, this writ appeal stands disposed of.

JUDGE

CHIEF JUSTICE

Comparing Assistant