



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

**(1) WP(C) No.5169 OF 2020**

Navin Kumar Ray,  
Son of Ram Udgar Ray,  
Village: Agbandha Saiding, PO: Agbandha  
Bengali Gaon, PS: Margherita, District:  
Tinsukia, Assam, PIN – 786187. The

**.....Petitioner**

**-Versus-**

1. The State of Assam, represented by the  
Commissioner & Secretary to the  
Government of Assam, Personnel (A)  
Department, Dispur, Guwahati, PIN –  
781006.

2. The Assam Public Service Commission,  
represented by its Chairman,  
Jawaharnagar, Khanapara, Guwahati,  
Assam, PIN – 781022.

3. The Secretary, Assam Public Service  
Commission, Jawaharnagar, Khanapara,  
Guwahati, Assam, PIN – 781022.

4. The Joint Secretary, Assam Public  
Service Commission, Jawaharnagar,  
Khanapara, Guwahati, Assam, PIN –  
781022.

5. The Principal Controller of  
Examinations, Assam Public Service  
Commission, Jawaharnagar, Khanapara,  
Guwahati, Assam, PIN – 781022.

**.....Respondents**

**(2) WP(C) No.5248 OF 2020**

Bonani Priya Rajkonwar,  
Daughter of Jayanta Rajkonwar,  
Present resident of House No.19, Bye  
Lane No.3, Bishnujyoti Path, Hatigaon,  
Kamrup (M), Assam, PIN – 781038,  
permanent resident of House NO.91,  
Village: Rongchangi, Opposite Rongchangi  
Mini PHC, Dibrugarh, Assam, PIN –  
786184.

**.....Petitioner**

**-Versus-**

1. The State of Assam, represented by the  
Commissioner & Secretary to the  
Government of Assam, Personnel (A)  
Department, Dispur, Guwahati, PIN –  
781006, District: Kamrup (M), Assam.
2. The Principal Secretary, Government of  
Assam, Personnel (A) Department, Dispur,  
Guwahati –781006, District: Kamrup (M),  
Assam.
3. The Assam Public Service Commission,  
represented by its Chairman,  
Jawaharnagar, Khanapara, Guwahati –  
781022, District: Kamrup (M), Assam.
4. The Secretary, Assam Public Service  
Commission, represented by its Chairman,  
Jawaharnagar, Khanapara, Guwahati –  
781022, District: Kamrup (M), Assam.
5. The Joint Secretary, Assam Public  
Service Commission, represented by its  
Chairman, Jawaharnagar, Khanapara,  
Guwahati – 781022, District: Kamrup (M),  
Assam.

**.....Respondents**

**(3) WP(C) No.28 OF 2021**

Smti. Bondita Borah  
Daughter of Gobin Chandra Borah,

Resident of Village: Chetiagaon, Ward No.5, PO: North Lakhimpur, District: Lakhimpur, Assam, PIN – 787001.

**.....Petitioner**

**-Versus-**

1. The State of Assam, represented by the Commissioner & Secretary to the Government of Assam, Personnel Department of Personnel (B), Dispur, Guwahati –781006.
2. The Assam Public Service Commission, represented by its Chairman, Jawaharnagar, Khanapara, Guwahati – 781022.
3. The Chairman, Assam Public Service Commission, Jawaharnagar, Khanapara, Guwahati – 781022.
4. Sri Aaron Teron,  
Son of Naren Teron, Village: Rukasen, PO & PS: Diphu, District: Karbi Anglong.
5. Sri Bhomklarchen Singnar,  
Son of Sri Kangbura Singnar, Village: Chephongsajlr, PO & PS: Diphu, District: Karbi Anglong.
6. Sri Barnel Bey,  
Son of Sri Longki Bey, Village: Rongkimi, PO & PS: Diphu, District: Karbi Anglong.
7. Sri Ujjwal Nath,  
Son of Lipika Nath, Resident of Block Road, Choudhury Villa, Ramkrishna Nagar, District: Karimganj, Assam, Pin - 788166.
8. Sri Pranab Das,  
Son of Pradip Chandra Das, Resident of Near Network Counter, PO: Irongmara, District: Cachar, Assam, Pin - 788011.
9. Sri Partha Jyoti Das,  
House No.47, Lane No.27, Vivekananda Road, Silchar, District: Cachar, Assam, Pin - 788007.
10. Sri Pathikrit Ahmed,  
Son of Samsuddin Ahmed, Resident of Near Ellahi Masjid, Ellahi Masjid Road,

Deorail Badarpur, District: Karimganj, Assam, Pin - 78886.

11. Smti. Rebika Maibangsa,  
Daughter of Nripendra Maibangsa,  
Resident of Dirik, Halflong, District: Dima  
Hasao, Assam.

12. Smti. Dividita Johari,  
Daughter of Bonil Johari, Resident of  
Johaya Rajee, Halflong, District: Dima  
Hasao, Assam.

13. Smti. Abrina Halflongbar,  
Daughter of Ajit Halflongbar, Resident of  
Surat Nagar, Halflong, District: Dima  
Hasao, Assam.

14. Sri Thanghoulien Lieuthang,  
Son of Pawkholal Lieuthang, Circuit House  
Road, Halflong, District: Dima Hasao,  
Assam.

15. Sri Phoijen Bathari,  
Son of Japan Bathari, Resident of Mahur,  
District: Dima Hasao, Assam.

16. Sri Satlunsang Lunkim,  
Son of Lhunhao Lunkim, Resident of  
Mahur, District: Dima Hasao, Assam.

17. Sri Vishal Thapa,  
Son of Late Prem Thapa, Resident of Kana  
Basti, Halflong, District: Dima Hasao,  
Assam.

18. Sri Sidhartha Sarmah,  
Son of Sri Mrinal Sarmah, Resident of  
Betbati, Ghilaguri, PO: Betbari Alimur,  
District: Sivasagar, PIN – 785009.

19. Ms. Hamjana Hojai,  
Daughter of Nipolal Hojai,  
Resident of Dibarai, Haflong,  
District: Dima Hasao, Assam.

20. Sri Javin Nunisa,  
Son of Samir Nunisa,  
Resident of Surat Nagar, Near Civil  
Hospital, Haflong, District: Dima Hasao,  
Assam.

21. Sri Zoilien Hrangkhol,  
Son of Gobin Liensonglal Hrangkhol,  
Resident of PWD 3<sup>rd</sup> Colony, Haflong,  
District: Dima Hasao, Assam.

**.....Respondents**

**(4) PIL No.83 OF 2021**

Sidhartha Sarmah,  
Son of Sri Mrinal Sarmah,  
Resident of Betbati, Ghilaguri, PO: Betbari  
Alimur, District: Sivasagar, PIN – 785009.

**.....Petitioner**

**-Versus-**

1. The State of Assam, represented by the Chief Secretary to the Government of Assam, Dispur – 781006, Kamrup (M), Guwahati, Assam.
2. The Commissioner & Secretary to the Government of Assam, Department of Personnel (B), Dispur – 781006, Kamrup (M), Guwahati, Assam.
3. The Assam Public Service Commission, represented by its Chairman, Jawaharnagar, Khanapara – 781022, Kamrup (M), Assam.
4. The Secretary, Assam Public Service Commission, represented by its Chairman, Jawaharnagar, Khanapara – 781022, Guwahati, Kamrup (M), Assam.

**.....Respondents**

**(5) WP(C) No.1208 OF 2022**

Sri Dhritideep Das,  
Son of Sri Khanin Das,  
Resident of BTC Road, Howly Town,  
PO & PS: Howly, District: Barpeta, Assam.

**.....Petitioner**

**-Versus-**

1. The State of Assam, represented by the Chief Secretary to the Government of Assam, Dispur – 781006, Kamrup (M), Guwahati, Assam.
2. The Commissioner & Secretary to the Government of Assam, Department of

Personnel (B), Dispur – 781006, Kamrup (M), Guwahati, Assam.

3. The Assam Public Service Commission, represented by its Chairman, Jawaharnagar, Khanapara – 781022, Kamrup (M), Assam.

4. The Secretary, Assam Public Service Commission, Jawaharnagar, Khanapara – 781022, Guwahati, Kamrup (M), Assam.

**.....Respondents**

**(6) I.A. (CIVIL) No.1572 OF 2022**

1. Assam Public Service Commission, represented by the Secretary, Assam Public Service Commission, Jawaharnagar, Khanapara, Guwahati – 781022, Assam.

2. The Secretary, Assam Public Service Commission, Jawaharnagar, Khanapara, Guwahati – 781022, Assam.

**.....Applicants**

**-Versus-**

1. Smti. Bondita Borah  
Daughter of Gobin Chandra Borah,  
Resident of Village: Chetiagaon, Ward  
No.5, PO: North Lakhimpur, District:  
Lakhimpur, Assam, PIN – 787001.

2. The State of Assam, represented by the  
Commissioner & Secretary to the  
Government of Assam, Department of  
Personnel (B), Dispur, Guwahati –781006,  
Assam.

3. Sri Aaron Teron,  
Son of Naren Teron, Village: Rukasen,  
PO & PS: Diphu, District: Karbi Anglong.

4. Sri Bhomklarchen Singnar,  
Son of Sri Kangbura Singnar, Village:  
Chephongsajlr, Resident of Mahur,  
District: Dima Hasao, Assam.

5. Sri Barnel Bey,  
Son of Sri Longki Bey, Village: Rongkimi,  
PO & PS: Diphu, District: Karbi Anglong.

6. Sri Ujjal Nath,

Son of Lipika Nath, Resident of Block Road, Choudhury Villa, Ramkrishna Nagar, District: Karimganj, Assam, Pin - 788166.

7. Sri Pranab Das,

Son of Pradip Chandra Das, Resident of Near Network Counter, PO: Irongmara, District: Cachar, Assam, Pin - 788011.

8. Sri Partha Jyoti Das,

House No.47, Lane No.27, Vivekananda Road, Silchar, District: Cachar, Assam, Pin - 788007.

9. Sri Pathikrit Ahmed,

Son of Samsuddin Ahmed, Resident of Near Ellahi Masjid, Ellahi Masjid Road, Deorail Badarpur, District: Karimganj, Assam, Pin - 78886.

10. Smti. Rebika Maibangsa,

Daughter of Nripendra Maibangsa, Resident of Dirik, Halflong, District: Dima Hasao, Assam.

11. Smti. Dividita Johari,

Daughter of Bonil Johari, Resident of Johaya Rajee, Halflong, District: Dima Hasao, Assam.

12. Smti. Abrina Halflongbar,

Daughter of Ajit Halflongbar, Resident of Surat Nagar, Halflong, District: Dima Hasao, Assam.

13. Sri Thanghoulien Lieuthang,

Son of Pawkholal Lieuthang, Circuit House Road, Halflong, District: Dima Hasao, Assam.

14. Sri Phoijen Bathari,

Son of Japan Bathari, Resident of Mahur, District: Dima Hasao, Assam.

15. Sri Satlunsang Lunkim,

Son of Lhunhao Lunkim, Resident of Mahur, District: Dima Hasao, Assam.

16. Sri Vishal Thapa,

Son of Late Prem Thapa, Resident of Kana Basti, Halflong, District: Dima Hasao, Assam.

17. Sri Sidhartha Sarmah,  
Son of Sri Mrinal Sarmah, Resident of  
Betbati, Ghilaguri, PO: Betbari Alimur,  
District: Sivasagar, PIN – 785009.

**.....Respondents**

- For the Petitioners : Mr. K.N. Choudhury, Sr. Advocate,  
Mr. N. Gautam, Advocate,  
Mr. F. Khan, Advocate,  
Mr. M.K. Sharma, Advocate.
- For State Respondents : Mr. D. Saikia, Advocate General, Assam  
Ms. R. Barua, Advocate.
- For Respondents APSC : Mr. T.J. Mahanta, Sr. SC, APSC,  
Mr. P.P. Dutta, Advocate,  
Mr. A. Barua, Advocate.
- For Private Respondents : Ms. S. Kemprai, Advocate for the  
respondents No.4, 5 & 6 in WP(C)  
No.28/2021.
- For Private Respondents : Mr. V. Rajkhowa, Advocate for the  
respondents No.11 to 17, 19 to 21  
in WP(C) No.28/2021

**- B E F O R E -**

**HON'BLE THE CHIEF JUSTICE MR. R.M. CHHAYA  
HON'BLE MR. JUSTICE SOUMITRA SAIKIA**

Date of hearing : 01.09.2022.

Date of Judgment & Order : **21.10.2022.**

**JUDGMENT & ORDER (CAV)**

**(Per Bench)**

**INTRODUCTION**

This bunch of 5(five) petitions raise identical questions as regards the Assam Public Services Combined Competitive Examination (Amendment) Rules, 2019; Assam Public Services Combined Competitive Examination (Amendment) Rules, 2020 and pertains to an advertisement No.8/2020 issued by the Assam Public



Service Commission (hereinafter referred to as "APSC") and the addendum vide Notification No.58PSC/E-3/2020-2021 dated 08.01.2020.

2. All the matters were heard together. Lead arguments were made in WP(C) No.5169/2020; PIL No.83/2021 and WP(C) No.1208/2022.

3. The main issue as such involved in this bunch of petitions is regarding the language paper in the Combined Competitive Examination (hereinafter described as "CCE" for the sake of brevity) to be conducted by the APSC pursuant to the advertisement in question.

**PRAYERS PRAYED FOR IN EACH PETITIONS**

4. **WP(C) No.5169/2020** is filed by a candidate, who appeared in the written examination conducted by the APSC. The petitioner has, *inter alia*, prayed for the following reliefs:-

*"It is therefore prayed that, in the premises aforesaid, Your Lordship would be pleased to admit this petition, call for the records, Issue Rule, issue notice calling upon the Respondents to show-cause as to (I) why the Assam Public Services Combined Competitive Examination (Amendment) Rules, 2019 i.e., second part of paragraph 1 occurring at i.e., SECTION-II (b) below the heading 'QUALIFYING PAPERS (in the level of Class X)' whereby, candidates from Dima Hasao, Karbi Anglong and West Karbi Anglong Districts who have not studied any of the languages viz. Assamese, Bengali and Bodo, are exempted from appearing for the Qualifying Language Paper A which consist of 300 marks and is of 3 Hours duration, be not be set aside and quashed being ultra vires the Constitution of India and/or (II) why the Assam Public Services Combined Competitive Examination (Amendment) Rules, 2020 whereby, candidates from Dima Hasao, Karbi Anglong, West Karbi Anglong, Cachar, Karimganj and Hailakandi, who did not have any of the*

*languages viz. Assamese, Bengali and Bodo, in High School Leaving Certificate Examination were exempted from appearing for the Qualifying Language Paper A which consist of 300 marks and is of 3 Hours duration, being ultra vires the Constitution of India be not set aside and quashed as the same being ultra-vires to the Constitution of India for being violative of Article 14 & Article 16 of the Constitution of India and (III) and consequently, why a Writ in the nature of Mandamus be not issued directing the respondents to cancel, re-call or otherwise forbear from giving effect to POINT NO.7(II)(A)1 of the Advertisement No.08/2020 issued vide No.23PSC/E-3/2020-2021 dated 08/09/2020 and Addendum bearing No.58PSC/E-3/2020-21 dated 08.10.2020 and/or (IV) and consequently, why a Writ in the nature of Certiorari be not issued setting aside and quashing the POINT NO.7(II)(A)1 of the Advertisement No.08/2020 issued vide No.23PSC/E-3/2020-2021 dated 08/09/2020 and Addendum bearing No.58PSC/E-3/2020-21 dated 08.10.2020 and/or (V) why a Writ in the nature of Mandamus be not issued directing the respondent authorities not to create a class within a class by exempting a choosen class of candidates on the basis of residence from taking the Competitive Examination fully and allowing such class of candidates to qualify with lesser marks; AND/OR (VI) Alternatively why writ in the nature of Mandamus be not issued directing the respondent authorities to also exempt the petitioners in tune with POINT NO.7(II)(A)1 of the Advertisement No.08/2020 issued vide No.23PSC/E-3/2020-2021 dated 08/09/2020 and Addendum bearing No.58PSC/E-3/2020-21 dated 08.10.2020 although the petitioners are not from and belonging to Dima Hasao, Karbi Anglong, West Karbi Anglong, Cachar, Karimganj and Hailakandi but fall within the same class of candidates to whom exemptions are given and/or pass any other or further order or orders as to this Court may deem fit and proper in the fact and circumstances in the interest of complete justice to the petitioners, and in the event of any cause or causes, if any, being shown, after hearing the parties and make the Rule absolute.*

*-AND-*

*In the interim direct the Respondent authorities to not to give effect to the POINT NO.7(II)(A) 1 of the Advertisement No.08/2020 issued vide No.23PSC/E-3/2020-2021 dated 08/09/2020 and Addendum bearing No.58PSC/E-3/2020-21 dated 08.10.2020 as the same been violation of Article 14 and Article 16 of the Constitution of India.”*

5. **WP(C) No.5248/2020** is also filed by one of the candidate, who applied pursuant to the said advertisement and appeared in the written examination has *inter alia* prayed for the following reliefs, which are in a way identical to the prayers made by the petitioner in WP(C) No.5169/2020:-

*"It is therefore prayed that Your Lordships would be pleased to admit this petition, call for records, issue a Rule calling upon the respondents to show cause as to why a writ in the nature of Certiorari or any other appropriate writ, order or direction shall not be issued:-*

*(i) To strike down second part of paragraph 1 occurring at SECTION-II (b) below the heading 'QUALIFYING PAPERS (in the level of Class X)' of the Assam Public Services Combined Competitive Examination (Amendment) Rules, 2019, whereby, candidates from Dima Hasao, Karbi Anglong and West Karbi Anglong Districts who have not studied any of the languages viz. Assamese, Bengali and Bodo, are exempted from appearing for the Qualifying Language Paper A which consist of 300 marks and is of 3 Hours duration, being ultra vires the Constitution of India (Annexure 7).*

*(ii) To strike down Assam Public Services Combined Competitive Examination (Amendment) Rules, 2020, whereby, candidates from Dima Hasao, Karbi Anglong, West Karbi Anglong, Cachar, Karimganj and Hailakandi, who did not have any of the languages viz. Assamese, Bengali and Bodo, in High School Leaving Certificate Examination were exempted from appearing for the Qualifying Language Paper A which consist of 300 marks and is of 3 Hours duration, being ultra vires the Constitution of India (Annexure 8).*

*(iii) To strike down Impugned Point No.7(II)(A) 1, of the aforesaid Advertisement No.08/2020 vide Notification No.23 PSC/E-3/2020-21, dated 08.09.2020, whereby, candidates from Dima Hasao, Karbi Anglong and West Karbi Anglong Districts who have not studied any of the languages viz. Assamese, Bengali and Bodo, at school, are exempted from appearing for the Qualifying Language Paper A which consist of 300 marks and is of 3 Hours duration (Annexure 1).*

*(iv) To strike down impugned ADDENDUM vide Notification No.58PSC/E-3/020-2021, dated 08.10.2020, whereby, in continuation of the aforesaid Advertisement No.08/2020 vide Notification No.23PSC/E-3/2020-21, dated 08.09.2020, point*

*no.7(II)(A)1, was amended and candidates from Dima Hasao, Karbi Anglong, West Karbi Anglong, Cachar, Karimganj and Hailakandi, who did not have any of the languages viz. Assamese, Bengali and Bodo, in High School Leaving Certificate Examination were exempted from appearing for the Qualifying Language Paper A which consist of 300 marks and is of 3 Hours duration (Annexure 9).*

*-AND-*

*In the interim your Lordships may be pleased to:*

*(i) stay the Preliminary Examination in terms with Advertisement No.08/2020 vide Notification No.23PSC/E-3/2020-21, dated 08.09.2020, regarding the Combined Competitive Examination, 2020, for screening candidates for the Main Examination for recruitment to the vacant services/posts in various Departments under the Government of Assam, in accordance with the Assam Public Services Combined Competitive Examination (Amendment) Rules, 2019 (Annexure 1).*

*(ii) direct the respondent authorities not to give effect to the second part of paragraph 1 occurring at SECTION-II(b) below the heading 'QUALIFYING PAPERS (in the level of Class x)' of the Assam Public Services Combined Competitive Examination (Amendment) Rules, 2019, whereby, candidates from Dima Hasao, Karbi Anglong and West Karbi Anglong Districts who have not studied any of the languages viz. Assamese, Bengali and Bodo, are exempted from appearing for the Qualifying Language Paper A which consist of 300 marks and is of 3 Hours duration, being ultra vires the Constitution of India (Annexure 7).*

*(iii) direct the respondent authorities not to give effect to the Assam Public Services Combined Competitive Examination (Amendment) Rules, 2020, whereby, candidates from Dima Hasao, Karbi Anglong, West Karbi Anglong, Cachar, Karimganj and Hailakandi, who did not have any of the languages viz. Assamese, Bengali and Bodo, in High School Leaving Certificate Examination were exempted from appearing for the Qualifying Language Paper A which consist of 300 marks and is of 3 Hours duration, being ultra vires the Constitution of India (Annexure 8)."*

**6.** Similarly, the petitioner of **WP(C) No.28/2021** has apperaed in the written examination and has also applied pursuant to the said advertisement and *inter alia* has prayed as under:-

*"In the premises aforesaid, it is therefore, prayed before this Hon'ble Court to be pleased to issue Rule, call for the records and calling upon the Respondents to show cause as to why a issue Rule, call for the records and calling for the Respondents as to why a Writ in the nature of Certiorari and/or Mandamus and/or any other direction or order/order(s) should not be issued giving the following reliefs:-*

*(1) To strike of compulsory language paper enumerated in Section III (Part-B) (1) read with Paper-A of Clause 1 of Part-B of Appendix-II of Section-III of the Assam Public Services Combined Competitive Examination (Amendment) Rules, 2019 and/or*

*(2) To Strike of Sub-Clause 1 of Clause 7(II)(A) of the Advertisement under No.23PSC/E-3/2020-21 dated 08.09.2020 (Annexure-A) and*

*(3) Direct the Respondents to restore the petitioner's right to appear in the forthcoming Combined Competitive Examination to be held in terms of the advertisement No.23PSC/E-3/2020-21 dated 08.09.2020 (Annexure-A) in the light of Sections 6 and 7 of the Assam Official Language Act, 1960*

*And cause and causes that being shown and upon hearing the parties be pleased to make the rule absolute and/or pass such further order/orders as Your Lordship may deem fit and proper in the facts and circumstances of the case.*

*-AND-*

*Pending disposal of this Rule, this Hon'ble Court may be pleased to direct the Respondents not to put restriction upon the petitioner under Sub-Clause 1 of Clause 7(II)(A) of the advertisement under No.23PSC/E-3/2020-21 dated 08.09.2020 (Annexure-A) and/or pass such any other order/orders as this Hon'ble Court may deem fit and proper."*

**7. PIL No.83/2021** is filed by a practicing advocate as a public interest litigation and has *inter alia* prayed as under:-

*"It is therefore prayed that, in the premises aforesaid, Your Lordship would be pleased to admit this petition, and issue a rule calling upon the Respondents to show cause as to why a writ in the nature of Certiorari shall not be issued to set-aside and quash the minutes of Cabinet Meeting held on 24-11-2021 wherein decision has been taken removal of qualifying Papers from Assam Public Services Combined Competitive Examination which is violative of Assam Public*

*Service Competitive Examination (Amendment) Rules 2019 and 2020 and/or why a writ in the nature of Mandamus shall not be issued commanding the Respondents to strictly follow the Assam Official Language Act, 1960 and/or why appropriate writ or direction shall not be issued to give full and complete relief to the petitioner and upon cause or causes being shown and upon hearing the parties be pleased to make the rules absolute.*

-AND-

*In the interim direct the Respondent authorities not to give effect to the cabinet decision taken in its meeting held on 24.11.2021 in respect of removal of the requirement of appearing in the language qualifying papers (1) Assamese, Bengali, Bodo (II) English in the Competitive Examination (CCE) conducted by Assam Public Service as provided in Assam Public Service Competitive Examination (Amendment) Rules 2019 and 2020."*

**8. WP(C) No.1208/2022** is filed by an aspirant, who claims that he may be eligible for the post advertised and the present writ petition is filed through the learned advocate, who happens to be the petitioner in PIL No.83/2021, and has *inter alia* prayed as under:-

*"It is therefore prayed that, in the premises aforesaid, Your Lordship would be pleased to admit this petition and issue a rule calling upon the Respondents to show cause as to why a writ in the nature of Certiorari shall not be issued to set-aside and quash the Assam Public Services Combined Competitive Examination (Amended) Rules, 2020 exempting the candidates belonging to Cachar, Karimganj and Hailakandi from appearing in the Compulsory Language Paper-A and/or why a writ in the nature of Certiorari shall not be issued to set aside the minutes of Cabinet of Govt. of Assam in its meeting held on 24-11-2021 (Annexure-3) wherein decision has been taken to dispense with the qualifying Papers from Assam Public Services Combined Competitive Examination and/or why a writ in the nature of Mandamus shall not be issued to commanding the Respondents to strictly follow the Assam official Language Act, 1960 vis-à-vis the Section II(B) under Schedule-II of the Assam Public Services Combined Competitive Examination (Amended) Rules, 2019 and/or why appropriate writ or direction shall not be issued to give full and complete relief to the petitioner and upon cause or causes being shown and*

*upon hearing the parties be pleased to make the rules absolute.*

-AND-

*In the interim direct the Respondent authorities not to give effect to the cabinet decision taken in its meeting held on 24.11.2021 in respect of dispensing with the requirement of appearing in the language qualifying papers (1) Assamese, Bengali, Bodo (II) English in the Competitive Examination (CCE) conducted by Assam Public Service as provided in Assam Public Service Competitive Examination (Amendment) Rules 2019."*

**PLEADINGS IN EACH PETITION**

**9. WP(C) No.5169/2020** was filed by the petitioner on 27.11.2020. The petitioner, after giving the details of the advertisement and the last date of submission and the programme thereof, has contended that he has opted for "Tinsukia Examination Centre" and the last date of receiving the application forms being 12.11.2020. The petitioner has further relied upon Paragraph 7 of the advertisement and has also narrated the stages of examination, i.e. Preliminary Examination (objective type); Main Examination (written and interview) and has stated that qualifying language Papers "A" and "B" requires a participating candidate to score minimum of 25% as qualifying marks. The petitioner has also further narrated that Paper "A" of 300 marks with three hours duration prescribes for any one of the language from Assamese, Bengali and Bodo. It has also *inter alia* provided that candidates belonging to Dima Hassao, Karbi Anglong, West Karbi Anglong, who have not studied any of the above three languages in school shall be exempted from appearing in Paper "A", more particularly, referring to

Paragraph 7(II) of the Amendment Rules of 2019. The petitioner has contended that previously there was no requirement of appearing in language papers of Assamese, Bengali and Bodo as qualifying marks, except in English subject. According to the petitioner, in fact there were no language papers of Assamese, Bengali and Bodo in previous APSC examinations.

The petitioner has contended that there is a complete departure to the rule of fair play and level playing field and the respondent authorities have decided to exempt languages of Assamese, Bengali and Bodo for those candidates from Dima Hasao, Karbi Anglong and West Karbi Anglong, who have not studied the said languages in school based upon the residence of particular districts of Assam. It is further contended that in furtherance of such a decision to exempt candidates in respect of Paper "A" for languages of Assamese, Bengali and Bodo, the authorities have expanded the same and included the districts of Cachar, Karimganj and Hailakandi. It is the case of the petitioner that he did make enquiries about possibility of such benefit of exclusion being granted throughout the State of Assam or not. It was thus contended that the Addendum dated 08.10.2022 including/ adding districts of Cachar, Karimganj and Hailakandi was without any jurisdiction, without bringing amendment to the Rules and without any powers to do so under the Rules. It is contended that the said action was rectified subsequently by the Government of Assam by officially



bringing an amendment to the Assam Public Services Combined Competitive Examination Rules, 1989. Hence, it is contended that *prima facie* the Addendum dated 08.10.2020 was issued without jurisdiction and powers to do so and no amendment to the Rules was carried out before bringing the districts of Cachar, Karimganj and Hailakandi under exclusion.

It is contended by the petitioner that with a Notification dated 21.10.2020, the Assam Public Services Combined Competitive Examination Rules, 1989 were amended by Amendment Rules of 2020 and earlier they were amended in 2019. It is also contended by the petitioner that the basic point of difference in the Amendment Rules of 2019 and the Amendment Rules of 2020 is that in 2019, three districts were given exemption, whereas in 2020, six districts were given exemption. In 2019 Amendment Rules, candidates who did not have the aforesaid languages in the school were given exemption, whereas in the 2020 Amendment Rules, the candidates who did not have the aforesaid languages in High School Leaving Certificate Examination were given exemption. According to the petitioner, the plain interpretation would be that as per the 2019 Rules, if a candidate had any of the aforesaid languages in any class while in school, he is not entitled to exemption and as per the 2020 Rules, a candidate even if he had those languages upto 9<sup>th</sup> standard but did not opt for the same in the 10<sup>th</sup> standard, would be

entitled to exemption even though he may be well versed with the aforesaid languages.

It is contended by the petitioner that the respondent Commission being a constitutional authority is conferred with jurisdiction to take decisions with intelligible differentia. While the respondent Commission has not altered its stand for requiring the participating candidates to score minimum of 150 marks out of 600 marks for Papers "A" and "B" in respect of candidates not belonging to the six districts, the same would amount to bestowing undue benefit for illegal gain and wrongful bargain. It is the contention of the petitioner that the respondent authorities have, in substance and in essence, scaled down the requirement of the minimum qualifying marks to 75 in respect of candidates belonging to Karbi Anglong, Dima Hasao, West Karbi Anglong districts and the 6(six) districts of Barak Valley region, who did not study languages of Assamese, Bengali and Bodo. It is contended that the respondent authorities have acted illegally, arbitrarily and discriminatorily and have created a class within class in so far as the qualifying examination for CCE, 2020 is concerned and thus, it is alleged that the fundamental rights of the petitioner are affected.

The petitioner has further averred that in all India Secondary Examination, 2008, the petitioners did not have Assamese, Bengali and Bodo as Modern Indian Language in their syllabus in the school. However, as the petitioner did not belong from any of the six districts, the exemption

to appear in Paper "A" languages is not granted to the petitioner. It is alleged that such discrimination, although the petitioner falls within the same category, is violative of Articles 14 and 16 of the Constitution of India. It is further contended that power to grant exemption under the statutory provisions may amount to subordinate legislation in a given case but being in the domain of exercise of discretionary power is subject to same tests in administrative law as in executive or administrative action and its validity can be tested as per well-known Wednesbury principle and the Court may strike down an abuse of such discretionary power on grounds that irrelevant circumstances have been taken into account or that the relevant circumstances have not been taken into account. According to the petitioner, a class within a class is created by granting exemption for appearing in the qualifying examination Paper "A" and at the same time denying the said exemption to similar class of students differentiating on the basis of their residence making it violative of Articles 14 and 16 of the Constitution of India.

**10. WP(C) No.5248/2020** was filed by the petitioner on 02.12.2020. The petitioner herein is also a candidate from Dibrugarh district and had applied pursuant to the advertisement dated 08.09.2020. The said petitioner has passed HSLC examination in the year 2007 conducted by the Board of Secondary Education, Assam, Guwahati, and had appeared from Assam Vidyapith Higher Secondary School, Chabua, located at Dibrugarh district. The

petitioner has Assamese as MIL subject and Hindi as elective subject. The petitioner herein as such raised similar contentions as raised by the petitioner of WP(C) No.5169/2020 and has also further contended that there are many such recruitment bodies, who conduct examinations for recruitment but no such exemption is given in such examinations. It is contended that if such exemptions are allowed under APSC, it would open a floodgate and the candidates from the exempted districts will ask for exemption in all types of competitive examinations including the judicial service examination conducted by this Court. It is also contended that it is practically impossible for a candidate working under the Government of Assam in the Government offices to run day to day works of the office without being well versed in any of the local languages.

It is also contended that non-exempted districts have to take extra burden of 300 marks and the same consumes much more time in preparing the said subjects, whereas their competitors from exempted districts can utilize the same time for the other subjects. It is, therefore, contended that such decision is unfair and bias. It is also contended that if the jobs for which appointments are being made can be managed without knowing the aforesaid languages then language Paper "A" should be exempted from syllabus and that there is no need for putting extra burden on candidates to invest valuable time and study language Paper "A". It is also contended that

since the day to day affairs of the offices of the Government of Assam demands that an employee of the Government of Assam should know the aforesaid languages as such the candidates aspiring for a job under the Government of Assam should endeavour to learn official languages even if the same is not taught at school. It is contended that the distinction sought to be made between exempted districts and non-exempted districts is violative of Articles 14 and 16 of the Constitution of India and the same cannot be allowed. It is, therefore, contended that the exemption provision should be struck down being *ultra vires* the Constitution of India.

**11. WP(C) No.28/2021** was filed by the petitioner on 16.12.2020. The petitioner is one of the candidate, who had applied for the post, and has raised similar contentions as regards the exemption granted. It is further contended that the criteria as stipulated in the said advertisement in relation to appearing in Paper "A" in main examination followed by attaining minimum 25% passing marks mandatorily goes against the provision as stipulated in Assam Official Language Act, 1960. Relying upon the provisions of Sections 6 and 7 of the Assam Official Language Act, 1960, it is also contended that the said provisions gives an option to choose the language and also protects the candidates from getting adversely affected in relation to their medium of instruction. It is thus submitted that the said amendment in the Rule in the year 2020 is overriding the provisions of the Assam Official Language

Act, 1960 and is, therefore, violative of Articles 14 and 16 of the Constitution of India. It is also contended that the same is liable to be struck off enabling all the persons/ candidates of any class or language can participate in such public appointment. It is also contended that in some states of India, the concerned Public Service Commission Authority has introduced compulsory learning of regional languages after qualifying and getting selected in the concerned Public Service Commission.

**12.** As aforesaid, **PIL No.83/2021** was filed on 20.12.2021 in form of public interest litigation by an advocate practicing in this Court. It is contended by the petitioner that the petition is preferred for welfare and dignity of the Assamese community and their language living in the State of Assam and most particularly for the students of Assam who will be deprived in the marking system while appearing in the examinations of APSC, if the decision of the Cabinet held on 24.11.2021 is implemented by the Government of Assam, which is violative of the Assam Public Services Combined Competitive Examination (Amendment) Rules, 2019 read with Article 345 of the Constitution of India and is also violative of the extant provisions of the Assam Official Language Act, 1960, as amended thereafter.

It is contended that though the Governor of Assam has already amended the Assam Public Services Combined Competitive Examination Rules, 1989 in exercise of his power conferred by proviso to Article 309 of the

Constitution of India, and brought the Assam Public Services Combined Competitive Examination (Amended) Rules, 2019 providing for two qualifying language papers consisting of 300 marks each, the Government of Assam, by a Cabinet meeting held on 24.11.2021, decided to remove the language qualifying papers from the Combined Competitive Examination, 2020 as well as from all the upcoming Combined Competitive Examinations to be conducted by APSC. It is contended that among the language papers, Paper "A" consists of three official languages of the State of Assam, i.e. Assamese, Bengali and Bodo and Paper "B" consists of English language. It is contended that by this decision, exemption was given to the candidates appearing from Dima Hasao, Karbi Anglong and West Karbi Anlgong, who have not studied any of these languages in school. It is also contended that subsequently by another decision, the benefit of exemption has also been given to the candidates appearing from the districts of Barak Valley also. It is contended that the State of Assam is divided into two important geographical regions, i.e. Barak Valley and the Brahmaputra Valley, and the principal language spoken in Assam is Assamese followed by Bengali and Bodo. The petitioner also contends that that Assamese is also one of the languages recognized and listed in the 8<sup>th</sup> Schedule of the Constitution of India.

It is further contended that Article 345 of the Constitution of India empowers the legislature of a State to enact any law for adopting any one or more languages

used in the State to be used as its language for official or for any other purposes of the State and, therefore, by an enactment of the Assam Official Language Act, 1960, Assamese language has been made the official language of the State of Assam, except in the three districts of Barak Valley and Sixth Schedule areas. It is also contended that the proviso to Section 6 of the Assam Official Language Act, 1960 also provides a right to the candidates to choose any one of the languages in use in the State of Assam, which was the medium of his/her university examination. The petitioner contended that the State is under a constitutional obligation to protect and promote the official language of the State as well as the cultural and ethnic identity of the people of the State of Assam. It is further contended that APSC was constituted under Article 315 of the Constitution of India and its object is to select suitable candidates possessing required educational qualification, skills and qualities, apart from having adequate knowledge of regional language, to serve the people of Assam. It is contended that the decision of the Cabinet meeting held on 24.11.2021 to waive the qualifying language paper for the recruitment process initiated vide advertisement dated 08.09.2021 is violative of the advertisement issued in accordance with the statutory rule and also violative of the statutory rules framed under Article 309 of the Constitution of India. The petitioner contends that it is a settled position of law that the decision taken in the Cabinet meeting in contravention of any statute enacted by the legislature is



not tenable in the eye of law and hence the decision of the State Cabinet to exempt the candidates from appearing in compulsory language paper is unfathomable besides being without jurisdiction.

It is also contended that while enacting the Assam Official Language Act, 1960, the legislature of the State made it mandatory that Assamese shall be used for all official purposes. It is contended that since there is no dispute that at grass root level including district level offices, 90% to 95% of the official communications are made in vernacular, then how a candidate having no proficiency over the language can administer his office as well as the people of the State. It is contended that though under Article 162 of the Constitution of India the State legislature has the power to make laws but, in absence of any amendment to the Assam Official Language Act, 1960, it is beyond the competent of the State Cabinet to withdraw the effect of a primary legislation enacted by the State legislature in exercise of the power conferred under Article 162 of the Constitution of India. It is contended by the petitioner that the Constituent Assembly debates as well as later development including re-organization of the State would go to show that language is the basis for creation of the States and in that sense it is a basic feature of the Constitution of India. Therefore, the petitioner contends that a constitutional mandate cannot be overridden by a decision of the Cabinet. It is also contended that language plays a significant role in the administration

of the State and the objective behind putting official language as one of the qualifying papers in the recruitment of Civil Service Officer is that the scope of work of a State Civil Service Officer demands knowledge of official language of the State. It is contended that several State Civil Services Commission in India have included their respective official/regional languages as one of the qualifying language papers and/or test for proficiency in regional languages in the selection process.

The further contention of the petitioner is that the Judicial Officers of the State are also required to have adequate knowledge and proficiency over the regional language or official languages of the State for fair administration of justice for which the Assam Judicial Service Rules, 2003 was amended by Assam Judicial Service (Amendment) Rules, 2011, thereby inserting one paper consisting of 50 marks to test the proficiency of the candidates in official language(s) of the State of Assam.

It is contended by the petitioner that to promote learning of its official language and to preserve its official language and ethnic identity, the Government of Assam enacted the Assamese Language Learning Act, 2020, whereby it was provided that Assamese language shall be taught as a compulsory language in all class of all the schools in the State of Assam, except in the sixth schedule areas, Bodo medium schools of Bodo inhabited areas and Barak Valley areas either as MIL or as first language or second language or elective subjects. It is, therefore,

contended that the Cabinet decision taken in its meeting dated 24.11.2021 regarding removal of qualifying language papers from APSC examinations are contrary to the objective sought to be achieved till date with regard to importance to be given to the official languages in Assam. It is contended that the said Cabinet decision is also against the interest of the Assamese people and if it is implemented, the same will prejudice the cultural and linguistic identities of the State of Assam. It is also contended that knowledge of regional language is necessary for the Assam Civil Servant Officer to communicate and keep harmony and official business affairs, which shall preserve the traditional local language and heritage and inclusion of official language papers in selection process is the purpose behind it.

**13. WP(C) No.1208/2022** is filed by an aspirant who has not appeared in the examination and has not applied pursuant to the advertisement in question. It is contended by the petitioner that he has done graduation in Political Science from B.H. College, Howly and is pursuing LL.B from University Law College, Gauhati University. He has contended that he has studied in English medium school and yet he has no difficulty in appearing in APSC main examination containing qualifying languages paper as prescribed by Assam Public Services Combined Competitive Examination (Amended) Rules, 2019 and more particularly as the qualifying language papers prescribed by the extant Rules of 2019. It happens to be the official language of the

State of Assam, which according to the petitioner is the mother tongue of majority of the residents of Assam.

It is contended by the petitioner that language plays a significant role in the administration of the State and the objective behind putting official language as one of the qualifying papers in the recruitment of Civil Service Officer is that the scope of work of a State Civil Service Officer demands knowledge of official language of the State. It is contended that several State Civil Services Commission in India have included their respective official/regional languages as one of the qualifying language papers and/or test for proficiency in regional languages in the selection process. It is contended that Article 350 of the Constitution of India also guarantees a right to all citizens to seek redressal of its grievances from the authorities in their own regional languages. It is contended that thus proficiency in the regional language is prime quality to be possessed by a Civil Service Officer for administering the State. It is contended that majority of the official communications from grass root to district level are in vernacular languages. It is contended that Article 29(1) of the Constitution of India also confers right upon all citizens to conserve its language, script and culture and, therefore, the State is under a constitutional obligation to protect and promote the official language of the State of Assam to conserve the languages of the people of Assam as well as the cultural and ethnic identity of the people of the State of Assam.

Referring to Article 315 of the Constitution of India, it is contended that the respondent Commission is constituted with an object to select suitable candidates possessing required educational qualification, skills and qualities as well as adequate regional knowledge to serve people of Assam and in order to achieve such objective, the Governor of Assam in exercise of powers conferred by proviso to Article 309 of the Constitution of India amended the Assam Public Services Combined Competitive Examination Rules, 1989 and brought in Assam Public Services Combined Competitive Examination (Amended) Rules, 2019 by providing two qualifying language papers consisting of 300 marks each. It is contended that as per the said amendment, two qualifying language papers - Paper "A" consisting of three official languages of the State of Assam, i.e. Assamese or Bengali or Bodo, and - Paper "B" consisting of English language, were introduced. Thus, due to exemption with regard to choosing of any of the language from Paper "A" has been given to the candidates belonging to Dima Hasao, Karbi Anglong and West Karbi Anglong, who have not studied the said language in their school. It is also contended that the Rules of 2019 has reasonable objective behind it and is a valid Rule enacted for the interest of the people of the State of Assam. It is contended that the exemption given to the candidates belonging to Dima Hasao, Karbi Anglong and West Karbi Anglong, who have not studied the said language in their

school, is also a reasonable and permissible one and the same is within the ambit of law.

It is contended that the decision taken by the Cabinet extends the benefit of exemption from appearing in qualifying language paper to other districts of Barak Valley, who did not have these languages in HSLC examination and finally, the Assam Public Services Combined Competitive Examination (Amended) Rules, 2020 were brought into force by a Notification dated 21.10.2020, whereby exemption has been granted to candidates belonging to Barak Valley, who did not have any of these languages, i.e. Assamese, Bengali and Bodo in HSLC examination, which is *ex-facie* impermissible, arbitrary, unreasonable and apparently unwanted. It is contended that there cannot be said to have any reasonable objective behind it. It is contended that Bengali language being the official language for the three districts of Barak Valley and as it being commonly spoken mother tongue of the inhabitants of those area, there is no reasonable objective of exempting the candidates of the said districts. The said exemption cannot be said to be reasonable classification as like the exemptions given to the candidates belonging to Hill Districts of the State of Assam and was thus liable to be set aside and quashed.

Reiterating the said contention, the petitioner has referred to the decision taken by the Cabinet of the Government of Assam dated 24.11.2021, wherein it was decided to dispense with qualifying papers including

English from upcoming CCE mains examination of APSC as well as from the ongoing CCE examination 2020. It is contended that from the decision taken by the Cabinet it can be seen that the Cabinet accepted that the proficiency of other official languages is an important factor for administration of State and the Civil Services Officers must have adequate proficiency over the regional languages of the State but by laying down the criteria that the candidate should be able to speak Assamese or other official language or associate official language or any of the tribal languages of the State cannot be said to achieve the objective of choosing suitable candidates having proficiency over official languages of Assam as it just says about ability of speaking, which is not just enough to meet objective as scope of the work of civil service officers demand adequate knowledge and proficiency over the languages of Assam, as majority of official communications in the grass root level is in vernacular language. It is contended that the decision taken by the respondents is per se unconstitutional as Article 15 of the Constitution of India prohibits the State from discriminating any citizen on the basis of place of residence. It is also contended that the importance of official language of the State in the Combined Competitive Examination held by the APSC or by any State Civil Service Commission whatsoever has originated from the concept of reorganization of the State on the basis of mostly spoken languages of the State. It is also contended that Article 29 of the Constitution of India cast duty and obligation upon

the State to conserve the distinct language, script and culture of the citizens of India.

**14.** At this stage, it is to be noted that WP(C) No.5169/2020; WP(C) No.5248/2020 and WP(C) No.28/2021 were filed at a stage when the main examination was yet to be conducted. Similarly, PIL No.83/2021 came to be filed after the State Cabinet took the decision on 24.11.2021 and the fifth petition being WP(C) No.1208/2022 was filed after the decision.

**15.** The Commissioner & Secretary to the Government of Assam, Personnel (A) Department has filed an affidavit dated 22.04.2021 in WP(C) No.5169/2020 and the Deputy Secretary to the Government of Assam, Personnel (A) Department has filed an affidavit dated 12.08.2021 in WP(C) No.5248/2020. Similarly, the respondent No.18, i.e. the public interest litigant, has also filed an affidavit-in-opposition in WP(C) No.28/2021. However, in view of the fact that the petitioners of WP(C) No.5169/2020 and WP(C) No.28/2021 have not cleared the main examination and in WP(C) No.5248/2020, the alternative prayer already stands allowed, we deem it fit not to elaborately discuss the stand of the respondents in these three writ petitions.

**16.** The contentions raised in WP(C) No.1208/2022 and PIL No.83/2021 are almost similar and identical and considering the events that have taken place during the pendency of these petitions, the respondent State has filed an affidavit-in-opposition in PIL No.83/2021 and the



petitioner has filed an affidavit-in-reply to the affidavit-in-opposition filed by the Joint Secretary to the Government of Assam, Personnel Department in PIL No.83/2021, which is discussed elaborately hereinafter.

**17.** It is contended by the Joint Secretary to the Government of Assam, Personnel Department as deponent of the said affidavit-in-opposition that prior to Notification of the Assam Public Services Combined Competitive (Amendment) Rules, 2019, there was no language paper other than English in Combined Competitive Examination (CCE) conducted by APSC. It is contended that by way of an amendment, a provision was made for inclusion of Assamese, Bengali and Bodo as qualifying language paper in CCE (Mains). However, exemption was granted in the language paper of the three languages to those students of Dima Hasao, Karbi Anglong and West Karbi Anglong districts, who did not have any languages in the High School Leaving Certificate Examination. The exemption was a policy decision approved by the State Cabinet on 22.07.2019 in the interest of the candidates of those districts who have spent substantial years of their academic lives in Assam and genuinely missed the opportunity to learn, write and/or speak Assamese, Bodo or Bengali still however, they have a legitimate claim of State Government jobs. It is contended by the State Government that similar representations were received from Cachar Hindi Bhasi Chatra Parishad on 28.07.2020 and from Manipuri Community of Barak Valley on 24.08.2020, *inter alia*,

praying that many candidates in the districts of Cachar, Karimganj and Hailakandi did not have any of the three languages in High School Leaving Certificate Examination and, therefore, such students should not be discriminated against by making it mandatory for them to appear for a qualifying language paper and considering the same the exemption was further extended to the districts of Cachar, Karimganj and Hailakandi through the Assam Public Services Combined Competitive Examination (Amendment) Rules, 2020, which came to be notified on 21.10.2020. It is contended that by that time no recruitment was done by APSC through CCE after the above two amendments of 2019 and 2020. Only in the advertisement of ongoing CCE, 2020, the provision of qualifying paper existed, except for Hill Districts, while exemptions for Barak Valley districts were notified by the 2020 Amendments.

**18.** It is contended that some candidates other than from the six exempted districts, who were aggrieved with the exemption offered to some candidates of six districts, approached this Court for redressal of their grievances [*reference to WP(C) No.5169 of 2020, WP(C) No.5248 of 2020 and WP(C) No.28 of 2021*]. It is contended that considering the contentions raised in the said petitions, more particularly, the contention that the class within a class is created amongst the candidates, who are to appear in the Mains Examination and the same being violative of Article 14 of the Constitution of India and other contentions as raised in the said petition, the State Cabinet in its

meeting held on 24.11.2021 decided to return back to the pre-2019 position and to do away with the requirement to appear in qualifying language paper, i.e. Assamese, Bengali or Bodo, in the Combined Competitive (Mains) Examination.

**19.** The deponent has referred to the order dated 10.12.2021 passed by this Court in WP(C) No.28/2021 allowing the APSC to hold the Mains (written) examination for CCE 2020 without the qualifying language paper. Further referring to the order passed by this Court on 24.01.2022 in the same very writ petition, it is contended that this Court also allowed the APSC to conduct *viva voce* for the successful candidates of the Mains (written) Examination with the condition that final result shall not be declared without leave of this Court. It is also contended that latest amendments do not prevent any candidate from taking any of the optional papers of Assamese, Bengali or Bodo in CCE (Mains), the marks of which are counted for the final list. The State Cabinet in the very said meeting dated 24.11.2021 also decided that in future question papers for CCE would be set in Assamese, apart from English and advised the APSC to prepare plans for setting question papers in other associate official languages, including Bodo language. The Cabinet also took a decision that in future the candidates should be registered at the District Employment Office to apply for APSC examination and that they should be original inhabitants of Assam. It is also provided that the candidates appearing in APSC

examinations should be able to speak Assamese or other official languages or associate official languages of the State or any other tribal languages of the State and would also further ensure a minimum level of knowledge about those languages among the selected officers. It is further stated that the Officer selected through CCE conducted by APSC have to pass three language papers as a part of departmental examinations and the departmental examinations are conducted by APSC as per the provisions of the Rules for Conduct of Departmental Examination, 1963. It is contended that the Officers have to select the three language papers from among Assamese, Bengali Hindi and eight tribal languages, namely, Karbi, Khasi, Dimasa, Bodo, Garo, Hmar, Mishing and Kuki, and if his/her mother tongue is Assamese, he/she has to appear in Bengali, Hindi and a tribal language. Similarly, if the mother tongue is Bengali, he/she has to appear in Assamese, Hindi and a tribal language and if his/her mother tongue is other than above, he/she has to appear in Hindi, Assamese and Bengali or a tribal language.

**20.** Referring to Rule 22 of the Assam Civil Services Rules, 1998, it is contended that the newly recruited ACS Officers are first placed on probation for a period of 2(two) years and during that period, they are required to pass the departmental examination, which includes three language papers for his confirmation to the service. It is also stated that for other services recruited through CCE, there are similar Service Rules, which stipulates of qualifying in the

departmental examination, including the language papers to be a mandatory requirement for confirmation in the respective services. It is also contended that for departmental examinations, the Officers have to be proficient in languages in order to qualify and the level of proficiency is in consistency with the level required for the transaction of official duties. It is further contended that prior to the notification of the Assam Public Services Combined Competitive Examination (Amendment) Rules, 2019, there was no language paper other than English and has reiterated the amendments made in 2019 and the representations dated 28.07.2020 and 24.08.2020 received from respective Organizations and the amendment of 2020.

**21.** It is specifically contended that the State Cabinet as the highest decision making body is empowered by the provisions of the Assam Rules of Executive Business, 1968 to bring about amendments in Rules. It is also further contended that in view of the factual matrix existing in the present case, there exists element of violation of the mandate of Article 14 of the Constitution of India in the amended Rules of 2019 and 2020 and in order to fulfill the requirement of Article 14 of the Constitution of India, the Government had the option to either make it mandatory for all candidates of the State to appear in the qualifying language papers or exempt all candidates from appearing in the qualifying language papers. It is stated that previously the exemption was introduced in the first

instance after taking into consideration the interests of candidates from those districts, who have spent substantial years of their academic lives in Assam and genuinely missed the opportunity to learn, write and/or speak Assamese, Bodo or Bengali and who have legitimate claims on State Government jobs. It is contended that qualifying language mandatory for all candidates would discriminate against that section of candidates and hence decision was taken to exempt all candidates from appearing in the qualifying examination, which appeared to be more prudent option for fulfilling the requirement of Article 14 of the Constitution of India.

**22.** It is contended that the number of posts advertised in each category of CCE 2020 was based on the vacancy position of posts as on 01.01.2020. It is further contended that due to litigations and resentments of the examination, the same had delayed the long pending vacancies which would adversely affect the administration. It is further contended that considering the need to fulfill the requirement of Article 14 of the Constitution of India and faced with the prospect of long drawn Court cases delaying the recruitment process and hampering the State's administration, the State Cabinet in its meeting held on 24.11.2021 decided to return back to pre-2019 position and do away with requirement of qualifying language papers in the three languages in the Combined Competitive (Mains) Examination. The deponent has relied upon the

Rules for Conduct of Departmental Examination, 1963 and has also relied upon the Assam Civil Services Rules, 1998.

**23.** The petitioner has filed affidavit-in-reply to the aforesaid affidavit-in-opposition and has denied the averments made in the affidavit-in-opposition and has reiterated and reaffirmed all the averments made in Paragraphs 1 to 32 of PIL No.83/2021. It is *inter alia* contended by the petitioner that the averments made in the affidavit-in-opposition is not germane to the adjudication of the issues involved in the present petition. It is contended that what needs to be appreciated is that the language being the purpose behind establishment of different States, proficiency of the future civil servants in official regional language as well as English language is imperative. It is contended that the State has decided to object the PIL but has maintained silence in respect of the other writ petitions, viz. WP(C) No.5169/2020, WP(C) No.5248/2020 and WP(C) No.28/2021. It is contended that the contentions raised as regards violation of Article 14 of the Constitution of India in relation to the amendments in 2019 and 2020 is wholly misconceived and even the contention that a class is created within a class, is also misconceived. It is contended that the State in fact seeks to plead negative equality, which is not permissible. It is contended that it is no longer *res-integra* that it is mandatory for future civil servants to qualify in Indian language/official languages of the State as well as English language.

**24.** It is alleged that the affidavit-in-opposition reflects total non-application of mind and the same deserves to be ignored. Referring to the Report submitted by the Committee on Civil Services Examination Reforms headed by Professor Arun Nigavekar dated 30.08.2012, it is submitted that test proficiency of future civil servants in Indian language as well as English language is imperative and that is why in UPSC examination, there is a compulsory language paper as averred in the PIL. Reference is made to the Committee of Shri M.P. Bezbaruah, IAS (Retired) constituted by the Government of Assam on Combined Competitive Examination Reforms, it is contended that the Committee had recommended that there shall be a paper in language which will be of a qualifying nature and in such paper, the candidates will have to qualify either in General Assamese, Bengali, General English or Bodo and that the standard of the three languages and the English will be that of Senior Secondary Level. It is contended that the Rules of 2019 are inconsistent with the Report of the Committee submitted in the year 2015. It is further submitted that prescription of compulsory language paper in the official languages of the State is a view of an expert, which could not have been ignored by the State Cabinet in its decision taken on 24.11.2021. It is also contended that in view of the expert opinion, it is imperative for the future civil servants to have proficiency in official languages of the State as well as in English and such view ought not to have been and could not have been ignored by the State



Cabinet. It is also contended the Assam Act No.XXXIII of 1960 was enacted to give effect to the provisions of Article 345 read with Article 29(1) of the Constitution of India. It is evident that the Cabinet's decision to do away with language paper as well as English paper is *void ab initio* and the same needs to be interfered with and this is a fit case wherein this Court may be pleased to allow the petition.

**ORDERS PASSED ON DIFFERENT DATES IN THIS BUNCH OF PETITIONS**

**25.** Considering the fact that this bunch of 5(five) petitions is filed at different stages of the recruitment process. Before deciding the issues involved in this bunch of petitions, it would be appropriate to refer to the different orders that are passed by this Court.

"WP(C) No.28/2021  
WP(C) No.5169/2020  
WP(C) No.5248/2020

23-08-2021

*The matter is taken up through video conferencing.*

*Heard Mr. S. Banik, learned counsel for the petitioner in WP(C) No.5169/2020 and Mr. M.K. Sharma, learned counsel for the petitioner in WP(C) No.5248/2020. Also heard Mr. D. Saikia, learned Advocate General, Assam for the respondent State.*

*The preliminary examination may go on, however, the selection and final result of the examination shall be subject to the decision of this Court.*

*List again on 2<sup>nd</sup> September, 2021 among the first five cases."*

"WP(C) No.28/2021  
WP(C) No.5169/2020  
WP(C) No.5248/2020

02.09.2021

*These matters are taken up through video conferencing.*

*Heard Mr. S.S. Saikia, learned counsel for the petitioner in WP(C) No.28/2021; Mr. S. Banik, learned counsel for the petitioner in WP(C) No.5169/2020 and Mr. F. Khan, learned counsel for the petitioner in WP(C) No.5248/2020. Also heard Mr. D. Saikia, learned Advocate General, Assam and Mr. T.J. Mahanta learned Standing Counsel, APSC for the respondents.*

*After hearing the learned counsel for the petitioners and the learned Advocate General, Assam, we are of the considered view that those candidates who did not have any of the three languages (Assamese, Bodo and Bengali) in their High School and have been given exemption from appearing in the language paper in the preliminary examination, such as candidates belonging to Cachar, Karimganj, Hailakandi and the 6th Schedule areas, should be represented before this Court at least in their representative capacity. The State Government shall, therefore, make proper publication in at least two daily newspapers having wide circulation in the State of Assam so that they may be aware of these proceedings and be parties to the writ petitions. Meanwhile, the Secretary, APSC shall also inform such candidates so that they can put in their appearance before this Court.*

*List again on 4<sup>th</sup> October, 2021.*

*Meanwhile, we make it very clear that the preliminary examination shall go on as scheduled."*

"WP(C) No.28/2021  
WP(C) No.5169/2020  
WP(C) No.5248/2020

10.12.2021

*The matter is taken up through video conferencing.*

*Heard Mr. M.K. Sharma, learned counsel for the petitioner in WP(C) No.28/2021; Mr. S. Banik, learned counsel for the petitioner in WP(C) No.5169/2020 and Mr. F. Khan, learned counsel for the petitioner in WP(C) No.5248/2020. Also heard Mr. D. Saikia, learned Advocate General, Assam; Mr. T.J. Mahanta, learned senior standing counsel, APSC; Ms. S. Kemprai and Mr. V. Rajkhowa, learned*

*counsel, appearing for the newly impleaded private respondents.*

*The Assam Public Service Commission (APSC) had initiated a selection process for the posts of State Civil Servants in Assam vide its advertisement dated 08.09.2020. As per the advertisement, the candidates had to first qualify a preliminary examination and then had to appear in the main written examination and viva-voce. For those who qualify in the preliminary examination, apart from the other subjects, it was also mandatory to qualify in any of the three languages, i.e. Assamese, Bodo and Bengali.*

*We must note at this juncture that Assamese is the official language in Assam but by law certain concessions have also been given to other languages, such as Bodo and Bengali, which are also spoken in parts of Assam. This qualifying paper in language was initially exempted for the candidates belonging to three Districts, i.e. Dima Hasao, Karbi Anglong and West Karbi Anglong, and thereafter it was extended to three more Districts of Barak Valley, which are Karimganj, Cachar and Hailakandi.*

*These writ petitions were filed before this Court challenging the exemption given to candidates of other Districts on the ground that this is violative of Articles 14 and 16 of the Constitution of India and on other grounds as well.*

*During the pendency of these writ petitions, the preliminary examinations were held and some of the petitioners before this Court did not qualify that examination. Nevertheless, the issue raised by them was alive and required attention of this Court.*

*On previous dates, we were told by Mr. D. Saikia, learned Advocate General, Assam that the State Government is re-looking at the entire aspect of the matter and he hopes that a solution would be brought very soon. Today, we have been also informed by Mr. D. Saikia, learned Advocate General, Assam today that a Cabinet meeting held on 24.11.2021 has already taken a decision, which has also been conveyed to the APSC, that in the written examination, which is tentatively scheduled for January or February, 2022, the requirement for qualifying in the language paper, i.e. Assamese, Bodo or Bengali, is removed.*

*The learned counsel for the petitioners, who have appeared before this Court today, have also expressed their satisfaction in the matter but have prayed that in the light of*

*the statement made by Mr. D. Saikia, learned Advocate General, Assam, the matter may be only adjourned as there are other legal aspects, which need a consideration of this Court.*

*In view of the above, we adjourn the matter.*

*List again on 14<sup>th</sup> February, 2022.*

*In the light of above and in order to remove any confusion, we direct that the APSC shall hold the written examination without the language paper.”*

"PIL No.83/2021

22.12.2021

*Heard Mr. K.N. Choudhury, learned Senior Counsel assisted by Mr. B. Kaushik, learned counsel for the petitioner. Also heard Mr. T.J. Mahanta, learned Senior Counsel and Standing Counsel, APSC assisted by Ms. P. Sarma, learned counsel for the respondent no. 3 & 4 and Ms. S. Konwar, learned counsel for the respondent nos. 1 & 2.*

*2. This PIL has been filed challenging the decision of the Cabinet taken in its meeting held on 24.11.2021 by which the Cabinet decided to remove the language qualifying papers from Assam Public Services Combine Competitive Examination, and also for a direction to the respondent authorities to strictly follow the Assam Official Language Act, 1960.*

*3. The main contention of the petitioner in the PIL is that the aforesaid Cabinet decision violates the official language policy of the State. It has been submitted that apart from this, it would amount to changing the terms of the advertisement issued by the Assam Public Service Commission on 08.09.2020 for recruitment to services/posts under the Government of Assam, wherein there is a requirement for appearing in qualifying language papers, namely,*

*(1) Paper A- Any one of the languages from Assamese, Bengali, Bodo. Candidates from Dima Hasao, Karbi Anglong and West Karbi Anglong districts who had not studied any of these languages in school are exempted from appearing from this Paper-A.*

*(2) Paper B – English*

*4. According to the learned Senior Counsel for the petitioner if the aforesaid Cabinet decision is given effect to,*

*the requirement of qualifying in Language Paper-A of Assamese/Bengali/Bodo will no more be necessary. In other words, there will be no need to qualify in the aforesaid language Paper-A. According to the learned Senior Counsel for the petitioner, this amounts not only violation of the language policy of the State as all the Civil Servants serving in the State are required to be acquainted with the official language of the State but also amounts to change in the examination criteria in the notification which was issued in terms of the Assam Public Services Combined Competitive Examination (Amendment) Rules, 2019 & 2020, which will not be permissible.*

*5. Learned Senior Counsel for the petitioner submits that it has been specifically mentioned in Section (II) of the Government notification dated 05.08.2019 notifying the Assam Public Services Combined Competitive Examination (Amendment) Rules 2019 that there shall be qualifying papers out of which there will be one paper in Assamese/Bengali/Bodo (Paper-A), wherein exemption has been given to certain candidates hailing from some districts as follows:*

*'Qualifying Papers (in the level of Class X):*

*1. Paper A (300 Marks – 3 Hours Duration) any one of the language from Assamese, Bengali, Bodo candidates from Dima Hasao, Karbi Anglong and West Karbi Anglong Districts who had not studied any of these languages in school shall be exempted from appearing for qualifying language papers.'*

*It has been accordingly submitted that if the said Cabinet decision is acted upon, without amending the aforesaid rules, which are yet to be amended, apart from violating the State Language Policy, it would also amount to change of goal post during the recruitment process which is not permissible. As far as law is concerned, we are also of the view that once the recruitment process has been initiated, any change in the Advertisement/Rules relating to recruitment would be questionable.*

*6. Be that as it may, it has been pointed out by Mr. T.J. Mahanta, learned Senior Counsel and Standing Counsel, APSC, that three other writ petitions are pending before this Court being, WP(C) no.28/2021, WP(C) no.5169/2020 and WP(C) no.5248/2020 in which some of the candidates have*

*approached this Court challenging the exemption given to certain categories of candidates belonging to Dima Hasao, Karbi Anglong and West Karbi Anglong districts, who had not studied in any of these languages in the school, from appearing in the qualifying language Paper-A, as discriminatory.*

*7. Accordingly, this Court by order dated 10.12.2021 passed in the aforesaid writ petitions i.e. WP(C) no.28/2021 and 2 (two) Others had ordered that 'in order to remove any confusion, we direct that the APSC shall hold the written examination without the language paper.'*

*8. Though the learned Senior Counsel for the petitioner in this PIL has prayed for passing of an ad interim order, directing the APSC not to hold any written examination, we would not like to pass any such prohibitory order at this stage as it may run contrary to the order already passed by this Court in WP(C) no.28/2021 and 2 (two) Others, but we have also noted the submission made by learned Senior Counsel APSC that the final examination has not yet been announced though the APSC is fully ready to conduct the final examination. Learned Senior Counsel, APSC, has submitted that an application has already been filed in the aforesaid bunch of writ petitions seeking clarification as to whether the order passed in the aforesaid writ petitions to the effect that 'the APSC shall hold the written examination without the language paper' is with regard to the language Paper-A (Assamese, Bengali and Bodo) only, or in respect of the English language Para-B also, and those writ petitions have already been listed today and till such clarification is made, the APSC is not in a position to announce the final date of written examination.*

*9. Considering the submission of Mr. T.J. Mahanta, learned Senior and Standing Counsel, APSC, we also expect that examination will be held after obtaining the leave of this Court in this PIL.*

*10. It appears to us that the issues raised in the said bunch of writ petitions though arose out of different cause of action, are closely related to the issue raised in the present PIL. We are thus, of the view that rather than taking up of this PIL separately, it would be more appropriate if the*

*present PIL is also taken up along with that bunch of writ petitions.*

*11. However, since this PIL and other bunch of writ petitions referred to above are listed before different Benches, we direct the Registrar General of this Court to place this PIL before the Hon'ble Chief Justice on the administrative side for an appropriate decision for listing of this PIL and other 3 (three) writ petitions i.e. WP(C) No.28/2021 and 2 (two) Others before the appropriate Bench.*

*12. List the PIL after necessary order of the Hon'ble Chief Justice."*

"PIL No.83/2021

10.01.2022

*The matter is taken up through video conferencing.*

*Heard Mr. K.N. Choudhury, learned senior counsel for the petitioner. Also heard Mr. D. Saikia, learned Advocate General, Assam, appearing for the respondent Nos.1 & 2 and Mr. T.J. Mahanta, learned senior standing counsel, APSC, appearing for the respondent Nos.3 & 4.*

*In this PIL, the action of the authorities of the State Government, which had dispensed with the proficiency in Assamese, Boro and Bengali languages as a qualifying language in the State Civil Service Examination, has been challenged.*

*On 22.12.2021, another Division Bench of this Court has passed the following order:*

*'1. ....*

*6. Be that as it may, it has been pointed out by Mr. T.J. Mahanta, learned Senior Counsel and Standing Counsel, APSC, that three other writ petitions are pending before this Court being, WP(C) no.28/2021, WP(C) no.5169/2020 and WP(C) no.5248/2020 in which some of the candidates have approached this Court challenging the exemption given to certain categories of candidates belonging to Dima Hasao, Karbi Anglong and West Karbi Anglong districts, who had not studied in any of these languages in the school, from appearing in the qualifying language Paper-A, as discriminatory.*

*7. Accordingly, this Court by order dated 10.12.2021 passed in the aforesaid writ petitions i.e.*

*WP(C) no.28/2021 and 2 (two) Others had ordered that 'in order to remove any confusion, we direct that the APSC shall hold the written examination without the language paper.'*

8. *Though the learned Senior Counsel for the petitioner in this PIL has prayed for passing of an ad interim order, directing the APSC not to hold any written examination, we would not like to pass any such prohibitory order at this stage as it may run contrary to the order already passed by this Court in WP(C) no.28/2021 and 2 (two) Others, but we have also noted the submission made by learned Senior Counsel APSC that the final examination has not yet been announced though the APSC is fully ready to conduct the final examination. Learned Senior Counsel, APSC, has submitted that an application has already been filed in the aforesaid bunch of writ petitions seeking clarification as to whether the order passed in the aforesaid writ petitions to the effect that 'the APSC shall hold the written examination without the language paper' is with regard to the language Paper-A (Assamese, Bengali and Bodo) only, or in respect of the English language Para-B also, and those writ petitions have already been listed today and till such clarification is made, the APSC is not in a position to announce the final date of written examination.*

9. *Considering the submission of Mr. T.J. Mahanta, learned Senior and Standing Counsel, APSC, we also expect that examination will be held after obtaining the leave of this Court in this PIL.*

10. *It appears to us that the issues raised in the said bunch of writ petitions though arose out of different cause of action, are closely related to the issue raised in the present PIL. We are thus, of the view that rather than taking up of this PIL separately, it would be more appropriate if the present PIL is also taken up along with that bunch of writ petitions.*

11. *However, since this PIL and other bunch of writ petitions referred to above are listed before different Benches, we direct the Registrar General of this Court to place this PIL before the Hon'ble Chief Justice on the administrative side for an appropriate decision for listing of this PIL and other 3 (three) writ petitions i.e. WP(C) No.28/2021 and 2 (two) Others before the appropriate Bench.*

12. *List the PIL after necessary order of the Hon'ble Chief Justice.'*



*In WP(C) No.28/2021; WP(C) No.5169/2020 and WP(C) No.5248/2020, vide order dated 10.12.2021, this Court had directed the Assam Public Service Commission to continue with the selection process.*

*The order dated 22.12.2021 passed in the present PIL and the order dated 10.12.2021 passed in WP(C) No.28/2021; WP(C) No.5169/2020 and WP(C) No.5248/2020 seem to be in conflict. We, therefore, vacate the order dated 22.12.2021 passed in the present PIL.*

*However, considering the importance of the matter, we give liberty to the present petitioner to move an application for his impleadment in the aforementioned writ petitions.*

*Put up again before this Court on 17<sup>th</sup> January, 2022 along with WP(C) No.28/2021; WP(C) No.5169/2020; WP(C) No.5248/2020 and I.A. (Civil) No.79/2022.*

*Cause-list shall reflect the name of Mr. V. Rajkhowa as the counsel for the respondent Nos.11 to 17 in I.A. (Civil) No.2370/2021."*

"PIL No.83/2021

24.01.2022

*The matter is taken up through video conferencing.*

*Heard Mr. K.N. Choudhury, learned senior counsel for the petitioner. Also heard Mr. D. Saikia, learned Advocate General, Assam, appearing for the respondent Nos.1 & 2 and Mr. T.J. Mahanta, learned senior standing counsel, APSC, appearing for the respondent Nos.3 & 4.*

*In this public interest litigation, the issue which has been raised by the petitioner is that the Government of Assam, by dispensing with language papers as a qualifying test, has violated the provisions of the Assam Official Language Act, 1960. It is also submitted that the action of the Government is also violative of Article 14 of the Constitution of India.*

*Mr. D. Saikia, learned Advocate General, Assam, on the other hand, has raised serious objection on the very maintainability of the present public interest litigation. Referring to more than one decisions of the Apex Court, wherein it has been categorically held that public interest litigation should not be entertained in service matters, his main argument would be that since the subject matter of the*

*public interest litigation is relating to public service in the State of Assam, the present public interest litigation is not maintainable, and none of the affected persons has filed this public interest litigation.*

*Undoubtedly, the issue raised in this public interest litigation is an important one but since we have already impleaded the petitioner as one of the respondents in the connected writ petitions, for the present their grievance will be looked into in the writ petition itself.*

*List again on 2<sup>nd</sup> March, 2022.*

*The State meanwhile shall file a detail objection, which shall be considered in accordance with law.”*

*"PIL No.83/2021*  
*WP(C) No.5169/2020*  
*WP(C) No.5248/2020*  
*WP(C) No.28/2021*  
*WP(C) No.989/2022*  
*WP(C) No.5169/2020*  
*WP(C) No.5248/2020*  
*WP(C) No.28/2021*  
*I.A. (Civil) No.2370/2021*  
*PIL No.83/2021*  
*I.A. (Civil) No.79/2022*  
*WP(C) No.6082/2021*  
*WP(C) No.386/2022*  
*WP(C) No.453/2022*  
*WP(C) No.660/2022*  
*WP(C) No.1208/2022*

*12.05.2022*

*Heard Mr. J. Payeng, learned counsel as well as Mr. B. Purukayastha, learned counsel for the petitioner appearing in WP (C)/989/2022, WP (C)/6082/2021, WP (C)/386/2022, WP (C)/453/2022 and WP (C)/660/2022.*

*It has been submitted that though the issue of 'language' is involved in these five petitions as in the other remaining petitions, which have been tagged together, perhaps these five petitions may require a different treatment as a different issue is also involved, and accordingly, have prayed that these matters be separated from the remaining petitions.*

*However, considering the fact that the similar issue of 'language' is involved, it is desirable that these petitions though may not be tagged with the remaining petitions, be*

*heard on the same day so long it is found appropriate and necessary.*

*Accordingly, these petitions are delinked from the rest of the petitions and will be listed tomorrow separately.*

*The remaining writ petitions will also be listed tomorrow, but not tagged with the above mentioned five writ petitions.*

*List these matters again tomorrow accordingly."*

"WP(C) No.1208/2022

13.05.2022

*Heard Mr. K.N. Choudhury, learned Senior Counsel for the petitioner in PIL No.83/2021 and WP(C) No.1208/2022. Also heard Mr. D. Saikia, learned Advocate General, Assam and Mr. P. Dutta, learned Standing Counsel, APSC.*

*Mr. D. Saikia, learned Advocate General, Assam submits that in PIL 83/2021 the State respondent Nos.1 & 2 seeks some time to file affidavit in justification of the cabinet decision taken regarding exemption of the language.*

*Learned Senior Counsel for the petitioner, on the other hand, has raised serious objection to the said prayer and has submitted that the matters require expeditious disposal.*

*Be that as it may, the concerned State respondents shall file the affidavit within a period of 4 (four) weeks without any fail.*

*Let the matter be listed on 15.06.2022."*

**26.** It is also a matter of record that the respondent authorities filed an interlocutory application being I.A. (Civil) No.2370/2021, wherein this Court passed the following order on 24.01.2022:-

"WP(C) No.5169/2020

WP(C) No.5248/2020

WP(C) No.28/2021

I.A. (Civil) No.2370/2021

24.01.2022

*The matter is taken up through video conferencing.*

*Heard Mr. H. Gupta, Mr. R.M. Sarmah and Mr. F. Khan, learned counsel for the petitioners. Also heard Mr. D. Saikia, learned Advocate General, Assam, appearing for the*

*State respondents; Mr. T.J. Mahanta, learned senior standing counsel, APSC and Mr. V. Rajkhowa, learned counsel appearing for the respondent Nos.11 to 17 in I.A. (Civil) No.2370/2021.*

*On 10.12.2021, we were told that the Cabinet has taken a decision on 24.11.2021, by which the requirement for qualifying in the language paper, i.e. Assamese, Bodo or Bengali, including English language, has been dispensed with.*

*The cabinet decision dated 24.11.2021 has also been placed before us by Mr. D. Saikia, learned Advocate General, Assam.*

*The notes of the Cabinet decision dated 24.11.2021 placed before us reads as under:-*

*'Extract of the minutes of the cabinet meeting held on 24/11/2021 at 11-00 AM in the conference room of deputy commissioner's office at Bongaigaon, Assam*

*Circulated during the Cabinet Meeting*

*Additional Item No.2                      File No.AAP.219/2018/Pt.I  
Personnel Department*

*Sub: Section II (B) under Schedule II of Assam Public Services Combined Competitive Examination Rules 1989 was amended in 2019 and 2020 allowing exemption from appearing in Qualifying Language Paper (Assamese, Bengali and Bodo) for candidates belonging to the Hills Districts of Dima Hasao, Karbi Anglong and West Karbi Anglong and the three Districts of Barak Valley namely Cachar, Karimganj and Hailakandi who did not have any of these languages in High School Leaving Certificate Examination. An amendment to this provision is sought to be made by removing the provision.*

*The Cabinet approved the proposal along with dispensing with the requirement for English language paper in the ongoing examination. For future examinations for recruitment to ACS etc. the following pattern will be followed-*

*(1) That persons appearing in the APSC examinations should be able to speak Assamese or other official languages or associate official languages of the State or any of the tribal languages of the State.*

*(2) The Cabinet also decided that English language paper and other language papers may be dropped from the scheme of examination.*

(3) *The candidates should be registered in the District Employment Office to apply for appearing in the APSC Examination and must be original inhabitants of Assam.*

*The above (1), (2) & (3) new provisions will not be part of the ongoing Mains Examination.*

*Also henceforth, APSC will also set question paper in Assamese along with English, Bodo will be one of the optional MIL.'*

*In our order dated 10.12.2021, the above Cabinet note was not placed before us. Our order dated 10.12.2021 reads as under:-*

*'The matter is taken up through video conferencing.*

*Heard Mr. M.K. Sharma, learned counsel for the petitioner in WP(C) No.28/2021; Mr. S. Banik, learned counsel for the petitioner in WP(C) No.5169/2020 and Mr. F. Khan, learned counsel for the petitioner in WP(C) No.5248/2020. Also heard Mr. D. Saikia, learned Advocate General, Assam; Mr. T.J. Mahanta, learned senior standing counsel, APSC; Ms. S. Kemprai and Mr. V. Rajkhowa, learned counsel, appearing for the newly impleaded private respondents.*

*The Assam Public Service Commission (APSC) had initiated a selection process for the posts of State Civil Servants in Assam vide its advertisement dated 08.09.2020. As per the advertisement, the candidates had to first qualify a preliminary examination and then had to appear in the main written examination and viva-voce. For those who qualify in the preliminary examination, apart from the other subjects, it was also mandatory to qualify in any of the three languages, i.e. Assamese, Bodo and Bengali.*

*We must note at this juncture that Assamese is the official language in Assam but by law certain concessions have also been given to other languages, such as Bodo and Bengali, which are also spoken in parts of Assam. This qualifying paper in language was initially exempted for the candidates belonging to three Districts, i.e. Dima Hasao, Karbi Anglong and West Karbi Anglong, and thereafter it was extended to three more Districts of Barak Valley, which are Karimganj, Cachar and Hailakandi.*

*These writ petitions were filed before this Court challenging the exemption given to candidates of other Districts on the ground that this is violative of Articles*

*14 and 16 of the Constitution of India and on other grounds as well.*

*During the pendency of these writ petitions, the preliminary examinations were held and some of the petitioners before this Court did not qualify that examination. Nevertheless, the issue raised by them was alive and required attention of this Court.*

*On previous dates, we were told by Mr. D. Saikia, learned Advocate General, Assam that the State Government is re-looking at the entire aspect of the matter and he hopes that a solution would be brought very soon. Today, we have been also informed by Mr. D. Saikia, learned Advocate General, Assam today that a Cabinet meeting held on 24.11.2021 has already taken a decision, which has also been conveyed to the APSC, that in the written examination, which is tentatively scheduled for January or February, 2022, the requirement for qualifying in the language paper, i.e. Assamese, Bodo or Bengali, is removed.*

*The learned counsel for the petitioners, who have appeared before this Court today, have also expressed their satisfaction in the matter but have prayed that in the light of the statement made by Mr. D. Saikia, learned Advocate General, Assam, the matter may be only adjourned as there are other legal aspects, which need a consideration of this Court.*

*In view of the above, we adjourn the matter.*

*List again on 14<sup>th</sup> February, 2022.*

*In the light of above and in order to remove any confusion, we direct that the APSC shall hold the written examination without the language paper.'*

*Mr. D. Saikia, learned Advocate General, Assam has informed this Court that in the present ongoing examination, the language paper, which is only of qualifying nature, has been dispensed with. The newly impleaded respondent, however, has serious objections to this fact. It must, however, be noted that the newly impleaded respondent represented by senior counsel Mr. K.N. Choudhury is neither a candidate in the ongoing examination nor had appeared for the same.*

*The issue, nevertheless, is extremely important. So far we refrained from interfering in the matter as before us were the petitioners who were wanting exemption from appearing in the qualifying paper of languages (Assamese, Bodo or Bangla), like their counterparts in Dima Hasao, Karbi Anglong and three districts of Barak Valley. Since the*

*Government, apparently to have a level playing field exempted this for the entire Assam, there was no occasion for our interference, till the filing of the PIL (i.e. PIL No.83/2021), in which we have passed a separate order today.*

*We are conscious of both the importance of the matter and its delicate nature. We shall examine the issue whether language as a qualifying paper must remain or whether exemption can be granted and, if so, to whom?*

*The learned Advocate General has already brought to our notice the Rules, namely, Rules for the Conduct of Departmental Examinations, 1963, which are presently applicable in Assam, which mandate that an officer who has qualified in the competitive examination conducted by the APSC has to pass departmental examination in language, very soon in order to get the next higher grade before being confirmed in service, otherwise he will remain in probation. In other words, showing proficiency in language, which is either in Assamese, Bengali or Bodo, or any one of the tribal languages, is an absolute necessity. Whether this is sufficient compliance of the language issue needs to be examined.*

*This is a multilayered and complicated issue, which needs to be examined in detail by this Court. In fact, this issue has been raised by the petitioner in PIL No.83/2021, who has been newly impleaded as a respondent in the writ petition and is being represented by Mr. K.N. Choudhury, learned senior counsel.*

*Meanwhile, we direct the Assam Public Service Commission to go ahead with the Combined Competitive (Mains) Examinations with the exemptions granted by the Government. After the Mains examination, the Commission may conduct the viva voce of the successful candidates, but the final result shall not be declared without leave of this Court.*

*List again on 2<sup>nd</sup> March, 2022."*

**27.** The respondents No.11 to 17, who were arrayed as party respondents in WP(C) No.28/2021, have also filed an affidavit-in-opposition through the respondent No.14.

Relying upon the judgment of the Apex Court in the case of ***N.T. Devin Katti & Ors. -Vs- Karnataka Public Service Commission & Ors.***, reported in ***(1990) 3 SCC 157***, it has been contended that the answering respondents had submitted their applications as per the terms and conditions of the advertisement dated 08.09.2020 and have thus acquired a vested right of being considered for selection in accordance with the Rules as they existed on the date of advertisement, wherein exemption is granted to the candidates of Dima Hasao, Karbi Anglong and West Karbi Anglong, i.e. the Hills Districts, from appearing in the qualifying language papers, i.e. Assamese, Bengali and Bodo, who have not studied any of these languages in school. It is, therefore, submitted that this Court may protect the legitimate right of the candidates from Dima Hasao district, including respondents No.11 to 17. It is also contended that the answering respondents are protected under the provisions of the Assam Official Language Act, 1960 and, more particularly Section 7(c), as neither the mother or father tongue of the candidates are Assamese, Bengali or Bodo and they have not studied any of these languages in school. It is, therefore, contended that any imposition of the said languages will adversely affect the rights of the answering respondents and would amount to discrimination on the ground of language in violation of the provisions of the Assam Official Language Act, 1960. It is also contended that as per the provisions of the Assamese Language Learning Act, 2020, the areas included being 6<sup>th</sup>



Schedule areas, have been exempted from learning Assamese as one of the language from the academic year 2021 and that the said Rules had come after the Amended Rules of 2019.

**28.** It is also contended that the district of Dima Hasao being the only tribal majority district of Assam with around 71% tribal population and around 13 major tribal groups have their own languages and dialects and uses a broken form of Hindi known as "Halflong Hindi" as their main *lingua franca*. It is also contended that none of the tribal groups of Dima Hasao district write or speak any of the three qualifying language papers, i.e. Assamese Bengali and Bodo, and that the answering respondents have never studied any of these three qualifying language papers. It is also contended that 90% of the official works in Dima Hasao district is conducted in English language and vast majority of the schools in Dima Hasao district are English medium schools. Relying upon the Report of the Committee on Combined Competitive Examination Reforms, 2015 and UPSC Civil Services (Main) Examination, 2020, it is contended that even UPSC grants exemption from Paper "A" on Indian Language for candidates hailing from the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland and Sikkim. It is also stated that legislative intent is clear that Dima Hasao district has been exempted from qualifying language papers in the three languages and, therefore, whether the Assam Public Services Combined Competitive Examination (Amendment)

Rules, 2020 is given retrospective effect or prospective effect, the exemption granted to Dima Hasao and other Hill Districts will be exempted from qualifying language papers and under such circumstances, it is prayed that this Court will protect the interest of the candidates of Dima Hasao district.

**29.** Heard Mr. K.N. Choudhury, learned senior counsel, assisted by Mr. N. Gautam, learned counsel appearing for the petitioners in PIL No.83/2021 and in WP(C) No.1208/2022, who also appears for the respondent No.18 in WP(C) No.28/2021; Mr. F. Khan, learned counsel for the petitioner in WP(C) No.5248/2020 and Mr. M.K. Sharma, learned counsel for the in WP(C) No.28/2021. None appears for the petitioner in WP(C) No.5169/2020. Also heard Mr. D. Saikia, learned Advocate General, Assam, assisted by Ms. R. Barua, learned counsel, appearing for the State respondents and Mr. T.J. Mahanta, learned senior counsel, assisted by Mr. P.P. Dutta and Mr. A. Barua, learned counsel, appearing for the Assam State Public Service Commission (APSC) and Ms. S. Kemprai, learned counsel, appearing for the respondents No.4, 5 & 6 in WP(C) No.28/2021 and Mr. V. Rajkhowa, learned counsel, appearing for the respondents No.11 to 17, 19 to 21 in WP(C) No.28/2021.

**CONTENTIONS IN A NUTSHELL TAKEN BY THE LEARNED COUNSELS FOR THE RESPECTIVE PARTIES**

**30.** The learned counsels appearing for the respective parties have also submitted their written submissions over and above the oral submissions made before this Court which are dealt with hereinafter.

**31.** These writ petitions have been filed challenging the exemptions granted to the six districts of questioning these exemptions on the ground that it is violative of Article 14 of the Constitution of India. The challenges by the writ petitioners are on the ground that for the same examination conducted by the same authority, namely, the APSC, for the same vacancies, these exemptions seek to create a class within a class as the candidates who are not covered by the exemptions will be subjected to a language paper comprising in 300 marks of which paper will be determinative in respect of the examinations which they have appeared. In other words, for candidates not covered by these exemptions, if they do not fair well in the language papers, there is a possibility that they will not be successful in clearing the preliminary examination. Whereas, candidates belonging to these exempted districts, namely, Dima Hasao, Karbi Anglong, West Karbi Anglong, Cachar, Karimganj and Hailakandi, they are not required to appear for the language papers of 300 marks and thereby they do not expose themselves to the possibility of being unsuccessful in the preliminary examination because of the language papers.

**32.** It is contended by Mr. K.N. Choudhury, learned senior counsel for the petitioners in PIL No.83/2021 and

WP(C) No.1208/2022 and for the respondent No.18 in WP(C) No.28/2021 that the Assam Public Services Combined Competitive Examination (Amendment) Rules, 2019, which prescribes mandatory language paper is violative of the Assam Official Language Act, 1960 (hereinafter referred to as "1960 Act"). According to the learned senior counsel for the petitioners, the exemptions given to the candidates from Dima Hasao, Karbi Anglong, West Karbi Anglong and the Barak Valley region by way of the amendments brought in by Assam Public Services Combined Competitive Examination (Amendment) Rules, 2019 and Assam Public Services Combined Competitive Examination (Amendment) Rules, 2020 are discriminatory and violative of Article 14 of the Constitution of India.

**33.** The decision taken by the State Cabinet dispensing with the requirement of English language paper and other language papers in the ongoing examination does not have any statutory backing. The said decision by the State Cabinet is inconsistent with the provisions of the 1960 Act. Such dispensation with the English paper will have far reaching consequences on adjudging the suitability of the candidates for the civil services of the State. The further decision of the State Cabinet that the candidates should be registered with the District Employment Agency and must be original inhabitants of Assam is *ex-facie* violative of Articles 14 and 15 of the Constitution of India as who is an original inhabitant is a highly contentious issue.

**34.** Reference made to the Rules for Conduct of Departmental Examination, 1963 by the learned Advocate General of the State to support his contentions that there is a mechanism in place to test the proficiency of candidates in official languages of the State by virtue of the aforesaid Rules of 1963, is incorrect. Reference to Rule 1 of the said Rules of 1963 makes it clear that the departmental examination is not mandatory. Consequently, it is contended that in the absence of language papers being prescribed for CCE, the exemption granted by the Cabinet will adversely affect the process of selection and determining the suitability of the candidates appearing in the CCE for State Civil Services and other allied services.

**35.** Regarding the exemptions granted to Dima Hasao, Karbi Anglong and West Karbi Anglong districts from appearing in the qualifying language paper, it is contended that the same is consistent with the provisions of the 1960 Act. However, there is no legitimate reason to grant similar exemptions in favour of the candidates from the Barak Valley districts, as has been given by the amendment Rules made in the year 2020. In support of the contentions, learned senior counsel has referred to the judgment of the Apex Court in ***Javed Niaz Beg & Anr. -Vs- Union of India & Ors.***, reported in ***(1980) Supp SCC 155*** to contend that exemptions like the one granted to the candidates from Dima Hasao, Karbi Anglong and West Karbi Anglong districts is permissible as similar

exemptions were given by the UPSC to candidates from Manipur, Nagaland, Mizoram, Arunachal Pradesh appearing in such qualifying papers in the UPSC and which exemption was upheld by the Apex Court in the said judgment.

**36.** It is further contended that the petitioners of WP(C) No.5248/2020 and WP(C) No.28/2021 have participated in the selection process pursuant to the advertisement dated 08.09.2020 and, therefore, they are estopped from challenging the same. As the selection process had commenced pursuant to the advertisement dated 08.09.2020, any amendment or change in the selection process will amount to change of rules in the middle of the game and as such, the same cannot be permitted.

**37.** The decision of the Cabinet has been taken in exercise of powers under Article 162 of the Constitution of India. However, the same cannot whittle down the effect of the Rules of 2019, which are Rules framed under Article 309 of the Constitution of India. It is the contention of the learned senior counsel that perhaps because of this reason, the Cabinet has rightly decided not to apply this amendment to the ongoing examination, which, however, is contrary to the submissions made by the learned Advocate General of the State that the Cabinet has taken a decision to apply the decision to the ongoing examination as well. It is contended that such policy decision, even if taken by the State Cabinet, cannot be made applicable

retrospectively. The learned senior counsel in this context referred to a communication No.AAP.219/2018/Pt.IV/37 dated 09.12.2021 issued by the Personnel Department to the learned Advocate General of the State, which was placed before this Court and which clearly indicates that the Cabinet decision is applicable to the ongoing CCE Examination. It is contended that perusal of the said communication reveals that it is the administration who seeks to apply the Cabinet decision retrospectively when the Cabinet itself did not intend the application of its decision to the ongoing examination.

**38.** The further contention is that the requirement of successfully clearing the qualifying language paper in terms of the amendment Rules of 2019 is consistent with the provisions of the 1960 Act enacted under Article 345 of the Constitution of India.

**39.** By referring to the examination notice No.04/2021-CSP dated 04.03.2021, the learned senior counsel submits that in so far as the UPSC Examination is concerned, there is a compulsory Indian language paper for Civil Services (Mains) Examinations. The only difference is that a candidate appearing in UPSC is required to appear and qualify in any of the Indian languages included in the 8<sup>th</sup> Schedule to the Constitution of India, whereas in the case of the candidates appearing in the APSC CCE, they are required to qualify in any one of the official languages

of the State. As such, there was no infirmity with the amendment Rules of 2019.

**40.** As per the advertisement dated 08.09.2020, it is evident that the recruitment to the services/posts should be conducted in accordance with the provisions of the Assam Public Services Combined Competitive Examination (Amendment) Rules, 2019. It is contended that the Rules operating on the last date of receipt of applications is the Rule that shall govern the recruitment process. As such, the Cabinet decision dated 24.11.2021 ought not to apply to the CCE (Mains) Examination presently being conducted by APSC and such is the intent of the Cabinet itself from a bare perusal of the Cabinet decision dated 24.11.2021.

**41.** By referring to the judgment of the Apex Court in the case of ***English Medium Students Parents Association -Vs- State of Karnataka & Ors.***, reported in ***(1994) 1 SCC 550***, where the Apex Court held by referring to Articles 29, 30, 14, 39(f) and 350A of the Constitution of India that a particular State is competent to take policy decision to compulsorily teach its regional language. It is contended that the State of Assam had already enacted the Assamese Language Learning Act, 2020 and has taken a policy decision to compulsorily teach its official language. As such, it is inconceivable as to on what premises the impugned Cabinet decision dated 24.11.2021 was taken. Such decision of the Cabinet will amount to overriding the "*will of the people*" as reflected



through the Act of the legislature, namely, the 1960 Act. It is also contended that the 1960 Act will prevail over the Cabinet decision taken purportedly under Article 162 of the Constitution of India.

It is contended that the exercise of power under Article 162 of the Constitution of India is subject to the provisions of the Constitution, i.e. Article 345. It is also seen that exercise of power by the State under Article 345 is subject to Articles 346 and 347 of the Constitution of India. That being the constitutional position, the impugned Cabinet decision dated 24.11.2021 is not consistent with Article 345 of the Constitution and the 1960 Act and, therefore, the same needs to be interfered with.

**42.** Referring to the judgment of the Apex Court in *Jagdev Singh Sidhanti -Vs- Pratap Singh Daulta & Ors.*, reported in *AIR (1965) SC 183*, the learned senior counsel contends that under Articles 29 and 30 read with Article 350A of the Constitution of India, rights are conferred upon the linguistic minority to preserve their language, script and culture. Such right will also have the right to have a choice of the medium of instruction. It is contended that it is not just a minority but the majority of the population living in a State also has the right to preserve/conservate its distinct language, script or culture. Referring to the said judgment, it was contended that any section of citizens residing in any territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. It is

contended that the rights enshrined under Article 29(1) of the Constitution of India are absolute and are not subject to any reasonable restrictions like some other fundamental rights as contained under Part-III of the Constitution of India. It is contended that in that view of the matter, the writ petitioner of WP(C) No.1208/2022, who aspires to be a civil servant in the State of Assam, has every right to seek enforcement of his fundamental and legal rights flowing from the Constitution of India and the laws framed thereunder. The petitioner has a vested right to demand the APSC to include language paper in the examination concerned for recruitment to the State Civil Services.

**43.** Referring to the recommendations of the M.P. Bezbaruah Committee on Competent Examination Report submitted in 2015, the learned senior counsel submits that it is the view of the experts in the field that it is imperative for future civil servants to have proficiency in the official languages of the State as well as in the English language. Such being the view of an expert, due deference should be extended.

**44.** Proficiency on official language in the State is imperative as it will ensure better administrative efficiency amongst the civil servants. Once any language/languages are adopted under the law made under Article 345 of the Constitution of India, the same shall be the official languages of the State. As such, in the State of Assam, which is linguistically, ethnically and culturally diverse, the

State has adopted three official languages. In Brahmaputra Valley, Assamese is the official language, except in Bodo dominated areas, where Bodo is the official language and in Barak Valley, Bengali is the official language. As such, it is contended that having regard to the scheme of the 1960 Act, it is incumbent upon the APSC to have one compulsory language paper and one paper in English.

**45.** It is strenuously urged that by way of any legislature or executive power under Article 162 of the Constitution of India, the State of Assam cannot tinker with the fundamental rights conferred on a citizen under Article 29(1) read with Article 345 of the Constitution of India to conserve its language. The State power must yield to the fundamental rights conferred under Article 29(1) of the Constitution of India.

**46.** The prescription of language paper by way of the 2019 amendments cannot be construed to be discriminatory to be hit by Article 14 of the Constitution of India. Constitutional and statutory re-enforcement to this effect can be traced to Article 345 of the Constitution of India and the 1960 Act. There is a visible nexus between such prescription and the object sought to be achieved, i.e. to test the proficiency of future civil servants in official language of the State. This requirement to qualify in compulsory language paper before recruitment of the civil servants cannot be brushed aside as a mere formality, which violates Article 14 of the Constitution of India. A

reference was made to the judgment of this Court in **WP(C) No.4598/2010** (*Smti. Kumari Arti -Vs- State of Assam & Ors.*), wherein a coordinate Bench of this Court vide judgment & order dated 10.12.2010 had rendered a similar finding in respect of the Assam Judicial Services (Grade-III). This Court vide the said judgment upheld the requirement and/or prescription of qualifying in a language paper as a part of pre-appointment training for recruitment to Assam Judicial Service (Grade-III) to be just and legal.

**47.** Regarding the maintainability of the PIL, the learned senior counsel urges that the maintainability of the PIL is to be viewed from the prayers made which the PIL petitioners seeks to enforce. What is contended by the PIL petitioner is that since the State of Assam has already enacted the 1960 Act read with the subsequent amendments, to have Assamese, Bodo and Bengali as official languages of the State and having regard to that the APSC CCE Rules were amended, whereby a compulsory language paper amongst others has been prescribed, it cannot be said that a citizen has no *locus* to approach the Court of law to preserve/conserve the official language of the State. Once it is established by the law laid down by the Apex Court that citizens have a right to conserve their language, script or culture irrespective of the fact where they are members of majority or minority community, all that is necessary for a person who approaches the Court for enforcement of his or her fundamental and legal right that the person should be a member of the section of the

citizen residing in the territory of India, which has a distinct language, script or culture. The PIL petitioner being a citizen of the State of Assam is genuinely concerned for conservation of the Assamese language, script and culture and, therefore, he being a section of the citizen has the *locus* to file the PIL.

**48.** The learned senior counsel referred to the judgment of the Apex Court in the case of ***Jagdev Singh Sidhanti*** (supra). A reference was also made to the judgment of the Apex Court rendered in ***Sarbananda Sonowal -Vs- Union of India & Anr.***, reported in **(2005) 5 SCC 665**. Referring to Paragraph 8 of the said judgment, learned senior counsel submits that in the said case also, a citizen of the State had approached the Apex Court questioning the constitutional validity of the IMDT Act, 1983. The Apex Court in the said judgment had conclusively held that the petitioner therein had the *locus* to maintain the writ petition and that it was the bounden duty of the PIL petitioner to bring to the notice of the Court the unconstitutional act of the State. Referring to another judgment of the Apex Court rendered in ***Assam Sanmilita Mahasangha & Ors. -Vs- Union of India & Ors.***, reported in **(2015) 3 SCC 1**, it is submitted that the Apex Court had taken judicial notice of the plight of the indigenous people of the State from the perspective of Articles 21 and 29 of the Constitution of India and that the petitioner therein who is a part of the section of the citizens living in the State has every right to pray for

enforcement of his right to conserve the official languages of the State. Hence, it is submitted that the questions of maintainability and/or *locus standi* of the PIL petitioner has been raised only by oral objections without there being any supporting pleadings to that effect.

**49.** Regarding the Cabinet decision dated 24.11.2021, by referring to the judgment of the Apex Court in ***Delhi Development Authority & Anr. -Vs- Joint Action Committee, Allottee of SFS Flats & Ors.***, reported in ***(2008) 2 SCC 672***, it is submitted by the learned senior counsel that a policy decision is subject to judicial review on the grounds – (a) if it is unconstitutional; (b) if it is *de hors* the provisions of the Act and the Regulations; (c) if the delegatee has acted beyond its power of obligation; and (d) if the executive policy is contrary to the statutory or larger public policy. The learned senior counsel submits that the Cabinet decision dated 24.11.2021 falls foul of the propositions (a), (b) and (d) as evolved by the Apex Court. As such, the contention of the State that the Cabinet decision dated 24.11.2021 being a policy decision and, therefore, cannot be interfered with by Court, is incorrect and has no merits, in view of the law laid down by the Apex Court. As such, the learned senior counsel submits that the argument made by the State that the Cabinet decision dated 24.11.2021 being a policy decision no challenge can be maintained, is fully incorrect and the judgment relied upon by the learned Advocate General of the State are all distinguishable on facts.

**50.** The learned senior counsel has pressed into service the judgment of the Apex Court in the case of **Dr. Jagadish Saran & Ors. -Vs- Union of India**, reported in **(1980) 2 SCC 768** to project that the doctrine of protective discrimination as evolved by judicial interpretation. By referring to the various judgments, it was urged that it was legitimate on the part of the State to come up with a policy of compulsory language paper in APSC CCE (Mains) Examination by way of amendment of 2019. It is urged that due to large scale immigration, the demographic pattern of the State has been drastically changed, which the Apex Court has taken judicial notice of in the case of **Sarbananda Sonowal** (supra). In such view of the matter, it is a fundamental duty of every citizen including the petitioner to seek to conserve the official language which is under a threat. As such, it was just and legitimate on the part of the petitioner to approach this Court by way of the prayers made in PIL No.83/2021 as well as in WP(C) No.1208/2022.

**51.** In response to the contention of the State that Article 29(1) of the Constitution of India is applicable only to the minority alone and Assamese community not being a minority, Article 29(1) of the Constitution of India is not applicable for adjudication of the present *lis*, is strongly disputed. It is contended that Article 29(1) of the Constitution of India is applicable only to the minority. Referring to Paragraph 73 of the judgment of the Apex

Court in the case of *Ahmedabad St. Xavier's College Society & Anr. -Vs- State of Gujarat & Anr.*, reported in *(1974) 1 SCC 717*, learned senior counsel submits that the rights which flow from Article 29(1) of the Constitution of India provides that the citizen shall have the right to conserve their language irrespective of the fact whether they are members of the minority or majority community. As such, the contention of the State that Article 29(1) of the Constitution of India is not applicable, is denied.

**52.** Regarding the change of rule of the game, it is contended by Mr. Choudhury, learned senior counsel that the 2019 amendment Rule was carried under exercise of powers under Article 309 of the Constitution of India. Therefore, the Government without amending or repealing the 2019 Rules cannot give effect to the Cabinet decision dated 24.11.2021. The exercise of powers of the State under Articles 162 and 309 of the Constitution of India is subject to the provisions of Article 345 of the Constitution of India. Further, Article 345 is subject to the provisions of Articles 346 and 347 of the Constitution. The 1960 Act and its subsequent amendments, whereby Assamese, Bodo and Bengali have been recognized as the official languages can be traced to the powers under Article 345 of the Constitution. Such status of the official languages as conferred under 1960 Act cannot be lightly interfered with by the Cabinet, whose power under Article 162 of the Constitution, is fettered by Article 345 of the Constitution of India.



53. Referring to the judgments of the Apex Court rendered in *N.T. Devin Katti & Ors. -Vs- Karnataka Public Service Commission & Ors.*, reported in (1990) 3 SCC 157; *Madan Mohan Sharma & Anr. -Vs- State of Rajasthan & Ors.*, reported in (2008) 3 SCC 724; *State of Bihar & Ors. -Vs- Mithilesh Kumar*, reported in (2010) 13 SCC 467 and *Assam Public Service Commission & Ors. -Vs- Pranjal Kumar Sarma & Ors.*, reported in (2020) 20 SCC 680, learned senior counsel for the petitioners submits that it has been the consistent view of the Apex Court that the norms of the Rules as existing on the date when the selection begins will control such selection and any alteration to such norms will not affect the continuing process. The impugned Cabinet decision dated 24.11.2021 only proposes to amend the Rules of 2019. Under such circumstances, the Cabinet itself proclaimed that the ongoing selection will not be affected. However, the communication dated 09.12.2021 issued by the Personnel Department seeks to convey a meaning which is itself contrary to the Cabinet decision. The State cannot absolve of its constitutional obligations by taking a stand that the change in the selection process is pursuant to the orders passed by this Court. The learned senior counsel submits that no such mandamus had been issued by this Court and, therefore, such contention of the learned Advocate General of the State is due to the wrong interpretation of the legal position relating to the present */is.*

**54.** The contention that the departmental examination required to be undergone by the civil servants in terms of the Rules for Conduct of Departmental Examination, 1963 as well as the Assam Civil Services Rules, 1998 is mandatory, does not appear to be a correct interpretation of the Rules. Referring to Rule 1 of the 1963 Rules, the learned senior counsel refers to the expression "*all officers intending to appear*" makes it very clear that the Rules does not mandate compulsorily undergoing the departmental examination. There is no element of compulsion. A reference to an Office Memorandum dated 07.03.1986 issued by the State Government has been made by the learned senior counsel to contend that the fact that the Rules of 1963 has failed to achieve its objective is evident from the Office Memorandum dated 07.03.1986 issued by the State Government, where the State Government has deprecated the practice of allowing exemptions to officers for appearing in departmental examination, which includes passing of compulsory language paper. As such, the Rules of 1998 also do not have any mandatory character. It is submitted that under the circumstances, the only way to test the proficiency of future civil servants over the official language in the State can be ensured by a compulsory language paper as mandated by the amendment of 2019, which is still holding the field.

**55.** It is submitted that if the impugned Cabinet decision dated 24.11.2021 is made applicable to the ongoing examination, the same would be in contravention with Article 345 and Article 29(1) of the Constitution of India read with the provisions of the 1960 Act. From a perusal of the impugned Cabinet decision, it is clear that there was no proposal to bring in a further amendment made by way of the amendment Act of 2019 and the amendment Act of 2020. The Cabinet decision merely proposes to do away with the exemption. There is no proposal as can be noticed from the subject circulated for the Cabinet to do away with the language paper. Such attempt by the State to contend that the Cabinet decision has taken away the exemption for the ensuing examination, is contrary to the Cabinet decision itself.

**56.** The PIL petitioner is also the respondent No.18 in WP(C) No.28/2021 and, therefore, the contentions/submissions made by the PIL petitioner are similar to that of the respondent No.18 in WP(C) No.28/2021. Hence, they are addressed together.

**57.** In support of his contentions, Mr. K.N. Choudhury, learned senior counsel for the petitioners has relied upon the following decisions:

- (1) ***Javed Niaz Beg & Anr. -Vs- Union of India & Ors. :: (1980) Supp SCC 155;***
- (2) ***N.T. Devin Katti & Ors. -Vs- Karnataka Public Service Commission & Ors. :: (1990) 3 SCC 157***
- (3) ***Madan Mohan Sharma & Anr. -Vs- State of Rajasthan & Ors. :: (2008) 3 SCC 724***

- (4) *State of Bihar & Ors. -Vs- Mithilesh Kumar :: (2010) 13 SCC 467*
- (5) *B.N. Nagarajan & Ors. -Vs- State of Karnataka & Ors. :: (1979) 4 SCC 507*
- (6) *V.N. Sunanda Reddy & Ors. -Vs- State of A.P. & Ors. :: 1995 Supp (2) SCC 235*
- (7) *Assam Public Service Commission & Ors. -Vs- Pranjal Kumar Sarma & Ors. :: (2020) 20 SCC 680*
- (8) *English Medium Students Parents Association -Vs- State of Karnataka & Ors. :: (1994) 1 SCC 550*
- (9) *D.A.V. College, Etc. -Vs- State of Punjab & Ors. :: (1971) 2 SCC 269*
- (10) *Usha Mehta & Ors. -Vs- State of Maharashtra & Ors. :: (2004) 6 SCC 264*
- (11) *Jagdev Singh Sidhanti -Vs- Pratap Singh Daulta & Ors. :: AIR (1965) SC 183*
- (12) *Sarbananda Sonowal -Vs- Union of India & Anr. :: (2005) 5 SCC 665*
- (13) *Assam Sanmilita Mahasangha & Ors. -Vs- Union of India & Ors. :: (2015) 3 SCC 1*
- (14) *Namit Sharma -Vs- Union of India :: (2013) 1 SCC 745*
- (15) *Sunil K.R. Sahastrabudhey -Vs- Director, IIT, Kanpur :: AIR (1982) Allahabad 398*
- (16) *Delhi Development Authority & Anr. -Vs- Joint Action Committee, Allottee of SFS Flats & Ors. :: (2008) 2 SCC 672*
- (17) *Dr. Jagadish Saran & Ors. -Vs- Union of India :: (1980) 2 SCC 768*
- (18) *Ahmedabad St. Xavier's College Society & Anr. -Vs- State of Gujarat & Anr. :: (1974) 1 SCC 717*
- (19) *State of Orisa -Vs- Sudhansu Sekhar Misra & Ors. :: AIR (1968) SC 647*

58. Over and above the oral arguments, Mr. F. Khan, learned counsel for the petitioner in WP(C) No.5248/2020 has also submitted written arguments. It was submitted that the Assam Public Services Combined Competitive Examination (Amendment) Rules, 2019 granted exemptions to candidates belonging from three districts, namely, Dima Hasao, Karbi Anglong and West Karbi

Anglong, who did not study any of these languages, namely, Assamese, Bengali and Bodo from appearing in the qualifying language paper 'A' for the candidates. By way of the Assam Public Services Combined Competitive Examination (Amendment) Rules, 2020, candidates belonging to three other districts, namely, Cachar, Hailakandi and Karimganj, who did not have the languages - Assamese, Bengali and Bodo in High School Leaving Certificate Examination, were also granted exemption from appearing in the qualifying language paper 'A'. It is contended that while under the 2019 amendment made to the Rules, exemption was granted to candidates of the three districts, namely, Dima Hasao, Karbi Anglong and West Karbi Anglong, by way of the subsequent amendment brought in the year 2020, this exemption was extended to candidates of further three districts, namely, Cachar, Hailakandi and Karimganj. However, while under the 2019 amendment, exemptions were granted to the candidates who did not have the said languages in school were granted exemptions, whereas under the 2020 Rules, it is only the candidates from those districts who did not have the aforesaid languages in High School Leaving Certificate Examination were granted exemption. It is contended that under the 2019 amendment Rules, exemption is granted to only those candidates who never had the occasion to learn the aforesaid languages, whereas under the 2020 Amendment, exemptions were granted to candidates who might have learnt the aforesaid languages in school and

are well versed in the same but who did not opt to appear in those language papers in HSLC Examination. The learned counsel submits that this comparison is made to show that the basis of 2020 amendment holds no logic. It is contended that the second part of Paragraph 1 occurring at Section (ii)(b) below the heading "*Qualifying papers (in the level of Class X)*" of the 2019 amendment and the 2020 amendment are *ultra vires* the Constitution of India.

**59.** The learned counsel further contends that in terms of the RTI reply dated 04.02.2022 (Annexure-B to the additional affidavit dated 14.07.2022) in Dima Hasao district, there are 7 schools where Assamese language is taught and 18 schools where Bengali language is taught. Similarly, in Karbi Anglong district there are 86 schools where Assamese language is taught; 11 schools where Bengali language is taught and 9 schools where Bodo language is taught. In West Karbi Anglong district, there are 37 schools where Assamese language is taught. In Cachar district, there are 4 schools, where Assamese language is taught and 223 schools where Bengali language is taught. In Karimganj district there are 3 schools where Assamese is taught and in 168 schools Bengali language is taught. Similarly, in Hailakandi district, there are 104 schools where Bengali is taught. It is contended that from the said RTI reply, it is clear that the candidates who were granted the benefit of exemption had ample opportunity to learn any of the languages, namely, Assamese, Bengali and Bodo and, as such, they cannot be

given exemption on the ground that there is no opportunity to learn these languages in the six districts where the exemption by way of 2020 amendment has been granted. As such, it is contended that the 2019 and 2020 amendments are totally uncalled for and the same being granted without appreciation of the proper facts and data, which runs counter to the constitutional scheme, the said amendments ought to be interfered with as being unconstitutional.

**60.** The further contention of the learned counsel is that in the various offices of the Government of Assam, the candidates who are in the process of recruitment will have to deal with the members of the public on a day to day basis and communicate both in verbal and written in largely four languages, namely, Assamese, Bengali and Bodo and English. Therefore, it is in the interest of the Government of Assam as the employer to employ candidates who are well versed in those languages so that day to day affairs of the Government offices can be conducted smoothly. It is submitted that is the reason why the aforementioned paper 'A' and paper 'B' are made qualifying papers.

**61.** The further contention of the learned counsel is that exemptions granted to candidates belonging to the six districts from appearing in the qualifying language paper 'A' goes to show that the Government is of the view that candidates who are not well verse in the aforesaid

languages, if employed, can effectively conduct day to day works in the Government offices. As such, there can be no good ground for the Government to impose the qualifying language paper 'A' on other candidates, who do not belong to the six districts to which the exemption is extended. There is no reasonable basis permitting exemption in respect of the candidates belonging to six districts and at the same time compelling candidates from other districts like the petitioners to appear in the qualifying language paper 'A'. Because of such discrimination, the candidates from other districts like the petitioners, will have to undertake extra burden of 300 marks for appearing in the qualifying language paper 'A'. This has led to an unfair competition between the candidates from the exempted districts and the candidates belonging to non-exempted districts in respect of the same examinations. This extra load of 300 marks for candidates belonging to the non-exempted districts is unfair, biased and discriminatory and the same has infringed upon the rights of the petitioners guaranteed under the Constitution of India and the same should, therefore, be interfered with, set aside and quashed. The distinction and the artificial classification sought to be made by the Government by way of the amendments is hit by Articles 14 and 16 of the Constitution of India and the same, therefore, cannot be permitted to its stand judicial scrutiny.

**62.** During the course of hearing, it transpired that the petitioner in WP(C) No.5248/2020 remained absent in



the preliminary examination and, therefore, she did not qualify for appearing in the (Mains) Written Examination. The learned counsel for the petitioner, however, submits that the prayers of the petitioner challenging the 2019 and 2020 amendments Rules granting exemption to candidates appearing from Dima Hasao, Karbi Anglong, West Karbi Anglong, Cachar, Hailakandi and Karimganj respectively, cannot be dismissed on the ground that she had not qualified in the preliminary examination. The learned counsel for the petitioner referred to the order of this Court dated 10.12.2021 to submit that the fact that the petitioner did not qualify in the preliminary examination was recorded by this Court, yet this Court ordered that the issue raised by them was alive and required attention of this Court.

Consequently, the issues raised by the petitioner in her prayer (i) and (ii) are still alive and her right to agitate these issues cannot be denied on the ground of the petitioner not being qualified in the ongoing examination.

**63.** Mr. M.K. Sharma, learned counsel for the petitioner in WP(C) No.28/2021 adopts the arguments made by Mr. F. Khan, learned counsel for the petitioner in WP(C) No.5248/2020. He, however, very fairly submits that since the petitioner in WP(C) No.28/2021 had not been able to successfully clear the preliminary examination, there will be no occasion for the petitioner to have any grievance in respect of the Written (Main) Examination to be conducted by APSC.

**64.** As noted hereinabove, no one appeared for the writ petitioner of WP(C) No.5169/2020.

**65.** Over and above the oral submissions, Mr. D. Saikia, learned Advocate General of the State has also submitted written submissions.

**66.** It was submitted that on the basis of instructions received from the State Government, it was submitted before the Court that the issue raised by the three writ petitioners (candidates) appear to be genuine and, therefore, the same is under active consideration at the appropriate level in the State Government. Subsequently, it was informed that the Cabinet of the State in the meantime has taken a decision to grant exemption of the language papers for all candidates including the petitioners. This Hon'ble Court by order dated 10.12.2021 recorded that the Cabinet of the State in its meeting held on 24.11.2021 had taken decision that the requirement for qualifying in language papers i.e. Assamese, Bengali and Bodo are removed. This Court by the said order directed the APSC to hold the Mains examination without the language paper in view of the Cabinet decision. Thereafter, PIL being PIL No. 83/2021 came to be filed before this Court. By order dated 22.12.2021, a Co-ordinate Bench of this Court while hearing the PIL, although directed the PIL to be listed along with other writ petitions for being heard together, ordered that the APSC examination should be held after obtaining leave of the Court in this PIL. Subsequently, when the PIL came up along with other writ petitions before the

Bench which was hearing all the writ petitions, after taking into account, the various orders passed by the two (2) Division Benches in the writ petitions and in the PIL, by order dated 10.01.2022, vacated the order dated 22.12.2021 passed in the said PIL. However, it also permitted the PIL petitioner to move necessary impleadment application for being impleaded into the writ petitions as respondents. Pursuant to such order, impleadment petitions were filed, the PIL petitioner was impleaded in Writ Petition. Thereafter, by order dated 24.01.2022, this Court observed that the issues raised in the PIL needs to be examined and permitted the contesting parties to complete their pleadings. In the meantime, the APSC was also permitted to go ahead with the Combined Competitive (Mains) Examination and the viva-voce of the successful candidates but was directed that the final results shall not be declared without leave of this Court. The said interim order operates till today.

**67.** The State on the other hand led by the Advocate General disputes the contentions raised by the Writ petitioners and the PIL petitioner. The learned Government Advocate General, Assam leading the arguments on behalf of the State has at the first instance raised the question of maintainability of the PIL. He submits that the subject matter in the present PIL relates to recruitment of civil servants in the State of Assam. He, therefore, submits that there are catenas of judgments of the Apex Court which have laid down the law in clear terms that no PIL is maintainable in service matters.

**68.** The further argument is that the PIL petitioner is not an aspirant or a candidate and therefore, he is not aggrieved person. As such, even if the PIL is to be treated as a writ petitioner the same has to be dismissed *in limine*. The further submission of the learned Advocate General is that in view of the Cabinet decision, the grievances raised in the writ petitions have been addressed and nothing remains to be decided and therefore, the same may be closed.

**69.** The learned Advocate General submits that the exemption granted by the APSC CCE (Amendment) Rules 2019 to the Hill Districts, namely, Dima Hasao, Karbi Anglong and West Karbi Anglong were given to benefit the candidates of those districts who did not have any of the languages in the High School Leaving Examinations. The said exemption was in the interest of the candidates of those districts who genuinely missed their opportunity to learn or to write or to speak i.e Assamese, Bodo and Bengali but who otherwise have legitimate claims in State Government Jobs. It is submitted that pursuant to representation received from the Cachar Hindivasi Chatra Parisad on 28.07.2020 and representation from Manipuri Community Barak Valley on 24.08.2020 and they should not be discriminated against by making it compulsory to appear in any of these languages as qualifying paper. In view of that this exemption was also extended to the other three districts, namely, Cachar, Hailakandi and Karimganj by way of Assam Public Services Combined Competitive Examination (Amendment) Rules 2020

which was notified on 21.10.2020. The learned Advocate General submits that in view of the challenges made in the writ petitions, namely, by the petitioner in WP(C) No.28/2021, WP(C) No.5248/2020 and WP(C) No.5169/2020 whereby it was contended that the requirement of appearing in language papers for candidates belonging to the other districts other than the candidates in exempted districts is hit by Article 14 as it creates a class within a class. The Government taking into consideration the grievances of the candidates, who are not covered by the exemption of the language paper, took a decision to grant exemption to all candidates. Accordingly, such decision of the Cabinet is in the interest of the State as it will enable all eligible candidates from across all districts to participate in the ensuing selection procedure conducted by APSC through the CCE Examinations.

**70.** The Advocate General further submitted that the Rules for conduct of Departmental Examinations of 1963 is applicable to the candidates who was selected through the APSC CCE. They will be required to select language paper from amongst Assamese, Bengali and Hindi other than the language which is their mother tongue and two tribal languages from the 8(eight) tribal languages which are prescribed under the Rules. Under such Rules, the selected candidates are required to appear and clear the departmental examinations.

**71.** Further the contention is that the Cabinet decision is violative of Articles 29(1), 30 and 350A of the Constitution is totally unacceptable. The learned Advocate General referring from the Census report of 2011 submits that neither Assamese nor Bengali or Bodo are minorities in Assam and as such the contention that the Cabinet decision is violation of Articles mentioned i.e. Articles 29(1), 30 and 350A of the Constitution, are fully incorrect and therefore, the same is not acceptable. The learned Advocate General also referred to the National Commission for Minorities Act, 1992 as well as the Assam State Commission for Minorities Act 2003 to refer to the definition of minority as prescribed under these Acts. It is submitted that Assamese, Bengali or Bodo linguistic groups are not notified as minorities in Assam. Consequently, there is no applicability of Articles 29(1) and 30 of the Constitution of India.

**72.** The further contention of the learned Advocate General is that the Cabinet decision to grant exemptions to these languages is a policy decision of the Government. This policy decision is taken by the Government in the best interest of all concerned. Therefore, it is the consistent view of the Apex Court that in matters of policy decision ordinarily the Courts ought not to interfere unless such policies taken are completely opposed to public policy or unless any instance of any malice in law is apparent in such a decision.

In facts of the case and the contentions raised by the petitioners, no such instances have been brought before this Court. Therefore, this being a policy decision taken by

the State in the interest of wider participation of the candidates from all sections of the society and across the State, there is no infirmity in the Cabinet decision dated 24.11.2021 and consequently, no interference is called for at the instance of the writ petitioners and the PIL petitioner.

**73.** In so far as the contentions raised in respect of changing the rules of the game, the learned Advocate General submits that the APSC CCE (Amendment) Rules 2019 was brought into force on 05.08.2019 whereby exemptions were granted to the Hill Districts. The Advertisement issued by the APSC inviting candidates for the CCE was issued on 08.09.2020. Thereafter, the APSC CCE (Amendment) Rules 2020 was brought into force on 21.10.2020 whereby exemptions to the three other districts were provided for. Subsequently, an Addendum was issued wherein the mode of selection of the original advertisement was changed. Consequent to the Addendum issued, the recruitment process was altered. But there is no challenged by the PIL petitioner in respect of the terms and conditions notified by the Addendum vis-à-vis those terms and conditions issued by the original advertisement. That apart, this Hon'ble Court vide the order dated 23.08.2021 directed and permitted the APSC to conduct the preliminary examinations and which were accordingly, conducted in October, 2021. Subsequently, the results of the preliminary examination were declared on 05.11.2021 and the APSC thereafter, issued another Advertisement on 15.11.2021. This Hon'ble Court vide the order dated 10.12.2021 permitted the APSC to conduct the

Mains Examinations without any language paper. It is only after this order the PIL was filed. There is no challenged the order passed by this Court permitting the APSC to conduct the Mains Examinations without language papers. As such, the PIL ought to be dismissed on the ground of delay and laches. The Advocate General rather objected to the PIL being permitted to be heard in the absence of non-joinder of necessary and proper parties. It is submitted that the PIL did not implead any of the candidates who qualified in the preliminary and appeared in the Mains and viva-voce in the recruitment process. It is submitted that accordingly, the PIL ought to be dismissed for non-joinder of the necessary and proper parties.

**74.** The further argument of the learned Advocate General is that the State being the employer, it has every right to lay down the criteria of eligibility and experience as well as the criteria for recruitments. In so far as the reference to the report of the Committee on the Combined Competitive Examination Rules, 2015 is concerned, the learned Advocate General submits that the terms of reference of the committee, when perused, will clearly reveal that it is not related to discharging the official duties by candidates who are recruited through CCE conducted by the APSC. The report was neither considered nor relied nor accepted by the Government at any point in time. It is submitted that this report is primarily directed towards removing the anomalies in the APSC and to bring back public confidence on the said institution. The said committee did



not have any occasions to look into the curriculum of the students or the schools under the various Education Boards as well as the presence of various linguistic groups existing in the State of Assam. In reference to the requirement to the language paper for Assam Judicial Services are concerned, the learned Advocate General submits that the scope of duty of a Judicial Officer is far different from that a Civil Servant. A Judicial Officer is required to deliver judgments and orders and conduct judicial proceedings where the evidences of the various witnesses are adduced in vernacular languages. As such, the requirement of language paper for a Judicial Officer is justified. However, the same is not the case of the Administrative Officers and other allied services, barring the Officials who are posted in the Revenue Department. For those Officers under the Revenue Department they are required to undergo specific training in addition to the language examination prescribed under the Rules of 1963. Therefore, the reference to inclusion of language paper in Judicial Service is completely misplaced in the context of the present proceedings. In support of his contentions the learned Advocate General has relied upon the following judgments:

- (1) ***Kanhaiya Lal Sethia & Anr. -Vs- Union of India & Anr. :: (1997) 6 SCC 573***
- (2) ***Hindi Hitrakshak Samiti & Ors. -Vs- Union of India & Ors. :: (1990) 2 SCC 352***
- (3) ***English Medium Students Parents Association - Vs- State of Karnataka & Ors. :: (1994) 1 SCC 550***

- (4) **State of Karnataka & Anr. -Vs- Associated Management of English Medium Primary and Secondary Schools & Ors. :: (2014) 9 SCC 485**
- (5) **Satya Dev Bhagaur & Ors. -Vs- State of Rajasthan & Ors. :: (2022) 5 SCC 314**
- (6) **Dattaraj Nathuji Thaware -Vs- State of Maharashtra & Ors. :: (2005) 1 SCC 590**
- (7) **Dr. B. Singh -Vs- Union of India & Ors. :: (2004) 3 SCC 363**
- (8) **Janhit Manch -Vs- State of Maharashtra & Ors. :: (2019) 2 SCC 505**
- (9) **Vishal Ashok Thorat & Ors. -Vs- Rajesh Shrirambapu Fate & Ors. :: (2020) 18 SCC 673**
- (10) **Janata Dal -Vs- H.S. Chowdhary & Ors. :: (1992) 4 SCC 305**
- (11) **Jasbhai Motibhai Desai -Vs- Roshan Kumar, Haji Bashir Ahmed & Ors. :: (1976) 1 SCC 671**
- (12) **State of Uttaranchal -Vs- Balwant Singh Chaufal & Ors. :: (2010) 3 SCC 402**
- (13) **Union of India -Vs- Pushpa Rani & Ors. :: (2008) 9 SCC 242**

75. Mr. T.J. Mahanta, learned senior counsel appearing for the APSC submits that pursuant to the advertisement dated 08.09.2020, total number of candidates who appeared in the Combined Competitive Preliminary Examination, 2020 is 37,622. The details of the candidates, who appeared and completed the various stages of selection process were submitted before this Court, which is extracted herein below:-

<i>Total numbers of candidates appeared in the CCPE, 2020</i>	<i>37622</i>
<i>Total candidates qualified for appearing in the CCME, 2020</i>	<i>4017</i>
<i>Candidates applied for the CCME, 2020 in pursuance to the notification dated 15/11/2021</i>	<i>3906</i>
<i>Total numbers of candidates appeared in CCME, 2020</i>	<i>3898</i>

<i>Total numbers of candidates qualified for interview</i>	<i>1001</i>
--	-------------

**76.** The learned senior counsel submits that out of a total of 3898 candidates, who appeared in the CCE (Mains), 2020, total 260 candidates from the said six districts, namely, Dima Hasao, Karbi Anglong, West Karbi Anglong, Cachar, Hailakandi and Karimganj, who were granted the language paper exemption, only 60 candidates have qualified for the interview. Distribution of the candidates, who qualified for interview from those districts, which were submitted before this Court by Mr. T.J. Mahanta, learned senior counsel, is also extracted herein below:-

<i>District</i>	<i>Total number of candidates</i>	
	<i>Applied for Language Paper exemption in CCE (M), 2022</i>	<i>Qualified for interview</i>
<i>Cachar</i>	<i>38</i>	<i>10</i>
<i>Dima Hasao</i>	<i>105</i>	<i>20</i>
<i>Hailakandi</i>	<i>13</i>	<i>5</i>
<i>Karbi Anglong</i>	<i>78</i>	<i>24</i>
<i>Karimganj</i>	<i>12</i>	<i>4</i>
<i>West Karbi Anglong</i>	<i>14</i>	<i>2</i>
<i>Total</i>	<i>260</i>	<i>68</i>

**77.** It is submitted before this Court by Mr. T.J. Mahanta, learned senior counsel appearing for the APSC that as per the order passed by this Court on 24.01.2022, the Commission conducted the interview of the eligible candidates from 26.05.2022 to 04.06.2022. Pursuant

thereto, an application has been filed before this Court seeking leave to declare the final results, where, however, no specific direction has been issued by this Court. Mr. Mahanta has submitted that the final results of CCE, 2020 was prepared on 06.06.2022, which was approved by the Commission in its meeting held on 06.06.2022. The APSC being the selection authority constituted under the Constitution of India, it has conducted the selection process as per the Rules framed by the Government of Assam. Out of the total 1001 candidates who qualified for interview, a total of 997 candidates appeared in the interview and the *viva voce* and are waiting for their results. Mr. Mahanta further submits that out of the petitioners before this Court in the present proceedings, only the writ petitioner in WP(C) No.5169/2020, i.e. Navin Kumar Ray, could qualify the Combined Competitive (Prelims and Mains) Examination, 2020. All other petitioners have failed to qualify the CCE (Mains) Examination, 2020. Mr. Mahanta, therefore, submits that since the entire selection process has been completed and the final results have also been approved by the Commission in its meeting held on 06.06.2022, the APSC be accorded permission to declare the final results so that the process initiated can be concluded.

**78.** In so far as the challenge made to the Assam Public Services Combined Competitive Examination (Amendment) Rules, 2019 and the Assam Public Services Combined Competitive Examination (Amendment) Rules,

2020 are concerned, the learned senior counsel has adopted the arguments made by Mr. D. Saikia, learned Advocate General of the State.

**79.** Mr. V. Rajkhowa, learned counsel who represents some of the candidates from the Hill Districts of Dima Hasao and who are arrayed as respondents No.11 to 17 and 18 to 21 in WP(C) No.28/2021, submits at the outset that they were impleaded as party respondents in the instant writ petition as respondents No.11 to 17 and respondent No.19 to 21 vide orders passed by this Court dated 02.11.2021 and 03.08.2022, respectively. The learned counsel submits that the writ petition has been filed challenging the Assam Public Services Combined Competitive Examination (Amendment) Rules, 2019, whereby candidates from the Hill Districts of Dima Hasao, Karbi Anglong and West Karbi Anglong were exempted from appearing in the qualifying language paper, i.e. Assamese, Bengali and Bodo, for those candidates, who have not studied any of those languages in school. The learned counsel appearing for the candidates from Dima Hasao submits that the petitioner is also an intending candidate who had applied for appearing in the CCE advertised by the APSC. The petitioners submitted their candidature as per the terms and conditions of the Assam Public Services Combined Competitive Examination (Amendment) Rules, 2019 and which they did so without assailing the said exemption granted. The exemption brought in by the Assam Public Services Combined

Competitive Examination (Amendment) Rules, 2019 granting exemption to the qualifying language paper of Assamese, Bengali and Bodo was notified on 05.08.2019. The advertisement published by the APSC for recruitment to 331 posts under the Assam Public Services Combined Competitive Examination (Amendment) Rules, 2019 was issued on 08.09.2020. There was no challenge made by the writ petitioners during this period of time but rather the writ petitioners responded to the advertisement published by APSC and submitted their particulars for participating in the selection process. It is submitted by Mr. V. Rajkhowa, learned counsel that the present writ petitions have been filed by the petitioners only after the Assam Public Services Combined Competitive Examination (Amendment) Rules, 2020 was notified on 21.10.2020. It is contended that WP(C) No.5169/2020 (Navin Kumar Ray); WP(C) No.5248/2020 (Bonani Priya Rajkonwar) and WP(C) No.28/2021 (Bondita Borah) were filed on 27.11.2020; 02.12.2020 and 16.12.2021, respectively.

**80.** Mr. V. Rajkhowa, learned counsel appearing for the candidates from the Hill Districts submits that for the candidates belonging to ST(H), there are 17 seats reserved out of total 331 in the CCE, 2020 as per the advertisement dated 08.09.2020. This reservation is as per the mandate of the Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1978. Mr. V. Rajkhowa, learned counsel submits that in so far as the seats reserved for the ST(H) category are concerned,

the petitioners who do not belong to ST(H) category have absolutely no claim over those seats. As such, the challenge made in the writ petition in respect of the exemptions granted to the candidates from the Hill Districts is not maintainable and the same not having any merit, should be dismissed.

**81.** It is further contended that by the Assam Public Services Combined Competitive Examination (Amendment) Rules, 2020, exemptions granted to the Hill Districts were extended to the three districts of Barak Valley – Cachar, Hailakandi and Karimganj for the first time. Mr. Rajkhowa contends that although the candidates from the Hill Districts are not affected by the Assam Public Services Combined Competitive Examination (Amendment) Rules, 2020 but the exemptions extended to the three districts in the Barak Valley is hit by the principle of retrospectivity inasmuch as the subsequent amendment brought in the year 2020 cannot be given effect to in respect of the selection process undertaken pursuant to the advertisement dated 08.09.2020 as the said advertisement was issued when the Assam Public Services Combined Competitive Examination (Amendment) Rules, 2019 were still in force.

**82.** The learned counsel appearing for the candidates from the Hill Districts referred to the judgments of the Apex Court in *N.T. Davin Katti & Ors. -Vs- Karnataka Public Service Commission & Ors.*, reported in (1990) 3

**SCC 157** (Paragraph 11) and **Assistant Excise Commissioner, Kottayam & Ors. -Vs- Esthappan Cherian & Anr.**, reported in **(2021) SCC OnLine SC 664** (Paragraph 15) in support of his contentions that the benefit of the exemptions granted in favour of the candidates belonging to the Barak Valley districts cannot be with retrospective effect for giving them the benefit in the ongoing selection process undertaken by the APSC. The benefit, if any, shall be operative from a future date.

**83.** It is contended that the language prevalent in the Barak Valley and Brahmaputra Valley districts are considered to be major languages and are included in the 8<sup>th</sup> Schedule to the Constitution of India, whereas the languages spoken in the Hill Districts, including Dima Hasao, are considered to be tribal languages and are not included in the 8<sup>th</sup> Schedule to the Constitution of India. That apart, these Hill Districts are part of 6<sup>th</sup> Schedule, whereas Barak Valley district is outside the purview of 6<sup>th</sup> Schedule. It is further contended that there are many tribal languages, like Dimasa, Karbi, Hmara, Kuki, etc., which are spoken amongst the various ethnic groups who are domiciled in the said Hill Districts and amongst themselves, they communicate in a form of broken Hindi, which is called "Haflong Hindi", whereas in Barak Valley districts, nearly 80% people speak Bengali language. The learned counsel, therefore, contends that the extension of benefit of exemption to the three districts of Barak Valley is uncalled for as the candidates from the Barak Valley are



not on the same footing as the candidates who belong to the Hill Districts of Dima Hasao, Karbi Anglong and West Karbi Anglong.

**84.** In so far as the provisions of the Assam Official Language Act, 1960 are concerned, Mr. Rajkhowa contends that Section 3 of the said Act declared "Assamese" to be the official language of Assam but Section 4 of the said Act provides safeguard to the autonomous regions and the autonomous districts permitting them to use the language, which was in use before commencement of the Act and the same will continue. The official language, i.e. Assamese, will not be applicable unless the District Councils or the Autonomous Councils, as the case may be, by a majority of not less than two thirds of the members present and voting decide in favour of adoption of any other language for any of the administrative or official purposes within that region or district. In the Dima Hasao district, which is an autonomous district governed under the 6<sup>th</sup> Schedule to the Constitution of India, it was the English language which was used well prior to the enactment of the 1960 Act and the same continued to be used as the official language in the Dima Hasao district.

Similarly, the Assamese Language Learning Act, 2020 is also not applicable to the 6<sup>th</sup> Schedule areas. The Act itself prescribes that the provisions of the Act will be applicable to provide for and ensure learning of Assamese as one of the languages in all schools in the State of Assam, except in the 6<sup>th</sup> Schedule areas, Bodo Medium

Schools of Bodo inhabited areas and Barak Valley areas. As contended earlier, Dima Hasao district being a 6<sup>th</sup> Schedule area, the same is outside the purview of the Assamese Language Learning Act, 2020.

**85.** With regard to the report of the Committee on Combined Competitive Examination Reforms, 2015, headed by Mr. M.P. Bezbaruah, IAS (Retired), it is contended by Mr. V. Rajkhowa that although the Committee recommends introduction of language paper of Assamese, Bengali and Bodo, the Hill Districts were exempted from introduction of the said languages. For the candidates of the Hill Districts, the Committee recommended the General English paper.

**86.** In so far as the Cabinet decision of 24.11.2021 is concerned, whereby the language paper which is qualifying in nature has been dispensed with, it is submitted by Mr. V. Rajkhowa, learned counsel appearing for the candidates for Dima Hasao district that they have no reason to object to the same. However, it is contended that the Cabinet decision being an executive decision cannot retrospectively amend the selection procedure by superceding the Rules of 2019 and 2020. It is contended that if there is a conflict between the executive instructions and the Rules made under the proviso to Article 309 of the Constitution of India, the Rules made under proviso to Article 309 of the Constitution of India must prevail.

**87.** Referring to the judgment of the Apex Court rendered in *Javed Niaz Beg* (supra), Mr. V. Rajkhowa

submits that the exemption granted to the candidates of the Hill Districts of Dima Hasao, Karbi Anglong and West Karbi Anglong from appearing in the qualifying papers of Assamese, Bengali and Bodo is not hit by Article 14 of the Constitution of India. Referring to the judgment of the Apex Court, it is contended that this exemption is a step to place the otherwise disadvantaged candidates from the Hill Districts on equal footing with the candidates of other districts in respect of the qualifying language papers. Relying on the judgment of the Apex Court, learned counsel submits that equalisation is a part of the dynamics of equality and that this concession is not in contravention of equality but conducive to equality.

**88.** Mr. Rajkhowa also contends that presumption is always in favour of constitutionality of a statute and the burden is upon him who seeks to demonstrate that there has been a clear transgression of the constitutional principles. Referring to the judgment of the Apex Court in the case of *R.K. Garg -Vs- Union of India & Ors.*, reported in *(1981) 4 SCC 675*, Mr. Rajkhowa concludes his argument and submits that there is no infirmity in the exemption granted by the State to the candidates belonging to the Hill Districts of Dima Hasao, Karbi Anglong and West Karbi Anglong from appearing in the qualifying language papers. This exemption is not violative of Article 14 of the Constitution of India but rather it is conducive to equality as it seeks to empower the candidates from the

Hill Districts to effectively appear and compete with the candidates from across the State.

### **CONCLUSIONS AND ANALYSIS**

**89.** On these facts, the issues which are being agitated before this Court are encapsulated as under:

That the Assam Official Language Act, 1960 requires Assamese to be used for all official purposes in all districts except "Cachar" which subsequently came to be comprised of two other districts, namely, Karimganj and Hailakandi. In these districts of Cachar, Karimganj and Hailakandi, Bengali is to be used as the medium of Official language. Subsequently, by an amendment brought in 1961, Bengali was included as an official language. By another amendment brought in the year 2020, Bodo is also included as an Official Language. The issue raised is whether in view of the mandate of the Official Language Act, can the Cabinet of the State take a decision to exempt the language paper comprising of Assamese, Bengali and Bodo from the Combined Competitive Examinations for selection and recruitment of candidates to various Class-I, Class-II and other allied services. Such Cabinet decision is contrary to the provisions of 1960 Act read with the Amendments. Therefore, the decision of the Cabinet being contrary to law, the same cannot be permitted to stand.

**90.** The Officers who will eventually be recruited must have working knowledge of any of the languages of Assamese, Bodo and Bengali in order to effectively discharge

their functions as Administrative Officers at the district and Tehsil level. As most of the official communications are in Assamese language, it is unconscionable to expect newly recruited Administrative Officers to discharge their functions effectively without the knowledge of the official languages primarily Assamese.

**91.** The Assam Cabinet has also enacted an another Act called Assamese Language Learning Act, 2020 which is an Act to provide for and ensure learning of Assamese as one of the language in all the Schools in the State of Assam except in the 6<sup>th</sup> Scheduled Areas, Bodo Medium Schools of Bodo inhabitant areas and Barak Valley Areas. Under the circumstances, where there is a State Act which provides and ensures learning of Assamese as language in all the Schools, the Cabinet decision to grant exemption of language paper from the CCE Examination runs-counter to the mandate of the people as well as provisions of the statute enacted by the State to preserve the Assamese Language. The Cabinet decision is also contrary to Article 29(1) of the Constitution which gives the right to citizens to ensure protection of distinct language, script or culture as well as and Article 350 B which relates to preservation of safeguards for linguistic minorities under the Constitution.

**92.** The APSC Combined Competitive Examination Rules are Article 309 Rules and any decision of the Cabinet can at best be considered to be an act under Article 162. Therefore, even where Article 309 Rules and statutes are in existence,

Cabinet decision overrides such statutory provisions by way of the exemption granted without bringing in the required amendments by way of proper Gazette Notification, etc., by virtue of its legislative power under Article 162 of the Constitution of India.

**93.** These writ petitions including PIL have been filed questioning certain exemptions given to candidates belonging to six districts in the State of Assam granting them exemptions in respect of the language papers in the ensuing Assam Public Services Commission Examination conducted for selection and recruitment into Assam Civil Services (ACS), Assam Police Services (APS) and other allied services.

**94.** Before dealing with the submissions made by learned counsels appearing for the respective parties, we deem it fit to deal with the point of maintainability of a public interest litigation in service matters. On the point of maintainability, the objections raised by the State is that there are several judgments of the Apex Court and the law is specifically laid down by the Apex Court that no PIL can be maintained in a service matter except in matter seeking a writ of *quo warranto*. Admittedly, this PIL is not a petition seeking a writ of *quo warranto*. As such, considering the law laid down by the Apex Court in ***Dattaraj Nathuji Thaware -Vs- The State of Maharashtra***, reported in **(2005) 1 SCC 590** (Para 15 & 16); ***Dr. B. Singh -Vs- Union of India***, reported in **(2004) 3 SCC 363** (Para 14 & 16); ***Vishal Ashok Thorat -Vs- Rajesh Shrirambapu***, reported in **(2020) 18 SCC 673**

(Para 32, 33 & 43), ordinarily no PIL is to be entertained in respect of any service matter. There is no dispute in facts that this PIL seeks to challenge the selection procedure adopted by the APSC by granting exemption of the language papers as per the State Cabinet decision, adopting to exempt language papers were admittedly pursuant to the advertisement dated 08.09.2020 published by the APSC inviting applications for the preliminary examinations for filling up various posts in Assam Civil Services (Jr. Grade), Assam Police Service (Jr. Grade) and other allied services. Thus, we are of the opinion that a public interest litigation like the present petition, which relates to service matter is not maintainable.

**95.** At this juncture, it would be appropriate to refer to the judgment relied upon by Mr. D. Saikia, learned Advocate General, Assam in the case of **Dattaraj Nathuji Thaware** (supra), wherein in Paragraphs 15 & 16, the Apex Court held thus:-

*"15. Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See State of Maharashtra v. Prabhu [(1994) 2 SCC 481] and A.P. State Financial Corpn. v. GAR Re-Rolling Mills [(1994) 2 SCC 647].) No litigant has a right to unlimited draught on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. [See Buddhi Kota Subbarao (Dr.) V. K. Parasaran [(1996) 5 SCC 530] .] Today people rush to courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in courts and among the public.*

16. *As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilised for disposal of genuine cases. Though in Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra [(1998) 7 SCC 273] this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Apart from the sinister manner, if any, of getting such copies, the real brain or force behind such cases would get exposed to find out the truth and motive behind the petition. Whenever such frivolous pleas, as noted, are taken to explain possession, the court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforesaid so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts."*

96. The Apex Court in the case of **Vishal Ashok Thorat** (supra) has observed in Paragraphs 32, 33 and 43 as under:-

"32. *When the High Court held that Respondent 1 could not be permitted to challenge the advertisements dated 30-1-2017 and 1-7-2017, we fail to appreciate that how the High Court could have interfered with the select list of 832 candidates, which was prepared after preliminary examination and main examination in pursuance of the advertisements dated 30-1-2017 and 1-7-2017. When*



*Respondent 1 was not allowed to challenge the advertisements, tinkering with the select list by the High Court was impermissible and self-contradictory. The High Court in para 52 of the judgment has issued the following direction: [Rajesh v. State of Maharashtra (2018 SCC OnLine Bom 17538)]*

*"52. Consequently, we direct the respondents to choose and select from the aspirants who have participated in selection process, only such candidates who fulfil the requirements of practical experience and driving licence, as per the qualification prescribed by the Central Government i.e. as per substantive part of Rule 3(iii) and Rule 3(iv) of the 2016 Rules."*

*33. The direction in para 52 of the impugned judgment [Rajesh v. State of Maharashtra (2018 SCC OnLine Bom 17538)] clearly directed the select list to be redrawn by including only those candidates who fulfil the requirements of practical experience and driving licence as prescribed by the Central Government i.e. as substantive part of Rule 3(iii) and Rule 3(iv) of the 2016 Rules, which the High Court could not do in view of its finding in para 49 of the judgment. When a person is not permitted to challenge the advertisements and process of recruitment, the select list which is outcome of such recruitment process cannot be interfered with at the instance of such person. The High Court, thus, clearly erred in issuing direction in para 52 to modify the select list dated 31-3-2018.*

*43. We, thus, are of the view that the High Court ought not to have entertained the writ petition, in which challenge was to the 2016 Rules, which were clearly in reference to recruitment under Advertisements Nos. 2 and 48 of 2017. When Respondent 1 i.e. writ petitioner was held not entitled to challenge Advertisements Nos. 2 and 48 of 2017 at his instance, proceeding to entertain the challenge to the validity of the Rules and to strike down the Rules and modifying the select list dated 31-3-2018 was clearly impermissible. The High Court, thus, fell in error in issuing directions in para 52. We are also of the view that in the facts of the present case, it was not necessary for the High Court to enter into the validity of Rule 3(iii), Rule 3(iv) and Rule 4 of the 2016 Rules. We having taken the view that directions issued by the High Court in para 52 are not sustainable, for the purpose of this case, it is not necessary for us to dwell upon various submissions raised with regard to the 2016 Rules, which according to us was not required to be gone into by the High Court in the background of the present case."*

Thus, the law is clear that public interest litigation in service matters is not maintainable. Similar provision also exists in the Gauhati High Court (Public Interest Litigation) Rules, 2011, which *inter alia* provides that the PIL relating to service matters and those pertaining to pension and gratuity shall not be entertained in public interest litigation.

**97.** It would also be appropriate to refer to the judgment of the Apex Court in the case of ***Pushpa Rani*** (supra), wherein in Paragraph 37, the Apex Court held thus:-

*"37. Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal position that matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala fides. The court cannot sit in appeal over the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open to the court to make comparative evaluation of the merit of the candidates. The court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration."*

**98.** At the outset, it deserves to be noted that the petitioners of WP(C) No.5248/2020 and WP(C) No.28/2021 have not cleared the Mains Examination. Even though Mr.

F. Khan, learned counsel appearing for the petitioner in WP(C) No.5248/2020 has raised his contentions, the fact remains is that no further consideration of those contentions would be needed separately as the petitioner has not qualified and by the decision of the State Cabinet dated 24.11.2021, the exemptions has been granted to all. Similarly, the petitioner of WP(C) No.5169/2020 has cleared the Mains Examination and has also qualified for further test, including *viva voce*, however, by the very said decision of the State Cabinet dated 24.11.2021, the alternative prayer prayed for in Paragraph 18C of the said petition stands allowed. At this juncture, it would also be appropriate to note that petitioners of WP(C) No.5169/2020 and WP(C) No.1208/2022 have not appeared and the petitioners were treated as *ex-parte*.

**99.** As discussed above, initially the three writ petitions, namely, WP(C) No.5169/2020, WP(C) No.5248/2020 and WP(C) No.28/2021 were filed primarily on the ground that the exemptions granted to the six districts by way of the Cabinet decision dated 24.11.2021 to be violative of Article 14 inasmuch as the candidates who are not covered by the exemptions will be required to be successfully clear the language papers examination in order to be considered for the Mains and viva-voce. There is an additional burden of 300 marks on those candidates who are not covered by the exemption.

**100.** During the course of hearing, upon submissions made by the learned Advocate General that the State Cabinet taking note of the contentions raised by the writ petitioners, the Cabinet had taken a decision dated 24.11.2021 to grant exemptions to all candidates in respect of the language papers, the primary grievance of the writ petitioners appeared to have been taken care of by the Cabinet decision. However, PIL 83/2021 which came to be filed subsequently questioned the Cabinet decision primarily on the ground of preservation of the Official Language of the State of Assam. Accordingly, parties were permitted to exchange pleadings and the matter was kept for being examined considering the fact that it has raised an important issue. The APSC in the meantime was also permitted to hold the Mains Examinations and the Viva-voce of the successful candidates but not to declare any results without leave of the Court.

**101.** It is also necessary to refer to the extract of the Cabinet decision, which was taken on 24.11.2021 as communicated by the Officer-on-Special Duty, Political (Cabinet Cell) Department. The Cabinet decision reads as under:

"SECRET

EXTRACT OF THE MINUTES OF THE CABINET MEETING HELD  
ON 24/11/2021 AT 11-00 AM IN THE CONFERENCE ROOM OF  
DEPUTY COMMISSIONER'S OFFICE AT BONGAIGAON, ASSAM

Circulated during the Cabinet Meeting

Additional Item No. 2

File No. AAP.219/2018/Pt.I

Personnel Department

*Sub: Section II (B) under Schedule II of Assam Public Services Combined Competitive Examination Rules 1989 was amended in 2019 and 2020 allowing exemption from appearing in*

*Qualifying Language Paper (Assamese, Bengali and Bodo) for candidates belonging to the Hills Districts of Dima Hasao, Karbi Anglong and West Karbi Anglong and the three Districts of Barak Valley namely Cachar, Karimganj and Hailakandi who did not have any of these languages in High School Leaving Certificate Examination. An amendment to this provision is sought to be made by removing the provision.*

*The Cabinet approved the proposal along with dispensing with the requirement for English language paper in the ongoing examination. For future examinations for recruitment to ACS etc. the following pattern will be followed-*

*(1) That persons appearing in the APSC examinations should be able to speak Assamese or other official languages or associate official languages of the State or any of the tribal languages of the State.*

*(2) The Cabinet also decided that English language paper and other language papers may be dropped from the scheme of examination.*

*(3) The candidates should be registered in the District Employment Office to apply for appearing in the APSC Examination and must be original inhabitants of Assam.*

*The above (1), (2) & (3) new provisions will not be part of the ongoing Mains Examination.*

*Also henceforth, APSC will also set question paper in Assamese along with English, Bodo will be one of the optional MIL*

*Officer-on-Special Duty  
Political (Cabinet Cell) Department,  
Dispur, Guwahati*

*The Principal Secretary  
Government of Assam  
Personnel Department  
Dispur, Guwahati."*

**102.** The selection of the candidates through Combined Competitive Examination (CCE) will ultimately lead to the appointments under the Assam Civil Services (ACS) or Assam Police Services (APS) and other allied services.

Under the Assam Civil Services Rules 1998, Rule 5 prescribes the method for recruitment through the Competitive Examination conducted by the APSC. Other

sources of recruitment to the APSC are by way of promotion or by way of selection. These two modes of recruitments are not relevant for the purposes of the present proceedings as we are concerned with the recruitment by ways of combined competitive examination held by the APSC.

**103.** Under Rule 19 of the Assam Civil Service Rules of 1998, it is provided that a Member of the Service shall be required to undergo such training and pass such departmental examination as the Government may prescribe.

**104.** Rule 22 of the Assam Civil Services Service Rules, 1998 prescribes that a Member of the Service shall be placed according to the seniority on probation for a period of two years amongst others, the candidates during probation has to successfully undergo training and clear the departmental examination.

**105.** Similarly for the Assam Police Services, the candidates selected are initially on probation for two years and are required to successfully complete the training and departmental examination to be conducted under those Rules.

**106.** Similar training and departmental examination are also prescribed for other allied services under the allied services of the Government of Assam. The selection in which are conducted through the APSC CCE Examination.

**107.** The said Rules called the "*Rules for Conduct of Departmental Examination 1963*" is presently applicable which prescribes for the departmental examinations of officers in the Indian Administrative Services, Assam Civil Services Class-I and Assam Civil Services Class-II. These Rules are still in force.

**108.** Rule 5 of the said Rules prescribes the examination in Assamese, Bengali, Hindi, Khasi, Lushai, Garo and Mikir. The papers for these examinations shall be selected or prepared as per the direction of the Chairman of APSC. The papers of these written examinations will be examined by the Officers who set them ordinarily as per the provisions of Rule 9.

**109.** Rules 10, 11 and 12 of the said Rules prescribes the subjects and standard of examination in so far as the languages are concerned. Under Rule 10, the languages prescribed in which the examination are to be held are as under:

*"10. The languages in which examination will be held are:-*

*(a) Assamese.*

*(b) Bengali.*

*(c) The following tribal languages:-*

*(i) Mikir (Assamese Script)*

*(ii) Khasi (Roman Script)*

*(iii) Lushai (Roman Script)*

*(iv) Garo (Roman Script)*

*(v) Hnar*

*(vi) Kuki*

*(vii) Bodo*

*(viii) Mishing*

*(d) Hindi."*

**110.** Under Rule 12 of the said Rules, it is prescribed that every officers shall have to pass one language and one Tribal language. For instance, for an officer whose mother tongue is Assamese he/she will have to compulsorily pass Bengali and one Tribal language or in the alternative two Tribal languages. Similarly, an officer whose mother tongue is Bengali will have to compulsorily pass in Assamese and one Tribal language. In respect of officers who do not fall into the above two categories, they must compulsorily pass in Assamese or Bengali or Assamese and any other Tribal language other than their mother tongue.

**111.** At this stage, it is very pertinent to note that the PIL petitioner was permitted to be arrayed as party respondent No.18 in WP(C) No.28/2021. It is also a matter of fact that the PIL petitioner is a practicing advocate and he is advocate on record for the petitioner of WP(C) No.1208/2022. In spite of that the contentions raised by the learned counsels for the respective parties in WP(C) No.1208/2022 are similar and identical to the issues raised in PIL No.83/2021, the same are dealt with in this judgment.

**112.** In so far as the PIL petitioner is concerned, what also transpired during the course of hearing is that the PIL petitioner is an Advocate practicing before this Court. He is also the Advocate on record for the petitioner in WP(C) No.1208/2022. Consequently, it appears that the PIL petitioner has a personal interest which he has projected before this Court to be a public interest. There is a



categorical statement made in the PIL petition that he is not personally affected. Such statement appears to be wholly incorrect in view of the fact that the PIL petitioner is an Advocate on record for the petitioner in WP(C) No.1208/2022. Such conduct of an Advocate on record to represent the litigant and at the same time to appear before this Court as a petitioner-in-person is wholly opposed to the spirit of public interest litigation which has been expanded by the Courts over the years. Such conduct of the PIL petitioner was totally uncalled for and is therefore, deprecated by this Court. In opinion of this Court, knowing fully well that PIL in service matter is not maintainable, the petitioner in PIL filed another writ petition through an aspirant raising identical questions. Such conduct speaks of itself.

**113.** The apprehension sought to be projected by the PIL petitioner and the petitioner in WP(C) No.1208/2022 are that the decision of the Cabinet dated 24.11.2021 runs counter to the mandate of the Act and Rules and therefore, undermines the constitutional obligation of the State to preserve the Assamese language and culture. In support of its contention, the counsel for the PIL petitioner has taken the Court through several judgments of the Apex Court to project that preservation of language and script and culture is protected under Article 29. It is urged by the learned counsel for the petitioner that because of large scale influx of illegal migrants from neighbouring countries, the indigenous people of the State has been reduced to

minority and consequently the protection of the Assamese language and culture has become all the more necessary. Referring to Article 350B, learned senior counsel submits that there is a provision for a special officer for linguistic minorities to be appointed by the President. Therefore, the Constitution prescribes due protection to be granted to minorities and their languages and the State is under obligation to take required steps towards preservation and protection of such language and culture. The learned senior counsel submits that ordinarily Assamese and the indigenous people may be not be considered to be minority but as per the data available in open platforms, it is evident that the unabated influx of illegal migrants and the inability of the State to take adequate measures for protection of the indigenous people, have practically reduced the indigenous people to the level of minority and in that view of the matter, the need of the hour is to take all steps possible to preserve the Assamese language and the culture.

**114.** While taking note of the objections raised by the State to the contentions raised by the petitioner, we are equally conscious of the fact that the core issue which has come up for decision before this Court is the exemption of qualifying language papers in respect of the candidates who are appearing in the CCE Examination and the prejudice if any likely to be caused to the stake holders. As discussed above, the issues raised before this Court in the present proceedings relate to recruitment process adopted

by the State for recruitment of civil servants in the State of Assam. The petitioners in WP(C) No.5169/2020; WP(C) No.5248/2020 and WP(C) No.28/2021 had assailed the exemptions given to six districts and have sought for directions to the Government from this Court as the said exemptions had led to discrimination by creating a class within a class. PIL No.83/2021 came to be filed subsequently on 20.12.2021 and WP(C) No.1208/2022 came to be filed on 19.02.2022. As such, the writ petitions, which were filed earlier relate to the selection process and recruitment sought to be carried out by the APSC pursuant to the advertisement dated 08.09.2020. PIL No.83/2021 and WP(C) No.1208/2022 have questioned the Cabinet decision dated 24.11.2021 on the ground that it runs counter to the provisions of the Assam Official Language Act, 1960 as well as the Assamese Language Learning Act, 2020 and thereby it will affect the preservation of Assamese language and culture. Such issues sought to be raised by the PIL petitioner and the petitioner in WP(C) No.1208/2022 seeks to expand the scope of the questions, which were before the Court in respect of the selection and recruitment process initiated by the APSC in response to the advertisement dated 08.09.2020. Therefore, this Court will only endeavour to address the questions raised in so far as the process and the manner of selection being conducted by the State and the APSC in terms of the Advertisement dated 08.09.2020 and as to whether such action of the State Government in granting exemptions to

the candidates will run counter to any of the provisions of the Act or the Rules in relation to the selection undertaken which are under process and whether any prejudice is caused to the candidates by the exemption of the Language papers to all candidates, granted by the State Cabinet.

**115.** During the course of hearing, there was a categorical submission made by the learned counsel for the PIL petitioner that they are not aggrieved by the exemption of language papers granted to the Hill Districts, namely, Dima Hasao, Karbi Anglong and West Karbi Anglong but their primary grievance is only with regard to the exemptions granted to the other three districts, namely, Cachar, Karimganj and Hailakandi. Even on a pointed query made by the Court as to why the objections raised by the PIL petitioner are selective and are only in respect exemption given to the three districts of the Cachar, Karimganj and Hailakandi, no satisfactory explanation came up before the Court.

**116.** As narrated hereinabove, on framing the Amendment Rules of 2019 and 2020, exemptions were given from language paper to only few districts. On one hand, the petitioners contend that exemption given to the three districts by 2019 Rules is not discriminatory and on the same breath, it is contended that the Amendment of 2020 Rules extending the benefit to other three districts of Barak Valley Districts are discriminatory and violative of

Article 14 of the Constitution of India. Even during the course of argument, Mr. K.N. Choudhury, learned senior counsel for the petitioners did reiterate such stand before us. On the contrary, by the Cabinet decision dated 24.11.2021, all are made equal and exemption has been granted to all candidates who have appeared in CCE this year with a specific mention about the future course of action and, therefore, the contention raised that the 2020 Rules are discriminatory and violative of Article 14 of the Constitution of India, is incorrect and without any basis.

It is a matter of fact that before 2019 Amendment in the Rules, there was no qualifying language papers provided for. It is not the case that in absence of such qualifying language paper(s), the administrations of the State of Assam is paralyzed in any manner and hence the apprehension ventilated by the PIL petitioner and the petitioner of WP(C) No.1208/2022 are without any basis and ill-founded.

**117.** The decision taken by the State Cabinet is within its executive powers under Article 162 of the Constitution of India. The legislature has power to frame Rules for recruitment and when such power exists, power under Article 162 for furtherance of the same can be exercised. The purpose and object of the Assam Official Language Act, 1960 is different and distinct and the same shall be subject to the selected candidates clearing the departmental examinations prescribed under the Rules for Conduct of Departmental Examination, 1963. The

contention that other conditions are placed for by the Cabinet while taking the decision dated 24.11.2021 as regards requirement of registration with the District Employment Agency and that he must be original inhabitants of Assam is not meant for the examination, which is already conducted and with respect the reading of the Cabinet decision dated 24.11.2021 is erroneous. On bare reading of the decision dated 24.11.2021 clearly postulates that the condition for registration with the District Employment Agency and the requirement of the candidate being original inhabitants of the State of Assam is for future examinations, which is not the subject matter of the present petitions and thus, the contention that it is *ex-facie* violative of Articles 14 and 15 of the Constitution of India, is without any basis.

**118.** In the State of Assam, there are three official languages and a person selected in CCE may be posted at any of the three regions where the official languages are different and in such an event, the Rules for Conduct of Departmental Examination, 1963 assumes a pivotal role. Only because the departmental examination is taken after recruitment, the same does not diminish its importance as before confirmation such examination has to be cleared. Even the contention raised that the same is not mandatory and exemption is granted again depends on factors like a candidate already possessing knowledge of a particular language, i.e. Assamese, Bengali and Bodo, and, therefore, it cannot be said that the exemption granted by the

Cabinet will adversely affect the process of selection and determining the suitability of candidates appearing in the CCE. The contention as regards the change of selection process as far as language paper is concerned by granting exemption to all candidates who have appeared in CCE, no one is as such prejudiced and, therefore, the decision taken by the Cabinet to give exemption has not adversely affect any candidates.

**119.** The decision of the Cabinet is taken under its exercise of powers under Article 162 of the Constitution of India and it cannot be said that the Cabinet has decided not to apply the amendment to the ongoing examination. It is again an erroneous and convenient reading of the decision of the Cabinet dated 24.11.2021 by the petitioner. Though the Amendment of 2019 Rules can be said to be consistent with the provisions of the Assam Official Language Act, 1960 and Article 345 of the Constitution of India, the exemption granted for the instant CCE cannot be said to be violative of Article 345 of the Constitution of India.

**120.** The reference to the pattern of examination of UPSC wherein a candidate is required to appear in any of the Indian languages included in 8<sup>th</sup> Schedule of the Constitution of India *vis-à-vis* the requirement of the APSC, is of no consequence as far as the challenge to the exemption granted is concerned. The contention that the decision of the State Cabinet dated 24.11.2021 would not

apply to the instant Combined Competitive (Mains) Examination and would apply to future examination, is incorrect reading of the same. Even considering the recommendations of the M.P. Bezbaruah Committee, referred to by the Mr. K.N. Choudhury, learned senior counsel for the petitioners, apart from the fact that the same is a suggestion made by the expert, as aforesaid, even after granting exemption from the English language paper as well as the official language paper as per the decision of the Cabinet dated 24.11.2021, a candidate is required to pass the departmental examination before being confirmed as per the Rules for Conduct of Departmental Examination, 1963. Even the contention to the effect that it is incumbent upon the APSC to have one compulsory language and one paper in English is within the realm of the employer, i.e. the State Government. Therefore, it is for the State to take a final decision on the said subject and the State Government has not given any exemption under the Rules for Conduct of Departmental Examination, 1963.

**121.** Article 29(1) read with Article 345 of the Constitution of India cannot be said to be in any way tinkered with by the Cabinet decision taken under Article 162 of the Constitution of India. By granting such exemption, it cannot be said the State Cabinet/State Government has not protected the interest or that it cannot be said that the State Government has in any way offensive to Article 29(1) and Article 345 of the



Constitution of India and by giving exemption would not mean that there is any alteration or change in the official language of the State. The further contention that the prescription of language paper by way of 2019 Amendments cannot be construed to be discriminatory to be hit by Article 14 of the Constitution of India is concerned, it deserves to be noted that by the said amendment only candidates from three districts were given exemption, whereas other thirty one districts even if though candidates may not be having knowledge of the three languages would be required to appear in the language papers and as rightly contended by the learned Advocate General of the State, such situation would create a class among the class.

**122.** As far as the contentions raised by Mr. F. Khan, learned counsel appearing for the petitioners in WP(C) No.5248/2020 and Mr. M.K. Sharma, learned counsel appearing for the petitioner in WP(C) No.28/2021 are concerned, as aforesaid, the petitioners have not cleared the preliminary examination and are even otherwise not eligible for any further recruitment. However, considering the contentions raised, in view of what has been stated above, the same does not require any further elaboration.

**123.** It is matter of record that the public interest litigation is directly related to the recruitment process and as rightly pointed out by Mr. D. Saikia, learned Advocate General, Assam, it is integral part of the service

jurisprudence. The record also indicates that the decision taken by the State Cabinet is based on the factual matrix of representations dated 28.07.2020 and 24.08.2020 received by the Government from Cachar Hindi Bhasi Chatra Parishad and Manipuri Community of Barak Valley, apart from the fact of three writ petitions filed before this Court. It clearly appears that the State Cabinet, while taking the decision dated 24.11.2021, has considered these materials. As per the requirement although the language papers are qualifying in nature, it was incumbent upon the candidates to obtain pass mark of 25%. Thus, if a candidate other than those of six districts failed to get 25% marks in two language papers, he would stand disqualified, whereas the candidates from the six districts would get a cakewalk over and thus it creates a class within a class, which would be violative of Article 14 of the Constitution of India.

**124.** The contentions and arguments raised on behalf of the petitioners are examined on the factual basis. The fact remains that upto the amendment of the 2019 Rules, there was no language paper required to be cleared. It is not the case of the petitioners that prior to 2019 no recruitment has taken place and, therefore, the apprehension ventilated by the petitioners that in absence of language paper, more particularly of the three languages, namely, Assamese, Bengali and Bodo is illegal, cannot be believed. The petitioners have not based its contention on the aspect that because of want of knowledge of a particular State language or regional

language, the Government Administration has been hampered. However, the fact remains that upto now the persons manning the Government have not appeared in any language paper prior to their recruitment. However, as provided under the Rules for Conduct of Departmental Examination, 1963, departmental examinations are taken before confirmation of any officer or employee.

**125.** Even considering the argument of the petitioners that the decision taken by the State Cabinet on 24.11.2021 is violative of Article 29(1) read with Article 345 of the Constitution of India, does not hold good in view of the fact that the latest amendments do not prevent any candidate from taking any optional papers of Assamese, Bengali or Bodo in CCE (Mains) Examination, the marks of which are counted for the final list. As provided in the impugned decision of the Cabinet, an officer selected through CCE conducted by the APSC is required to pass language papers as part of departmental examination, which are conducted by the very recruiting agency, namely, APSC, as per the provisions of the Rules for Conduct of Departmental Examination, 1963. As provided thereunder, an officer has to select three language papers from among Assamese, Bengali Hindi and eight tribal languages, namely, Karbi, Khasi, Dimasa, Bodo, Garo, Hmar, Mishing and Kuki. As further provided thereunder an officer, whose mother tongue is Assamese, he has to appear in Bengali, Hindi and a tribal language and if his mother tongue is Bengali, he has to appear in Assamese,

Hindi and a tribal language and similarly if his mother tongue is other than above, he has to appear in Hindi, Assamese and Bengali or a tribal language. At this juncture, it would also be appropriate to refer to Rule 22 of the Assam Civil Services Rules, 1998, which *inter alia* provides that the newly recruited ACS Officers are first placed on probation for a period of 2(two) years and have to pass the departmental examination, which includes the three language papers for his confirmation to service. As pointed out by the learned Advocate General even for other services recruited through CCE, similar Service Rules exist and language papers are mandatory requirement for confirmation in respective services.

**126.** The Rules for conduct of Departmental Examination 1963 are available and applicable to the candidates who are selected in the CCE Examination. A perusal of the Rules reveals that there are sufficient provisions which ensure that the candidates were selected and are mandatorily required to go through and clear the language papers before they are allotted any posting. There is a statement made at the bar by the Advocate General of the State that unless the candidates successfully clear the language papers, no posting or cadre are allotted to such candidates. The learned Advocate General for the State has submitted before this Court that in the event of candidates not being able to clear this language paper under the Rules of 1963, it will affect the cadre and seniority of such an officer and no posting is allotted. Such

provisions in the Rules of 1963 make it abundantly clear that there are sufficient provisions and safeguards available to ensure the candidates who are selected through the CCE are mandatorily required to undergo and clear the language papers as per the prescription under the Rules. It is also noticed that these examinations are also required to be conducted in due consultation with the APSC and these are not conducted departmentally.

**127.** Regarding the infraction of the Assam Official Languages Act, 1960 and in view of the exemptions granted by the Cabinet, it is seen that the Act of 1960 prescribes Assamese as the Official Language and by subsequent two amendments, Bengali and Bodo has also be included as official languages. The apprehension projected by the PIL petitioner is adequately addressed by the Rules of Departmental Examination as any selected candidates will have to mandatorily be required to clear the language paper under the said Rules. Although the Official Language Act, 1960 includes Assamese, Bengali and Bodo as the Official Languages, there is no quarrel with the fact that these three languages are not inter-changeably used across the State in all Districts. These languages are specific to the areas or to the districts in which these languages are largely spoken or used. For instance in the Barak Valley, Bengali is the predominantly used in various official works. Similarly, in BTR area, Bodo language is used in official works and other areas including the Brahmaputra Valley Assamese is used for official works.

The requirement of learning a language be it Assamese, Bodo or Bengali will not determine the place of posting for an officer selected and recruited by way of CCE Examination. The PIL petitioner has not been able to project or point out or refer to any material before the Court to the effect that an officer recruited and posted in any of the Districts where a specific language is spoken will always continue to be posted in those districts throughout his/her entire service career. As such, officers recruited for the state are required to be transferred across the State and during the course of their postings, they will be required to undergo necessary training where required, in the language which is predominantly used in those districts where the officer is posted. Accordingly, the proposition sought to be projected before this Court by the PIL petitioner that exemptions to the language papers will be a serious handicap for the officers in discharging their functions as officers of the State cannot be accepted in view of the mandate of the Departmental examination Rules 1963. The 1963 Rules are already in place which adequately address the apprehensions expressed by the PIL petitioner as well as petitioner of WP(C) No.1208/2022 before this Court.

**128.** As discussed above, these Rules mandatorily prescribe training in the languages provided there for and which are mandatorily required to be cleared by the candidates. Other issues relating to preservation of language as well as the Assamese language being reduced

to minority because of demographic changes are not required to be answered in the present proceedings for the simple reason that this PIL has primarily questioned the recruitment process conducted under CCE and therefore, this Court vide orders passed, permitted the PIL petitioner to be arrayed as party respondent. The questions as to how to effective preservation and usage of Assamese and other indigenous languages and cultures can be brought about in view of any demographic changes brought about by the unabated influx of illegal migrants, is an issue which is required to be properly addressed by the people's representatives in appropriate forums and thereafter, work cohesively to bring out a mechanism within the constitutional scheme so that these issues can be affectively addressed. In view of the same, it would not be proper for this Court to enter into an area which is yet to be appropriately addressed by framing necessary policies on the basis of comprehensive and quantifiable data if required by the State.

**129.** In so far as the contention raised by the PIL petitioner in respect of the change of Rules of the Game which has been made because of the Cabinet decision, this Court finds that the PIL petitioner is not a candidate for the ensuing CCE Examination. The writ petitioner in 1208/2022 is also not a candidate but projects himself as aspirant. None of the candidates who have successfully cleared the preliminary examinations and/or the Mains Examination have been arrayed before this Court as party respondents.

None of such candidates have approached this Court, questioning the exemption given and/or the prejudice likely to be caused to them, in view of the exemption given by the Cabinet decision dated 24.11.2021.

**130.** What has been done by the respondent authorities is to revert back the position prior to the 2019 amendment recruitment Rules. If the exemption is given as per the 2019 amendment, candidates from only three districts could have derived the exemption. Similarly, as per the 2020 amendment Rules, candidates from further three districts, who have not studied the three languages upto secondary level was given the exemption. This Court is of the opinion that the same would have created class within the class and the candidates, who either do not fulfil the requirements for entitlement of the exemption beyond any other districts though would have studied in any other medium and who would not have studied those languages and their being students of any other medium schools would have been required to appear in language paper as well as English paper. The petitioner of WP(C) No.1208/2022 has no objection if the exemption is granted to three districts as per 2019 amendment Rules. By granting exemption to all, all are made equal and it cannot be said that by granting exemption, there is breach of Articles 29 and/or 30 of the Constitution of India.

**131.** Article 29 of the Constitution of India provides for protection of interest of minorities. Article 29(1) *inter alia*



provides that a citizen has a right to conserve his distinct language. Though such a right is conferred on both majority and minority under Article 29(1) of the Constitution of India, by exemption in language paper, as was done in the instant case, would not be violative of Article 29(1) of the Constitution of India.

**132.** In so far as the Assamese Language Learning Act, 2020 is concerned, the apprehension expressed by the PIL petitioner is thoroughly misplaced. This statue is for ensuring teaching of Assamese language in schools. We are unable to understand how the Cabinet decision dated 24.11.2021 runs counter to the prescription mandated by the Act of 2020. In the context of the challenges made in respect of the selection & recruitment conducted by the APSC through the CCE, the scope and ambit of the Act does not in any way affect such selection and recruitment.

**133.** We have carefully perused the Act of 2020 and we also hold that the Provisions of this Act of 2020 pertained to learning of Assamese language in primary School. This has no application in respect of selections of appointments made in Class-I, Class-II of Administrative services and other allied services under the State of Assam.

**134.** As far as Article 350A of the Constitution is concerned, the same mandates that every State and every local authority within the State shall endeavour to provide adequate facilities for instructions in mother tongue at the primary stage of education to the children belonging to

linguistic minority groups. Similarly, under Article 350 B for linguistic minority groups, a special officer is to be appointed by the President to provide for safeguard for linguistic minorities under the Constitution and report it to the President upon those matters at such intervals as the President may direct. Similarly, under Article 29, the cultural and educational rights of the sections of citizens are guaranteed for having a distinct language, script or culture or its own and the right to conserve the same. There is no quarrel with the mandate prescribed under the Constitution in the Articles referred above. So far as the issues raised and which pertain to the present proceedings, which is the exemptions granted by the Cabinet in respect of language papers for all candidates in the APSC Mains examinations, we are unable to agree with the submissions made by the PIL petitioner that such exemptions granted will be to the detriment of the language, culture and script of the indigenous people in the State of Assam. As has been discussed, the requirement of adequately an effectively learning of local language including Assamese, Bengali or Bodo is mandated under the Rules for Conduct of Departmental Examinations, 1963. These rules have elaborate provisions for ensuring that the candidates who are selected and subsequently appointed as Officers under Class-I, Class-II of Civil Services and other allied services are mandatorily required to undergo the training and compulsorily acquire sufficient proficiency in both spoken and written form so as to enable them to effectively

discharge their duties at various Districts and Tehsil levels across the State of Assam. We therefore turned down the said arguments made by the PIL petitioner before this Court.

**135.** As observed hereinabove, the petitioners are not aggrieved persons and by granting exemption by the impugned decision of the State Cabinet dated 24.11.2021, nobody is prejudiced. On the contrary, all candidates are treated equal and no candidate is required to clear the language paper as well as English paper. The decision of the State Cabinet has not affected anybody adversely and hence the reliance placed by the learned senior counsel for the petitioners on the catena of decisions on change of rules, would not apply in the facts of these cases.

**136.** The judgment of *Javed Niaz Beg* (supra), which was relied upon by the PIL petitioner to support its contentions, perhaps goes against the very contentions raised by the PIL petitioner that the State could not have granted exemptions in the manner it has done, in respect of examination for selection of candidates conducted by the APSC in view of Assam Official Language Act, 1960 and the Assamese Learning Act, 2020. The Apex Court in the judgment of *Javed Niaz Beg* (supra) upheld similar exemptions being granted by the UPSC in respect of certain candidates appearing from the Northeastern Region. The Apex Court held that there is no discrimination in the exemption provided as both equalization as a

measure of equality and national integration as a homogenization of the people of the country required the State that has taken.

In **Javed Niaz Beg** (supra), a notification came to be issued, whereby exemption was granted in Paper I in Indian languages. However, it was not made compulsory for the candidates hailing from North Eastern States and Union Territories of Arunachal Pradesh, Manipur, Meghalaya, Mizoram and Nagaland, which was the subject matter of challenge, wherein the Apex Court has observed thus:-

*"3. The gravamen of the charge against this notification is that candidates hailing from the North Eastern States/Union Territories of Arunachal Pradesh, Manipur, Meghalaya, Mizoram and Nagaland are not obligated to take Paper I on Indian languages. Why should this discrimination be shown in their favour, urges counsel for the petitioners. While favourable treatment for women and children, backward classes, scheduled castes and scheduled tribes is sanctified by the Constitution, the linguistic concession shown to the Indian brethren in the remote regions we have just referred to is castigated as unconstitutional, unequal and invidiously discriminatory. In the familiar jargon, counsel contends that inequality among equals is the intent and effect of the notification and the vice of discrimination must prove lethal to its validity. We are not impressed with this submission.*

*4. The integrity of India is a supreme value. The languages of India are dearest to the people who speak them. It is notorious that the North Eastern States/Union Territories of Arunachal Pradesh, Manipur, Meghalaya, Mizoram and Nagaland have handicaps in the matter of language. The Eighth Schedule to the Constitution has set out the prominent languages of India which are written and spoken by large populations between Kashmir and Kanyakumari. But this rich tapestry, for its very beauty, must afford equal opportunity for those linguistically less advanced groups who are outside the Eighth Schedule and may suffer serious disabilities if forced to take examinations in those languages. Logically, an option for them to take or*

*not to take Paper I on Indian languages is a facility which puts them on par with the rest. Once we understand that equalisation is part of the dynamics of equality, this concession is not contravention of equality but conducive to equality. It helps a handicapped group and does not hamper those who are ahead.*

5. *A realistic appraisal of the linguistic landscape of the North Eastern States of our motherland will leave no thinking Indian in doubt that the exemption granted will encourage disabled groups into integrating themselves with the nation. More and more of successful candidates from these border areas coming into the mainstream of our Central Public Services is a tribute to national integration and democratic foundation. On the other hand, procrustean equality by insistence on the linguistic "have-nots" being treated on a par with the linguistic "haves" is productive of inequality. Both equalisation as a measure of equality and national integration as a homogenisation of the people of the country, require the step that has been taken. We discern no discrimination. On the contrary, we find a sensitive appreciation of the situation prevailing in those States and operates for a better egalite among unequals."*

**137.** As held by the Apex Court in **Jasbhai Motibhai Desai** (supra), a person seeking a writ of *Certiorari* must be a person aggrieved. The Apex Court in the same judgment has lucidly explained the meaning of "person aggrieved". Similarly for seeking a writ of Mandamus the existence of a legal right is a *Sin-qua-non*. Unless the person before the Court is capable of establishing a legal right and infringement thereon, there can be no Mandamus issued by writ court.

**138.** As discussed above, in view of the facts, which has subsequently surfaced before this Court the petitioners in WP(C) No.28/2021, WP(C) No.5248/2020, WP(C) No.5169/2020 and WP(C) No.1208/2022 cannot be

considered to be persons aggrieved or persons whose legal rights have been infringed upon.

**139.** In the State of Assam, after a candidate passes CCE Mains Examination and after he is appointed and recruited, he is required to undergo training and clear the departmental examination under the Rules for Conduct of Departmental Examinations 1963, which is also conducted by APSC. It is a matter of common knowledge that when an IAS candidate is appointed, he has to clear the language examination in a particular State. In just a position, a candidate appearing in CCE Examination selects any of the three languages in the language paper, as contended by the petitioners and appears in the examination, however, he is posted in the region where other regional language is required, i.e. to say that a candidate having cleared language paper in Assamese is posted in Barak Valley area or Bodoland, he would be required to use Bengali and Bodo language, respectively, and such is achieved only when he clears the departmental examination after appointment and training. Thus, by granting exemption to all candidates appearing in CCE in the ensuing examination would, in no manner, violate Article 29(1) of the Constitution of India as well as Article 30 of the Constitution, as canvassed by the learned counsel for the petitioners.

**140.** By relying on the judgment of the Apex Court in *N.T. Devin Katti* (supra), it is contended on behalf of the

PIL petitioner and the petitioner in WP(C) No.1208/2021 that the candidates from the Districts of Dima Hasao, Karbi Anglong and West Karbi Anglong who had submitted their applications in response to the advertisement dated 08.09.2020 acquired a vested right of being considered for the selection in terms of the Rules which were in existence on the date of submission of their applications, namely, the Assam Public Services Combined Competitive Examination (Amendment) Rules, 2019. The PIL petitioner, who had arrayed himself as respondent No.18 in WP(C) No.28/2021 has come out in support of the exemptions granted to the candidates from Dima Hasao, Karbi Anglong and West Karbi Anglong Districts, who are arrayed as respondents No.11 to 17 and 19 to 21 in WP(C) No.28/2021. It is contended that the selection pursuant to the said advertisement dated 08.09.2020 is mandatorily required to be carried on in terms of the Rules which existed at the relevant point in time.

**141.** In the cases in hand, on the contrary, by granting exemption from the language paper and English paper, the respondent authorities have put everybody in equal status and, therefore, the judgment in *Javed Niaz Beg* (supra) would not be applicable to the facts of this case. Similarly, the judgment in the case of *N.T. Devin Katti & Ors.* (supra) relied upon by Mr. K.N. Choudhury, learned senior counsel appearing for the petitioners is not applicable in the present cases.

**142.** On the said issue relating to the selection being governed by the Recruitment Rules and in terms of the criteria laid down in the advertisement, Mr. K.N. Choudhury, learned senior counsel also pressed into service the judgments of the Apex Court in ***Madan Mohan Sharma*** (supra) and ***Mithilesh Kumar*** (supra). The judgments of the Apex Court pressed into service in support of the contentions raised by Mr. K.N. Choudhury, learned senior counsel for the petitioners will have to be distinguished on the facts of the present proceedings. From the discussions made above, it is evident that the candidates from Dima Hasao, Karbi Anglong and West Karbi Anglong were given exemption of language papers in view of the fact that they never studied Assamese, Bengali or Bodo in school nor are any of the languages their mother tongue. Consequently, they are not aggrieved by the exemptions granted by the Government by way of the amendment made in 2019. It is also evident that the petitioner in WP(C) No.1208/2022 and PIL petitioner are not aggrieved by the exemptions granted by the Government to the candidates of Dima Hasao, Karbi Anglong and West Karbi Anglong by way of the amendment made in 2019 Rules, but they are specifically aggrieved by the said exemption extended to the candidates in three other districts namely Cachar, Hailakandi and Karimganj. However, by way of the Cabinet decision what has been sought to be done by the Government is to take a policy decision to do away with



the exemptions in respect to specific areas/territories within the State and instead have taken a decision to do away with the qualifying language Paper 'A' and the English language paper for all the candidates irrespective of whichever districts they may belong to. Consequently, by way of the Cabinet Decision, the candidates in the districts of Dima Hasao, Karbi Anglong and West Karbi Anglong who are arrayed as respondents No.11 to 17 and 19 to 21 in WP(C) No.28/2021 are not aggrieved parties since their benefit of exemption from appearing in the language papers continued. The exemptions extended to the three districts of Barak Valley, namely, Cachar, Hailakandi and Karimganj, are assailed on the ground that they are contrary to the provisions of the Assam Official Language Act, 1960 and the Assamese Language Learning Act, 2020. As such, it is seen that the challenge made to the exemption granted by way of the Cabinet decision dated 24.11.2021 is selective as the learned senior counsel has fairly submitted that the petitioners in WP(C) No.1208/2022 and PIL No.83/2021 do not object to the exemptions extended to the Hill Districts of Dima Hasao, Karbi Anglong and West Karbi Anglong. No reasons are given before this Court in support of such selective challenge made. Neither PIL petitioner nor the writ petitioner in WP(C) No.1208/2022 are candidates in the ensuing examination and as such, they cannot have any grievance with regard to such exemptions being granted by way of the policy decision taken by the State Cabinet. No

such grievances have come from any candidates who had submitted their candidature in response to the advertisement dated 08.09.2020 and had appeared in the selection process pursuant to the said advertisement. As has been held by the Apex Court in **Jasbhai Motibhai Desai** (supra), the petitioners in WP(C) No.1208/2022 and the PIL petitioner cannot be construed to be persons aggrieved by the Cabinet decision and therefore, the judgments relied upon by the learned senior counsel Mr. K.N. Choudhury to buttress his contentions in respect of the selection procedure does not come to his aid and are, therefore, not applicable in the facts and circumstances in this case.

**143.** In support of his contentions that executive order of the Government under Article 162 of the Constitution cannot override the Rules framed under Article 309, the learned senior counsel relies upon the judgment of the Apex Court in **B.N. Nagaraj** (supra) and submits that when there are Rules framed under Article 309 of the Constitution of India, which lays down the procedure and the criteria for selection of civil servants, namely, Assam Public Services Combined Competitive Examination (Amendment) Rules, 2019, the subsequent Cabinet decision dated 24.11.2021 claiming to take a policy decision to grant exemption to all districts is wholly impermissible without further amendment being brought in to the Assam Public Services Combined Competitive Examination (Amendment) Rules, 2019 in terms of the

policy decision taken. It is contended that such an action on the part of the State is impermissible when Article 309 Rules presently hold the domain. In ***B.N. Nagarajan*** (supra), the issue before the Apex Court was whether the promotees can claim seniority over the direct recruits under the Karnataka Government Servants (Seniority) Rules, 1957. The Recruitment Rules categorically provided that the seniority of a person in a particular cadre or service shall be determined as prescribed under the said Rules. Rule 2(A) prescribes that the officers appointed substantively in clear vacancies shall be senior to all persons appointed on officiating or any other basis in the same cadre of service or class of posts.

The promotees were appointed as Assistant Engineer, however, in officiating basis and were to hold office until further orders. Another such order passed by the Government was to the effect of promoting another group of Assistant Engineers on purely temporary basis and they would have to vacate the posts against which they were fitted, as soon as candidates were available through a process of direct recruitment. It was urged on behalf of the promotees that their promotions were on regular basis pursuant to orders passed by the Government. Such contention was rejected by the Apex Court in view of the clear prescription of the service Rule. It was in that context, the Apex Court had held that the Government orders passed under Article 162 cannot override the Rules under 309 of the Constitution of India.

It was held that no regularization is permissible in exercise of executive powers of the Government under Article 162 in contravention of the Rules. The learned senior counsel also relies upon the judgment of the Apex Court in **V.N. Sunanda Reddy** (supra), in support of his contentions that the Government orders cannot override the Recruitment Rules.

While there is no quarrel with the proposition that Executive Orders of the Government cannot override Recruitment Rules framed under Article 309 governing service conditions, in the facts of the present proceedings, it is seen that the Government has taken a policy decision by way of the Cabinet decision dated 24.11.2021 extending the exemption from appearing in qualifying language Paper 'A' to all the candidates and English language paper. The question of Government not following the procedure of amendment of the service Rules cannot arise at that juncture, inasmuch as the Cabinet decision was taken during the pendency of the present proceedings and the same having been assailed by the petitioner in WP(C) No.1208/2022 and the PIL petitioner. There are no materials before this Court to suggest that the procedure prescribed by law has not or will not be adopted by the State Government. Such presumption at this stage is not called for in the absence of specific materials to suggest such eventualities. In that view of the matter, the judgment pressed into service by the learned senior counsel that executive orders of the Government cannot

override the mandate of Rules framed under Article 309 cannot be made applicable to the facts of the present cases. At the cost of repetition, it must be mentioned that the writ petitions being WP(C) No.28/2021, WP(C) No.5248/2020 and WP(C) No.5169/2020 were filed before this Court challenging the amendments made to the Assam Public Services Combined Competitive Examination Rules, 1989, which had the effect of granting exemptions from the language papers to the candidates belonging to six districts in the State of Assam, namely, Dima Hasao, Karbi Anglong, West Karbi Anglong, Cachar, Hailakandi and Karimganj by two amendments. The grievances ventilated before this Court by the said petitioners are that these exemptions granted to the candidates of the six districts had the effect of creating a discrimination between candidates belonging to other districts and who are excluded from the exemptions granted inasmuch as the candidates from the other districts unlike the petitioners in WP(C) No.28/2021, WP(C) No.5248/2020 and WP(C) No.5169/2020 would be required to appear for language papers and which were qualifying in nature, namely, if they were not successful in clearing those language papers they would not be successful to move to the next round of the selection process, as compared to the candidates who are given the benefits of the exemption and who are not required to appear for these language papers. These petitioners urged before this Court that such exemptions restricted to certain districts of the State created an

imbalance and had the effect of creating a class within a class and, therefore, being discriminatory in nature were liable to be struck down. During the course of hearing before this Court, the learned Advocate General for the State informed this Court that taking note of the grievances ventilated by the writ petitioners, the State Cabinet has deliberated on the issue and has taken a policy decision to grant exemptions to all the candidates appearing for the ensuing APSC Combined Competitive Examinations. It was at this stage that PIL No.83/2021 and much later WP(C) No.1208/2021 came to be filed before this Court. It may be mentioned here that the executive authority of the State Government is co-extensive with that of the legislative power of the State legislature. Even in the absence of any legislation, the State Government has the competence to issue executive orders under Article 162 of the Constitution on matters over which the State legislature has the power to legislate. The submissions of Mr. K.N. Choudhury, learned senior counsel that the Cabinet decision being a decision in exercise of the powers of the State under Article 162 of the Constitution and that it cannot override the prescription of the Recruitment Rules framed under Article 309 of the Constitution, in the facts and circumstances of the case, therefore, cannot be accepted.

In the cases in hand, the State Cabinet in its meeting held on 24.11.2021 has taken a policy decision of granting equal exemption to all candidates and, therefore,

as such there is no violence to the existing Rules and hence the judgment of **B.N. Nagrajan** (supra) would not be applicable to the present case.

**144.** The judgment of the Apex Court rendered in **Pranjal Kumar Sarma** (supra) has been referred to by Mr. K.N. Choudhury, learned senior counsel to contend that the norms that existed on the date of the selection process will control the selection and any alteration to the norms or procedure would not affect the ongoing process, unless the new Rules are given retrospective effect.

**145.** The issue involved in the said case relates to the selection and recruitment of Assistant Engineers in the Water Resources Department of Assam for which advertisement dated 21.12.2018 was issued by APSC. At the relevant point in time, the Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2010 was in force. The said Rules came to be repealed and was replaced by a set of new Rules, namely, The Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2019. The following portion of Clause 12.2 which was incorporated with effect from 01.04.2019, under the 2019 Procedure, was struck down by the High Court.

*".....and any proceeding in relation to interviews, selections or competitive examination pending on the date of commencement of these Procedures may be continued and completed in accordance with the provisions of the Rules in force prior to such commencement."*

**146.** The Apex Court after considering the matter in its entirety held as under:

*"17. If the direction in the impugned judgment of the High Court is to be followed for conducting the next segment of the selection, for the single recruitment process the candidates will be evaluated by two different sets of procedure i.e. the 2010 Rules and the 2019 Procedure and such dual norms must not in our opinion, govern the ongoing recruitment process.*

*18. In view of the foregoing, we are persuaded to hold that the recruitment process initiated by the APSC through the advertisement dated 21.12.2018 for the 65 posts of Assistant Engineer (Civil), of the Water Resources Department should be finalised under the 2010 Rules. Consequently, the direction issued for application of the 2019 Procedure in the impugned judgment is found to be not merited and the same is accordingly interfered. The appeal stands allowed by permitting the APSC to complete the process of selection for the advertised posts, by following the 2010 Rules.*

**147.** This judgment does not come to the aid of the petitioners, inasmuch as, the Apex Court has held that if the direction in the impugned judgment of the High Court is to be followed for conducting the next segment of the selection, for the single recruitment process, the candidates will be evaluated by two different sets of procedure, i.e. the 2010 Rules and the 2019 Procedure, and such dual norms in the opinion of the Apex Court, should not govern the said recruitment process. Further as discussed above, the petitioners are not aggrieved parties. The PIL petitioner and the petitioner in WP(C) No.1208/2022 are not candidates who had appeared in the ensuing Assam Public Services Combined Competitive Examination, 2020 and, therefore, no prejudice is caused to them. As such the said judgment in the facts of the present cases, does not come to the aid of the petitioners



who are represented by senior counsel Mr. K.N. Choudhury.

**148.** In respect of the contentions of the learned senior counsel that the policy decision taken by the Cabinet by order dated 24.11.2021 being violative of Articles 29 and 30, the learned senior counsel relies upon the ratio rendered in the judgment of the Apex Court in ***English Medium Students Parents Association*** (supra). The learned senior counsel submits that in view of the mandate of the people resulting in the Assamese Language Learning Act, 2020, the State has already brought in a law to ensure that the students of the primary schools should be taught in their mother tongue which is either Assamese, Bengali or Bodo in their respective areas as the case may be. Under such circumstances, the impugned Cabinet decision granting exemption to the qualifying language Paper 'A', i.e. Assamese/Bengali/Bodo as well as English language papers run contrary to the will of the people as the same appears to be without any reasonable basis.

This judgment is relied upon by the learned senior counsel in support of his contentions that medium of instruction in the mother tongue is in consonance with Article 350(A) of the Constitution and the same does not offend the rights of the linguistic minorities under Articles 29 and 30. The ratio of this judgment does not come to the aid of the petitioners inasmuch as the issue in the present proceedings are with regard to the selection and recruitment into the State Civil Services. The question

before this Court does not relate to implementation of the medium of instruction in educational institutions. As such, the ratio of the judgment cannot be considered to be applicable to the facts of this case.

He also relies upon the Division Bench judgment of the Allahabad High Court in the case of **Sunil K.R. Sahastrabudhey** (supra), wherein it was held that there is no fundamental right to be taught in any particular language. In view of the discussions made above, the judgment of the Allahabad High Court referred to by Mr. K.N. Choudhury, learned senior counsel is also not applicable to the facts of the present cases.

**149.** Reliance is also placed by the learned senior counsel on the judgment of the Apex Court in **DAV College Etc.** (supra) to contend that a linguistic minority for the purposes of Article 30(1) is one which must at least have a separate spoken language.

The judgment of the Apex Court in **Usha Mehta** (supra) is referred to by the learned senior counsel to contend that Articles 29 and 30 cannot be construed to contend a negative right to exclude the learning of regional language. Referring to the ratio laid down in the judgment, it is contended that any particular State can validly take a policy decision to compulsorily teach its regional language, the same would not be violative of Articles 29 and 30. Reasonable regulations can be imposed on educational institutions for protecting the larger interest of the State and the nation. Reliance is also placed upon **Ahmedabad**

**St. Xavier's College Society** (supra), where the Apex Court was considering the rights guaranteed under Articles 29 and 30 of the Constitution in respect of the rights of the society, namely, the St. Xavier's College of Arts and College in Ahmedabad. It is submitted by the learned senior counsel that when the State legislature has enacted the Assam Official Language Act, 1960 as well as the Assamese Language Learning Act, 2020, the intention of the State is abundantly clear that it intends to implement the Assamese language in the State. The learned senior counsel strenuously urged that the impugned Cabinet decision runs contrary to such mandate of the State and, therefore, the same needs to be interfered with and set aside.

As have been discussed above, in the present proceedings, the issue urged before this Court pertains to the recruitment process adopted by the State by granting exemptions to the language papers. The judgments relied upon in support of the contentions raised by the learned senior counsel pertain to question of conserving local language and culture which, however, is not the issue which confronts this Court in the present proceedings. Accordingly, the judgments referred to and relied upon by Mr. K.N. Choudhury, learned senior counsel also have no application to the issues raised before this Court in the present proceedings.

**150.** The judgment of the Apex Court in **Jagdev Singh Sidhanti** (supra) is heavily relied upon by the learned senior counsel to contend that espousing cause of

particular language and making promises or asking people to protest against the Government in respect of its language policy is not corrupt practice within the meaning of Section 123(3) of the Act. The learned senior counsel in support of his contentions that the cause sought to be espoused by the PIL petitioner seeking a mandamus from this Court directing the State to withdraw the exemptions granted by way of the Cabinet decision dated 24.11.2021 is in respect of conserving the Assamese language and culture and such cause espoused by the PIL petitioner is permissible in law and, therefore, he cannot be said not to have any locus to raise such issues before the Court in respect of conservation of Assamese language and culture.

In support of his contentions that the petitioners have the locus to challenge the Cabinet decision, reliance is also placed on the judgment of the Apex Court in ***Sarbananda Sonowal*** (supra) in which the constitutional validity of the IMDT Act was questioned before the Apex Court. Referring to the said judgment, it is contended that in so far as the locus and maintainability of the writ petition is concerned, the Apex Court held that where any Act made by the legislature has disastrous effect on the nation or the Act is unconstitutional, any citizen is entitled to bring to the notice of the Supreme Court by filing the petition under Article 32 of the Constitution of India.

Similarly, the learned senior counsel also relies on the judgment of the Apex Court in ***Assam Sanmilita Mahasangha*** (supra). The petitioners rely on the

judgment of the Apex Court in **Namit Sharma** (supra), to contend that the right to preserve one's language and culture is protected under Articles 29 and 30 of the Constitution of India and, therefore, no prejudice needs to be proved where fundamental right is breached. A law which violates fundamental right is void.

There can be no quarrel with the proposition which is universally accepted in Courts across the country. However, the aforesaid judgments although relied upon have no application in the context of the facts and circumstances of the present proceedings.

**151.** So far as the ratio of the judgment of the Apex Court in **Namit Sharma** (supra) is concerned, there is no quarrel with the proposition laid down by the Apex Court therein but the reference to the said judgment, in the facts and the circumstances of the cases, does not come to the aid of the learned senior counsel for the petitioners.

Reference is made to the judgment of the Apex Court in **Delhi Development Authority** (supra), which is relied upon to contend that reasonableness and fairness is the heart and soul of Article 14 and the principles reiterated regarding permissibility, scope and judicial review. On the facts involved in the present case, the judgment referred to above will also have no application and cannot come to the aid of the petitioners.

**152.** The judgment of the Apex Court in **Dr. Jagadish Saran** (supra) pertains to reservations in respect of

medical admissions. The challenge made before the Apex Court was the Constitutionality of reservation of seats or quota of local candidates in professional courses.

In the facts of the present case, as discussed above, the judgments relied upon by the learned senior counsel have no application.

**153.** The judgment of the Apex Court in ***Sudhansu Sekhar Misra*** (supra) has been relied upon by the learned senior counsel for the petitioner to contend that a decision is to be taken to be an authority for what it actually decides. What is of essence in a decision is its ratio and not every observation found therein or not what logically follows from the various observation made in it.

There can be no quarrel with the proposition which is universally accepted in Courts across the country. However, the said judgment although relied upon has no application in the context of the facts and circumstances of the present proceedings.

**154.** The judgment of the Co-ordinate Bench of this Court rendered in ***WP(C) No.4598/2010 (Smti. Kumari Arti -Vs- State of Assam & Ors.)***, which is relied upon by the learned senior counsel for the petitioners is a decision of this Court rendered in a challenge made to the Assam Judicial Service Grade-III where the question was the requirement of language paper in Assamese under the said Rules. A Coordinate Bench of this Court upheld the requirement and dispelled the challenge made by the

petitioners therein. The learned senior counsel has pressed into service the ratio of the judgment to contend that the exemption granted by the Cabinet decision dated 24.11.2021 is totally opposed to the public policy inasmuch as even in judicial service under the State, the Coordinate Bench of this Court has upheld the requirement of qualifying in the Assamese language during the selection of Judicial Officer Grade-III.

In the context of the facts and circumstances in the present proceedings, this judgment is not applicable inasmuch as a State Judicial Officer is mandatorily required to learn the local language as judicial proceedings in some cases in the State are required to be conducted in the local language of the region. Evidences by and large in most cases are recorded in the local language for the benefit of the litigants. But in the context of civil servants, the rigours of learning the local language as required for Judicial Officers would not be applicable to the same degree. Besides as discussed above, the Assam Departmental Examinations Rules, 1968 prescribes that pursuant to selection of the civil servants, they are required to undergo training and appear and successfully clear, amongst others, language papers as prescribed under the said Rules. As such, the comparison sought to be drawn between the Judicial Officer Grade-III and a civil servant under the State of Assam in respect of the requirement of learning the local language cannot be accepted. In that view of the

matter, ratio of the judgment of a Coordinate Bench cannot be applied in the facts of the case.

**155.** So far as the submissions made by Mr. V. Rajkhowa, who represents some of the candidates from the Hill Districts of Dima Hasao and who are arrayed as respondents No.11 to 17 and 19 to 21 is concerned, it is seen that they are the beneficiaries of the exemption granted by the Assam Public Services Combined Competitive Examination (Amendment) Rules, 2019. They are also not affected by the exemptions granted to the candidates belonging to the three districts of Barak Valley by way of the subsequent amendment, i.e. Assam Public Services Combined Competitive Examination (Amendment) Rules, 2020. However, they questioned the said exemptions granted to the candidates of Barak Valley as being unconstitutional by referring to the provisions of the Assam Official Languages Act, 1960 as well as the Assamese Language Learning Act, 2020. Considering the fact that the candidates of the Hill Districts are beneficiaries of the exemptions granted by the 2019 Amendment Rules, the decision to grant exemption to the candidates of Barak Valley Districts by the State of Assam has not been specifically questioned or challenged by the said candidates of the Hill Districts. These candidates impleaded themselves as party respondents No.11 to 17 and 19 to 21 in WP(C) No.28/2021 where the challenge made in the said writ petition *inter alia* in respect of the exemptions granted by the State of Assam to the



candidates from the Hill Districts. As such, the said respondents having not challenged the exemptions granted to the candidates from the Barak Valley Districts, their contentions questioning the said exemption granted to the candidates from Barak Valley need not be considered at this stage. It is open for them to challenge the said exemptions granted in a separate proceeding, if so advised.

**156.** In so far as the challenge made by the petitioners in WP(C) No.5248/2020 and WP(C) No.28/2021 are concerned, since they have failed to clear the preliminary examination even the benefit granted by the said Cabinet decision cannot be availed of by the said petitioners at this stage. In so far as the writ petitioner in WP(C) No.5169/2020 is concerned, in view of the alternative prayer made in his writ petition having been answered by way of the Cabinet decision, no further grievance arises in case of the said petitioner.

**157.** In totality of the facts, as discussed hereinabove, this Court has come to the conclusion that public interest litigation in service matter is not maintainable. Similarly it is also worthwhile to note that the writ petitioner of WP(C) No.1208/2022 is not a candidate but he has posed himself to be an aspirant and thus he is not affected by the decision taken by the State Government to give exemption to all candidates who have appeared in CCE pursuant to the advertisement dated 08.09.2020. None of the

candidates who have appeared have come forward with a challenge. Even at the cost of repetition, it deserves to be noted that prior to 2019 amendment in the Rules, no instance has been shown by the petitioners that those candidates appointed without appearing in any qualifying language paper in recruitments done prior to 2019 and 2020 amendment Rules have defaulted in discharging their public duties as civil servants under the State Government as they did not appear in any of the language papers.

**158.** As stated hereinabove, before confirmation the successful candidates recruited by the respondent authorities shall have to undergo training and departmental examination as provided under Rule 19 thereof. The decision taken by the State Government in granting exemption is in no way violative of the provisions of the Assam Official Language Act, 1960. The Assamese Language Learning Act, 2020 appears in different sphere.

**159.** Thus, WP(C) No.5248/2020; WP(C) No.28/2021; PIL No.83/2021 and WP(C) No.1208/2022 are hereby dismissed. As far as the alternative prayer prayed for in WP(C) No.5169/2020 is concerned, the same stands exhausted as the exemption is granted by the State Government.

**160.** In light of the view taken by this Court, the APSC is at liberty to declare the final results of Combined Competitive (Mains) Examination, 2020 (Written + Interview) and complete the recruitment process as prayed

for in I.A. (Civil) No.1572/2022. The interlocutory application stands allowed accordingly.

**161.** In facts of these cases, parties to bear their own costs.

**JUDGE**

**CHIEF JUSTICE**

**Comparing Assistant**

*Mukut/Sandipan*