

GAHC010017492023



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

Case No. : WP(C)/646/2023

MUSTAFIJUR RAHMAN
S/O KHALILUR RAHMAN, R/O VILL-HATIJANA, MOUZA-GHILAMARI, P.O.-
JOSHIHATI, P.S.-HOWLY, DIST-BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, REVENUE AND DISASTER MANAGEMENT DEPARTMENT,
DISPUR, GUWAHATI-6

2:THE DEPUTY COMMISSIONER
BARPETA
P.O. AND DIST-BARPETA
ASSAM
PIN-781301

3:THE ADDL. DEPUTY COMMISSIONER
BARPETA
P.O. AND DIST-BARPETA
ASSAM
PIN-781301

4:THE CIRCLE OFFICER
BARPETA
P.O. AND DIST-BARPETA
ASSAM
PIN-781301

5:SHAHA ALOM KHAN
S/O RAMJAN KHAN
R/O VILL-HATIJAN

P.O.-JOSHIHATI
DIST-BARPETA
ASSAM
PIN-78131

Advocate for the Petitioner : MR. A R SIKDAR

Advocate for the Respondent : SC, REVENUE

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

08-09-2023

Heard Shri A. R. Sikdar, learned counsel for the petitioner. Also heard Shri S. Dutta, learned Standing Counsel, Revenue Department, Shri D. Borah, learned State Counsel as well as Shri A. M. Ahmed, learned counsel for the respondent no. 5.

2. Considering the subject matter in dispute and the fact that pleadings have been exchanged, this writ petition is taken up for disposal at the admission stage.

3. The instant petition has been filed with a grievance of not inviting the petitioner for appearing in the interview for the post of Gaonburah of charge No. 25, village-Hatijana under Barpeta Revenue Circle. The petitioner has alleged that the impugned action is in violation of the Gazette Notification dated 27.10.2022 whereby the minimum age for Gaonburah was stipulated to be 25 years. Shri Sikdar, the learned counsel has submitted that the minimum age is being changed from time to time only to suit certain vested interested candidates. He further submits that when the relevant Executive Instruction No. 162 of the Assam Land and Revenue Regulation does not stipulate the age, the existing age should have been allowed to be continued. The learned counsel has also referred to an earlier recruitment process vide advertisement dated 07.09.2019 in which as per Clause-2, the minimum age was stipulated to be 25

years. He further submits that there are materials to show that in another recruitment process vide an advertisement dated 19.07.2019, the age was reduced from 35 years to 25 years.

4. The learned counsel for the petitioner has submitted that the petitioner had earlier filed a writ petition being WP(C) No. 6091/2022 with regard to the stipulation of minimum 30 years instead of 25 years as per the notification dated 19.07.2022. The said writ petition was disposed of by this Court vide order dated 19.09.2022 directing to take a decision in the matter of minimum age for the post of Gaonburah. The learned counsel for the petitioner submits that no specific exercise was carried out in compliance of the said judgment *qua* the petitioner. He accordingly submits that a direction be issued to reconsider the entire matter by having the candidature of the petitioner in the recruitment process.

5. *Per contra*, Shri S. Dutta, learned Standing Counsel of the Department has submitted that after the order dated 19.09.2022, a corrigendum has been issued on 27.10.2022 with regard to the earlier Gazette Notification dated 26.08.2021. The learned Standing Counsel further submits that the corrigendum not being a subject matter of challenge, the petitioner is not entitled to any relief.

6. The aforesaid submission of the learned Standing Counsel is also endorsed by the learned State Counsel, Shri D. Borah, who additionally submits that a cut-off date is not liable to be interfered with on mere asking unless a case of gross illegality or *mala fide* is made out.

7. Shri A. M. Ahmed, learned counsel for the respondent no. 5 has submitted that the affidavit-in-opposition has been filed opposing the case projected by the petitioner. He submits that the procedure has been followed in accordance with law and therefore the present challenge is without any basis.

8. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

9. The grievance of the petitioner is with regard to not inviting him for the interview for the post of Gaonburah. The prescribed minimum age is 30 years which was notified vide Gazette Notification dated 26.08.2021. Though the learned Standing Counsel has referred to a corrigendum dated 27.10.2021, in the opinion of this Court, the said corrigendum will not act as a defence as the same has nothing to do with the minimum age and has only clarified the earlier Gazette Notification dated 26.08.2021 wherein "35" years was written in the context of Executive Instructions 162 which was corrected to mean "25" years.

10. Be that as it may, even discarding the aforesaid defence, as per the Gazette Notification dated 26.08.2021, there is no dispute that the minimum age has been fixed as 30 years and unless there is a specific challenge to the said Gazette Notification dated 26.08.2021, the present relief perhaps cannot be considered or granted.

11. In that view of the matter, this Court is of the opinion that no relief can be granted in the present writ petition, which is accordingly dismissed.

12. The petitioner is however at liberty to challenge the Gazette Notification dated 26.08.2021, if so advised.

JUDGE

Comparing Assistant