

GAHC010160792020



2026:GAU-AS:4636

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

Case No. : WP(C)/4740/2020

DR. RUNMONI BORAH PHUKAN
D/O- SRI MUKUL BORAH, R/O- C-102, MEGHMALLAR APARTMENT,
SEWALI PATH, HATIGAON, GHY, KAMRUP (M), ASSAM, 781038

VERSUS

THE KRISHNA KANTA HANDIQUI STATE OPEN UNIVERSITY AND 9 ORS
REP. BY THE REGISTRAR, UNIVERSITY CITY OFFICE, RESHAM NAGAR,
KHANAPARA, GHY, ASSAM, 781022

2:THE CHANCELLOR
KRISHNA KANTA HANDIQUI STATE OPEN UNIVERSITY
HIS EXCELLENCY THE GOVERNOR OF ASSAM
RAJ BHAWAN
KHARGHULI HILLS
GHY
ASSAM
781001

3:THE VICE CHANCELLOR
KRISHNA KANTA HANDIQUI STATE OPEN UNIVERSITY
UNIVERSITY CITY OFFICE
RESHAM NAGAR
KHANAPARA
GHY
ASSAM
781022

4:THE BOARD OF MANAGEMENT
KRISHNA KANTA HANDIQUI STATE OPEN UNIVERSITY REP. BY THE VICE
CHANCELLOR
UNIVERSITY CITY OFFICE
RESHAM NAGAR
KHANAPARA

GHY
ASSAM
781022

5:THE REGISTRAR
KRISHNA KANTA HANDIQUI STATE OPEN UNIVERSITY REP. BY THE
REGISTRAR
UNIVERSITY CITY OFFICE
RESHAM NAGAR
KHANAPARA
GHY
ASSAM
781022

6:THE SELECTION COMMITTEE FOR THE POST OF ASSTT. PROFESSOR
ASSAMESE
REP. BY THE VICE CHANCELLOR AS ITS CHAIRMAN
KRISHNA KANTA HANDIQUI STATE OPEN UNIVERSITY
UNIVERSITY CITY OFFICE
RESHAM NAGAR
KHANAPARA
GHY
ASSAM
781022

7:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
DEPTT. OF HIGHER EDUCATION
DISPUR
GHY-06

8:SANJIB BORAH
S/O- DURLABH BORAH
R/O- SILVER SPRING APARTMENT
BLOCK-3
SAWKUSHI
LOKHRA
P.S. LOKHRA
GHY-40
DIST.- KAMRUP (M)
ASSAM

9:THE DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GHY
KAMRUP (M)
ASSAM

10:THE GOVERNING BODY
PRAGJYOTISH COLLEGE
REP. BY ITS PRINCIPAL ANDSECY.
GOVERNING BODY
SANTIPUR
GHY-09
DIST.- KAMRUP (M)
ASSA

Advocate for the Petitioner : MR S N SARMA SENIOR ADVOCATE, MR. R PHUKAN,MR. K KALITA,MR. D J DAS,MR. R K BORAH

Advocate for the Respondent : SC, HIGHER EDU, MR. D GOSWAMI,MR. S M BARUAH,FOR CAVEATOR,SC, KKHSOU

:::BEFORE:::

HON'BLE MR. JUSTICE KARDAK ETE

Date on which judgment is reserved : N/A

Date of pronouncement of judgment : 31.03.2026

**Whether the pronouncement is of the
Operative part of the judgment** : N/A

**Whether the full judgment has been
Pronounced** : Yes

Judgment & Order (Oral)

Heard Mr. R. Phukan, learned counsel for the petitioner. Also heard Mr. P. J. Phukan, learned Standing Counsel, KKHSOU for the respondent Nos. 1 to 6; Mr. A. R. Tahbildar, learned Standing Counsel, Higher Education Department for the respondent Nos. 7 & 9 and Mr. S. N. Baruah, learned counsel for the respondent No. 8.

2. Challenge made in this writ petition is to the appointment of one *Dr. Sanjib Borah*, respondent No. 8 herein, as Assistant Professor in Assamese in Krishna Kanta Handiqui State Open University (hereinafter referred to as "KKHSOU") vide order dated 20.10.2020, pursuant to the advertisement dated 14.08.2020 for filling up the posts of Professor, Associate Professor, Assistant Professor and Assistant Regional Director, including the post of Assistant Professor in Assamese.

3. The case in brief, is that KKHSOU published an advertisement dated 14.08.2020 inviting applications for the posts of Professor, Associate Professor, Assistant Professor and Assistant Regional Director, including the post of Assistant Professor in Assamese in the said University. Pursuant thereto, the petitioner applied for the post of Assistant Professor in Assamese on 30.09.2020. The petitioner was directed to appear before the Selection Committee for interview on 09.10.2020. Accordingly, the petitioner appeared in the interview along with 8 (eight) shortlisted candidates.

4. The Selection Committee, vide its meeting dated 09.10.2020, after taking into consideration the academic credentials, experience in Open and Distance Learning (ODL), knowledge of computers and performance in the interview, recommended 3 (three) candidates, namely, *Dr. Sanjib Borah*, respondent No. 8 herein, *Dr. Runmoni Borah Phukan*, the petitioner herein and one *Dr. Pallabika Sarmah*. Consequently, respondent No. 8 was appointed as Assistant Professor in Assamese vide order dated 20.10.2020 issued by the Registrar, KKHSOU.

5. It is the contention of the petitioner that respondent No. 8 did not submit the required No Objection Certificate (NOC) from the concerned authority, although respondent No. 8 was working as an Assistant Professor in Assamese

at Pragjyotish College and submission of such NOC was one of the requirements in terms of the advertisement. It is contended that respondent No. 8 has no working experience in ODL, which is one of the prescribed qualifications in the advertisement; however, marks were awarded to respondent No. 8 for ODL experience. It is the further contention of the petitioner that respondent No. 8 was selected and appointed by way of favouritism, as the Vice-Chancellor of KKHSOU allegedly intervened in the selection process to award marks for ODL experience despite the fact that respondent No. 8 had no such experience.

6. Mr. R. Phukan, learned counsel for the petitioner, submits that the advertisement clearly stipulated that candidates who were already employed were required to produce an NOC from their respective employers in original at the time of the interview. It is undisputed that respondent No. 8 did not produce any such NOC either at the time of submission of the application or during the interview. He submits that as per the advertisement, one of the desirable qualifications was work experience in ODL; however, respondent No. 8 has no such experience, as is evident from his application form wherein the column pertaining to ODL experience was left blank. Despite this, the authorities awarded marks to respondent No. 8 under ODL experience. Therefore, the entire selection process was conducted in violation of the terms of the advertisement and as such same is vitiated.

7. He submits that had the authorities adhered to the prescribed requirements in the selection process by duly considering the requirement of submission of NOC from the concerned authority and the desirable qualification of work experience in ODL, the petitioner would have been selected. The respondent No. 8 has been unfairly favoured despite not fulfilling the requirements of

submission of NOC and work experience in ODL. He further submits that respondent No. 8 was, in fact, not eligible to participate in the selection process, as he lacked the requisite eligibility qualifications. Therefore, it is submitted that the appointment of respondent No. 8 is liable to be set aside and quashed and since the petitioner was placed second in the selection, the respondent authorities may be directed to appoint the petitioner to the post of Assistant Professor in Assamese.

8. Mr. R. Phukan, learned counsel, while referring to the circular issued by the Director of Higher Education, Assam, dated 22.06.2017, submits that as per Rule 24 of the Assam College Employees (Provincialisation) Rules, 2010 (hereinafter referred to as the Rules of 2010), obtaining an NOC for applying for other jobs is mandatory and the Governing Body is required to issue such NOC to college employees. Vide communication dated 04.12.2017, the Director of Higher Education, Assam, intimated all college Principals that no person can apply for employment elsewhere without obtaining an NOC from the concerned authority and in the event a teacher applies without such NOC, not only would his candidature be rejected, but such teacher would also be proceeded departmentally. However, it was clarified that if a person resigns and thereafter applies elsewhere, there would be no such bar. He submits that, since the requirement of obtaining an NOC from the concerned authority is mandatory in terms of the said rules, the acceptance of the candidature of respondent No. 8 by the respondent authorities is in clear violation of the said rules and is therefore unsustainable in law.

9. Mr. R. Phukan, learned counsel, in support of his submissions, has placed reliance on the following judgments:

(i). **Rakesh Kumar Sharma vs. State (NCT OF DELHI) and Ors.**, reported in **(2013) 11 SCC 58**, to project that eligibility conditions must be examined as on the last date prescribed for receipt of application. In the present case, since respondent No. 8 did not possess the requisite qualifications as on the last date for submission of the application, he was not eligible to participate in the selection process, much less to be considered for appointment.

(ii). **Rekha Chaturvedi (Smt) vs. University of Rajasthan & Ors.**, reported in **1993 Supp (3) SCC 168** to emphasize that candidates must possess the prescribed qualifications as on the cut-off date and that any relaxation of such qualifications, unless expressly provided for, would be impermissible. The relevant paragraph of the judgment is quoted hereinbelow:

“...11. However, for the reasons which follow, we are not inclined to set aside the selections in spite of the said illegality. The selected candidates have been working in the respective posts since February 1985. We are now in January 1993. Almost eight years have elapsed. There is also no record before us to show as to how the Selection Committee had proceeded to weigh the respective merits of the candidates and to relax the minimum qualifications in favour of some in exercise of the discretionary powers vested in it under the University Ordinance. If the considerations which weighed with the Committee in relaxing the requisite qualifications were valid, 'it would result in injustice to those who have been selected. We, however, feel it necessary to emphasise and bring to the notice of the University that the illegal practices in the selection of candidates which have come to light and which seem to be followed usually at its end must stop forthwith. it is for this purpose that we lay down the following guidelines for the future selection process:

A. The University must note that the qualifications it advertises for the posts should not be at variance with those prescribed by its ordinance/Statutes.

B. The candidates selected must be qualified as on the last date for making applications for the posts in question, or on the date to be specifically mentioned in the advertisement/notification for the purpose. The qualifications acquired by the candidates after the said date should not be taken into consideration, as that

would be arbitrary and result in discrimination. It must be remembered that when the advertisement/notification represents that the candidates must have the qualifications in question, with reference to the last date for making the applications or with reference to the specific date mentioned for the purpose, those who do not have such qualifications do not apply for the posts even though they are likely to acquire such qualifications and do acquire them after the said date. In the circumstances, many who would otherwise be entitled to be considered and may even be better than those who apply, can have a legitimate grievance since they are left out of consideration.

C. When the University or its Selection Committee relaxes the minimum required qualifications, unless it is specifically stated in the advertisement/notification both that the qualifications will be relaxed and also the conditions on which they will be relaxed, the relaxation will be illegal.

D. The University/Selection Committee must mention in its proceedings of selection the reasons for making relaxations, if any, in respect of each of the candidates in whose favour relaxation is made.

E. The minutes of the meetings of the Selection Committee should be preserved for a sufficiently long time, and if the selection process is challenged until the challenge is finally disposed of. An adverse inference is liable to be drawn if the minutes are destroyed or a plea is taken that they are not available.”

(iii). **State of Bihar vs. Madhu Kant Ranjan**, reported in **AIR 2022 SC 1310**, to project that a candidate must strictly comply with all the conditions and eligibility criteria stipulated in the advertisement within the prescribed time, failing which such candidature cannot be considered. The relevant paragraph of the judgment is quote hereinbelow:

“9. As per the settled proposition of law, a candidate/applicant has to comply with all the conditions/eligibility criteria as per the advertisement before the cut-off date mentioned therein unless extended by the recruiting authority. Also, only those documents, which are submitted alongwith the application form, which are required to be submitted as per the advertisement have to be considered. Therefore, when the respondent No.1 – original writ petitioner did not produce the photocopy of the NCC ‘B’ certificate alongwith the original application as per the advertisement and the same was submitted after a period of three years from the

cut-off date and that too after the physical test, he was not entitled to the additional five marks of the NCC 'B' certificate. In these circumstances, the Division Bench of the High Court has erred in directing the appellants to appoint the respondent No.1 – original writ petitioner on the post of Constable considering the select list dated 08.09.2007 and allotting five additional marks of NCC 'B' certificate.”

10. *Per contra*, Mr. P. J. Phukan, learned Standing Counsel for the respondent KKHSOU, submits that information to the effect that those who are already in service should have to apply through proper channel is merely general information and not mandatory in nature. The essential qualifications for the post of Assistant Professor, as well as the conditions of recruitment, are strictly in terms of the UGC Regulations. The condition regarding NOC from the employer is directory in nature and not mandatory and in any case, an NOC from the employer cannot be treated as a required qualification for any eligible candidate.

11. He submits that, in terms of the selection and interview, respondent No. 8 stood first with a total of 372 marks, while the petitioner secured the second position with a total of 352 marks. The respondent No. 8 had submitted an undertaking on 09.10.2020 that he would resign from his post as Assistant Professor at Pragjyotish College upon selection and appointment at KKHSOU. On the basis of this undertaking, he was allowed to participate in the interview by the Selection Committee and considering his merit, he was ranked first. He further submits that, for coordination and determination of standards in institutions of higher education, as well as in research, scientific and technical institutions, the UGC Regulations are applicable for appointments to the post of Assistant Professor.

12. As regards the marking aspect in the score sheet of the interview, while

referring to the additional-affidavit filed by the respondent authorities, by way of clarification, it is submitted that the column "SLM in ODL" refers to Self-Learning Material prepared by the University for different academic programmes, commonly referred to as course books in ODL mode. This material includes content that is self-explanatory, self-contained, self-directed and amenable to self-evaluation, but does not include textbooks or guidebooks. One SLM is created for each course, divided into 14–15 units and the University invite college and university teachers and scholars to contribute to these units. Upon approval by the Vice-Chancellor, the Dean (Academic Branch) issues formal letters to the content writers, whose names and designations are listed in the SLM contributor section and they are compensated on a payment basis. Marks under the "SLM in ODL" column are awarded based on documents submitted and verified by the Selection Committee.

13. With respect to the "ODL Experience" column, he submits that it signifies practical exposure to the Open and Distance Learning system, which provides flexible learning through print, electronic, online, and occasional face-to-face interaction. Marks in this column are awarded solely on the basis of oral performance and responses during the interview, without requiring any pre-submitted documents or certificates and vary depending on individual performances. The "Power-point Presentation & Knowledge of Computer" column evaluates live performance during the interview, including presentation skills, technical knowledge, online sessions, and related questions. The "Interview Subject Knowledge and Critical Aptitude" column assesses candidates' expertise in their respective subjects, with marks awarded based on the depth of knowledge, critical thinking and the decisions of the Selection Committee members.

14. Mr. P.J. Phukan, learned Standing Counsel, submits that the marking columns in the interview score sheet, including "SLM in ODL" and "ODL Experience", were evaluated on the basis of verified documents and the candidates' oral performance, with no pre-submitted certificates or documents required. He submits that marks were awarded strictly on merit and in accordance with established University practice. Accordingly, he submits that the selection of respondent No. 8, who secured the highest marks, fully conformed to the advertised criteria, the UGC Regulations and the transparent selection process of the University and that there is no substance in the contention of the petitioner that the appointment of respondent No. 8 was irregular or that he was ineligible.

15. In support of his submission Mr. P. J. Phukan, learned Standing Counsel, KKHSOU has relied on the judgment of the **Maharashtra Public Service Commission vs. Sandeep Shriram Warde and Ors.** reported in **(2019) 6 SCC 362**, to project that the prescription of essential and desirable qualifications lies within the exclusive domain of the employer and the Court, in exercise of judicial review, cannot sit in appeal over such conditions. It is further held that desirable qualifications only give preference and cannot be treated as mandatory eligibility criteria or give any automatic right of selection. The relevant paragraph of the judgment is quoted hereinbelow:

"19. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable best to qualifications, including any grant of preference. It is the employer who is the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being on a par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are

clear, the court cannot sit in judgment over the same. If there is an ambiguity in the advertisement of it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.

13. The preference clause in Clause 4.7 only means that if a candidate with the required degree qualification and practical experience in the manufacturing and testing of drugs for stipulated period of years has an additional desirable attribute of a research experience in a research laboratory, other things being equal, preference could be given to such a candidate. The term "preference" mentioned in the advertisement cannot be interpreted to mean that merely because a candidate may have had the requisite experience of testing in a research and development laboratory he/she possessed the essential eligibility and had a preferential right to be considered for appointment."

16. Mr. S. N. Baruah, learned counsel for respondent No. 8, while endorsing the submissions of the learned Standing Counsel, Mr. P. J. Phukan, submits that the respondent No. 8, being eligible, participated in the selection process and based on his performance in the interview and having secured the highest marks among the candidates, was recommended and appointed to the post of Assistant Professor in Assamese. He further submits that, as per the advertisement, submission of an NOC was not a mandatory requirement, as it was mentioned only under general information and not as a condition for eligibility.

17. I have considered the submissions of the learned counsel for the parties and also perused the materials available on record.

18. An advertisement dated 14.08.2020 was issued by the Registrar inviting applications for filling up the posts of Professor, Associate Professor, Assistant Professor and Assistant Regional Director, including the post of Assistant

Professor in Assamese. Pursuant thereto, respondent No. 8, Dr. Sanjib Borah, was selected for the said post at KKHSOU on the basis of his performance in the interview, having secured 74.4 marks (total 372 marks), whereas the writ petitioner secured 70.4 marks (total 352 marks) and was placed second in order of merit. It is noted that respondent No. 8 did not submit any NOC from Pragjyotish College, where he was serving as an Assistant Professor, nor did he possess work experience in ODL.

19. The issues that needs to be considered is as to whether the NOC from the concerned authority for candidates already employed in provincialised colleges is mandatory and whether work experience in ODL, as listed among the desirable qualifications, is compulsory or not.

20. The essential qualification for the post of Assistant Professor as per the advertisement dated 14.08.2020 is reproduced hereinunder:

“...6. Assistant Professor

Essential qualification:

A

i) A Master's Degree with at least 55% marks (or an equivalent grade in a point scale, wherever grading system is followed) in a concerned/relevant/allied subject from an Indian University, or an equivalent degree from an accredited foreign university. The Gazette of India: Extraordinary [Part III-Sec.4].

ii) Besides fulfilling the above qualifications, the candidate must have cleared the NET conducted by UGC or CSIR, or a similar test accredited by the UGC, like SLET/SET or who are or have been awarded Ph.D Degree in accordance with the UGC (Minimum Standards and Procedure for Award of M.Phil/Ph.D Degree) Regulations, 2009 or 2016 and their amendments from time to time as the case may be exempted from NET/SLET/SET:

Provided, the candidates registered for Ph.D programme prior to July 11, 2009

shall be governed by the provisions of the then existing Ordinances/Bye-Laws/Regulations of the Institution awarding the degree and such Ph.D candidates shall be exempted from the requirements of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions subject to the fulfilment of the following conditions -

- a) The Ph.D degree of the candidate has been awarded in a regular mode.*
- b) The Ph.D thesis has been evaluated by at least two external examiners.*
- c) An open Ph.D viva-voce of the candidate has been conducted;*
- d) The candidate has published two research papers from his/her Ph.D work, out of which at least one is in a referred journal;*
- e) The candidate has presented at least two papers based on his/her Ph.D work in conferences/seminars sponsored/funded/supported by the UGC/ICSSR/CSIR or any similar agency.*

The fulfilment of these conditions is to be certified by the Registrar or the Dean (Academic Affairs) of the University concerned.

Note: NET/SLET/SET shall also not be required for such Masters Programmes in disciplines for which NET/SLET/SET is not conducted by the UGC, CSIR or similar test accredited by the UGC, like SLET/SET.

OR

B.

The Ph.D degree obtained from a foreign University/Institution with a ranking among top %) in the World University Ranking (at any time) by any one of the following:

(i) Quacquarelli Symonds (QS), (ii) the Times Higher Education (THE) or (iii) the Academic Ranking of World Universities (ARWU) of the Sanghai Jiao Tong University (Sanghai).

Note: The Academic score as specified in Appendix II (Table 3A) for Universities, and Appendix II (Table 3B) for colleges of the UGC Regulations, 2018, shall be considered for short-listing of the candidates for interview only, and the selections

shall be based only on the performance in the Interview.

Desirable qualification:

(i). A degree/Diploma in distance education or working experience in distance education Institution.

(ii). Adequate knowledge of Computer.

(iii). Proficiency in both Assamese and English Languages.

Scale of Pay: Rs. 57,700/- Rs. 1,84,200/- (Academic Level 10)

(Pay to be fixed as per UGC guidelines and fixation formula)

Maximum Age: As per State Government rule.”

21. The advertisement provides, *inter alia*, general information that candidates already in service are required to apply through the proper channel. It is further indicated in the call letter that such employed candidates must produce an original NOC from their respective employer at the time of the interview.

22. Ordinance No. 8 under Section 23 (1)(d) of The Krishna Kanta Handique State Open University Act, 2005 (hereinafter referred to As the Act of 2005 in short), provides the essential and desirable qualification for Lecturer, which is reproduced hereinunder:

“...3. Lecturer, Assistant Regional Director:

Essential:

i) Consistently good academic records with at least 55% of the marks, or an equivalent grade of B in the 7 point scale with letter grades O,A,B,C,D,E & F at the Masters degree level in the relevant subject from an Indian University or an equivalent degree from a foreign University.

ii) Besides fulfilling the above qualifications candidates should have cleared the NET for lecturers conducted by UGC, CSIR or similar test accredited by the UGC.

Desirable:

i) A degree/diploma in Distance Education

ii) Experience of working in Open University/Distance Education System

iii) Working knowledge of Computer.

Provided that relaxation to requirement of NET, marks at master's level or any other requirement shall be as per UGC guidelines circulated for the purpose from time to time."

23. Considering the distinction between essential and desirable qualifications, it is clear that an "Essential Qualification" is a mandatory and minimum requirement prescribed in the advertisement which a candidate must possess as on the stipulated cut-off date to be eligible for consideration and non-fulfilment thereof renders the candidature ineligible. On the other hand, a "Desirable Qualification" is an additional or preferential attribute intended to assess the comparative merit and suitability of candidates who already meet the essential qualifications and its absence does not disqualify a candidate but only affects the extent of weightage that may be accorded during the selection process.

24. In the present case, the essential qualifications listed in the advertisement, such as the Master's degree and NET/Ph.D. requirements, determine the eligibility of a candidate to participate in the selection process. Desirable qualifications, including working experience in ODL, computer knowledge and proficiency in Assamese and English, are meant only for merit scoring and do not render a candidate ineligible if absent. The Selection Committee is empowered to award marks for such desirable qualifications on the basis of interview performance, presentation and other relevant inputs and not necessarily on pre-submitted documentary evidence.

25. Admittedly, respondent No. 8 did not submit any NOC from Pragjyotish College, where he was serving as Assistant Professor, nor did he have any prior experience in ODL. On perusal of the interview score sheet, it is seen that respondent No. 8 was awarded marks under the "ODL Experience" column, whereas he was marked zero under "SLM in ODL," whereas the petitioner has been awarded marks in "ODL Experience" and full marks in the "SLM in ODL" category. As submitted by the respondent authorities, marks under "SLM in ODL" are awarded only upon submission and verification of documents demonstrating contribution to Self-Learning Material, whereas marks under "ODL Experience" are based on oral performance, presentation and other verifiable inputs during the interview, without requiring prior documentary evidence, in accordance with the established University practice. So even assuming, for the sake of argument, that marks under "ODL Experience" should not have been awarded without pre-submitted documents, it is evident that both SLM contributions and ODL experience are desirable qualifications listed in the advertisement. Desirable qualifications are meant to assist in assessing comparative merit and do not render a candidate ineligible. However, the relevant consideration remains whether the lack of NOC in 2020 constituted a fatal defect or was adequately addressed through his undertaking of resignation and communications with the College Authority.

26. Rule 24 of the Rules of 2010 provides that the Governing Body shall issue NOC to college employees for applying for admission to courses of higher studies and for other jobs. The Director of Higher Education has clarified that an employee who has accepted employment by way of direct recruitment in a provincialised college cannot claim NOC as a matter of right. The Governing Body or Principal may decline recommendation for NOC if they consider that the

exit or absence of the teacher will adversely affect students or the academic functioning of the college. The office will not issue any NOC except when recommended by the College Authority. It is also further clarified that no teacher can apply for a job elsewhere without obtaining NOC; if a teacher applies without NOC, not only will their candidature be rejected, but such teachers may also be proceeded against departmentally.

27. In the Resolution adopted by the Governing Body of Pragjyotish College, in the meeting held on 18.12.2020, it has been held as under:

“...Ref. No.: PC/35/2022/1013

Date: 30/09/2022

Extract of Resolution adopted in the Governing Body, Meeting held on 18-12-2020 at Conference Hall of Pragjyotish College at 11.00 a.m.

Resolution No. 2D:

The GB expresses concern about the violation of service rule by Dr. Sanjib Bora, an Assistant Professor in the Department of Assamese who has applied for interview at KKHSOU without taking NOC from the college authority. After getting selection he has tendered resignation to make him enable to join there. The GB has resolved to accept his resignation and authorizes the Principal to take necessary steps for permanent release of Dr. Sanjib Bora from his post and to get necessary approval from office of the Director for advertisement against this vacant post. The GB also has resolved not to release his outstanding salary until a clear directive is given by the DHE regarding the violation of in vogue service conduct.

Sd/-

President,

Governing Body

Pragjyotish College

Dr. Manoj Kumar Mahanta

Principal

Pragjyotish College

Principal"

28. Perusal of the records shows that, vide his letter dated 06.11.2020 addressed to the Principal of Pragjyotish College, Santipur, Guwahati, respondent No. 8 had verbally informed the Principal on 27.08.2020 regarding the NOC and experience certificate required for applying to the post of Assistant Professor in the Department of Assamese at KKHSOU and acting on the Principal's advice, submitted his application without the NOC. Although he did not initially provide the NOC, he subsequently tendered his resignation to comply with the service rules. Further, his communications dated 31.10.2020, 02.11.2020 and 06.11.2020 reflect that he had requested the issuance of the NOC and release letter. Significantly, the resolution adopted by the Governing Body of Pragjyotish College in its meeting held on 18.12.2020 acknowledged this procedural lapse but accepted his resignation to enable him to join KKHSOU. This clearly reflects that the College Authority, while noting the irregularity, facilitated the legitimate continuation of his career progression and did not treat the absence of NOC as a disqualifying factor. The resolution further shows that the matter of his outstanding salary was reserved for future direction, without impeding his appointment at KKHSOU. Taken together, these actions demonstrate that respondent No. 8 acted in good faith, complied with the service rules to the extent possible and that the procedural lapse regarding the NOC was appropriately addressed and regularized by the College Authority.

29. On perusal of the case laws cited by the petitioner, this Court finds that none of the decisions advance the cause of the petitioner, as the observations and principles therein arise from the specific factual and legal contexts of those cases. In **Rakesh Kumar Sharma (supra)** and **Rekha Chaturvedi (supra)**,

the Hon'ble Supreme Court emphasized that candidates must possess the prescribed qualifications as on the cut-off date and that any relaxation of minimum qualifications must be specifically provided for; however, these decisions dealt with situations where essential qualifications were entirely absent or unlawfully relaxed. In the present case, respondent No. 8 possessed all essential qualifications at the relevant time and the marks awarded for desirable qualifications such as ODL experience were evaluated orally in accordance with the established University practice, which the Court finds to be transparent and fair. Similarly, in **State of Bihar v. Madhu Kant Ranjan (supra)**, the principle applied pertained to strict adherence to documentary submission for eligibility criteria explicitly prescribed as mandatory. In contrast, in the instant matter, the submission of NOC and ODL experience were procedural and desirable qualifications and the University exercised its discretion consistent with service rules and established selection norms. Accordingly, the case laws relied upon by the petitioner are distinguishable and do not support his contention that the appointment of respondent No. 8 was irregular or he was ineligible.

30. Having regard to the decision in **Sandeep Shriram Warde (supra)**, it is well-settled that the determination of essential and desirable qualifications is exclusively within the domain of the employer and the Court cannot alter such conditions. Desirable qualifications confer preference but do not constitute mandatory eligibility.

31. Having considered above, it is evident that the respondent No. 8, *Dr. Sanjib Borah*, possessed all the essential qualifications prescribed in the advertisement dated 14.08.2020 for the post of Assistant Professor in Assamese in KKHSOU.

Although he did not submit a NOC from Pragjyotish College at the time of applying, he had duly informed the Principal regarding the same, furnished an undertaking to resign upon selection and thereafter, tendered his resignation. The Governing Body of Pragjyotish College subsequently acknowledged and accepted his resignation, thereby facilitating his joining at KKHSOU.

32. With respect to ODL experience, the same is a desirable qualification meant for assessing comparative merit and not an essential requirement. It is, therefore, immaterial whether the petitioner or respondent No. 8 was awarded marks under this head, as the absence or presence of such marks does not affect eligibility. The marks awarded to respondent No. 8 in this category were based on his oral performance during the interview and no material has been brought on record to establish any favoritism or procedural irregularity in that regard.

33. In light of the above, having considered all the contentions raised by the petitioner regarding non-submission of NOC, lack of ODL experience and alleged favoritism, this Court finds no merit in any of these claims. Thus, the selection and appointment of respondent No. 8 is in conformity with the advertised criteria, the norms of the University and the applicable service rules and does not warrant interference by this Court.

34. Accordingly, the writ petition stands dismissed being devoid of merit. No order as to cost(s).

JUDGE

Comparing Assistant