

GAHC010025722018



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

Case No. : WA/94/2018

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE COMMISSIONER AND SECRETRY TO THE
GOVERNMENT OF ASSAM (ELEMENTARY) DEPARTMENT ,DISPUR,
GUWAHATI -6

2: THE DIRECTOR OF ELEMENTARY EDUCATION
KAHILIPARA
GUWAHAT

VERSUS

JERINA AHMED
W/O SHARIFUL ANAM
R/O HOWLY TOWN ,WARD NO-4,
P.O. -HOWLY ,DIST. BARPETA (ASSAM) PIN

Advocate for the appellants : MR. R. MAZUMDAR, SC, EDUCATION

Advocate for the Respondent : MR. R ALI

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 17-02-2023

This intra-court appeal is directed against the judgment/final order dated 08.06.2017, passed by the learned Single Bench in WP(C) 5456/2016 whereby, the

writ petition(c) filed by the respondent was accepted with the following directions:

“21. Viewing the matter in that perspective, rejection of the candidature of the petitioner is considered to be wholly inequitable and therefore, the writ petition is disposed of directing the respondent No. 2 to consider appointment of the petitioner in Azad High School or in any other vacant post of Assistant Teacher in any other school in the district of Barpeta within a period of one month from the date of receipt of a certified copy of this order. However, though the petitioner had prayed that she may be granted the benefits with effect from 27.6.2016, which is the date of appointment of the other selected candidates, I think in the circumstances of the case, ends of justice does not require passing of an order to that effect.
22. Accordingly, the writ petition stands allowed with the aforesaid direction and observation.”

2. Short controversy, which is raised for consideration of this court in this appeal is whether, age relaxation granted to the respondent/writ petitioner during the recruitment process undertaken by the Director of Elementary Education, Assam, in the year 2011-2012 for the post of Teacher (Contractual Basis), Elementary Education School, could be considered as operating in the recruitment process for Assistant Teacher in the selected government/provincialised L.P. Schools under the Director of Elementary Education, Assam.

3. We have heard and considered the submissions advanced by the learned counsel for the parties and have gone through the impugned judgment and the records. We find that the writ petitioner was selected and appointed as an Assistant Teacher on contractual basis pursuant to a selection process undertaken by the respondents in the year 2011-2012. She was granted age relaxation in this selection process and an Age Relaxation Code was issued to her by the Director of Elementary Education, Assam. She cleared the Teachers Eligibility Test (TET) in the year 2012 securing 66% marks. The advertisement in question was issued by the Director of Elementary Education, Assam, on 30.10.2014 inviting online applications in the prescribed format from TET qualified candidates for filling up of total 8193 vacancies of Assistant Teachers in the selected government/provincialised L.P. Schools. The writ petitioner having acquired the TET qualification, applied in pursuance to the above

advertisement for the Barpeta District. As per the combined list published on merit basis for all districts, the respondent/writ petitioner secured 209.53 marks in the examination and her name surfaced at Sl. No.137 of the merit list. However, when the select list for Barpeta District was issued on 25.06.2016, name of the writ petitioner was not reflected therein even though the candidates who had secured 110.73 marks were shown selected. Accordingly, the writ petition came to be filed wherein the respondents were put to notice. In the reply affidavit filed by the respondent no.2, i.e. Director of Elementary Education, Assam, it was stated that at the time of submission of the online application the writ petitioner's age was 40 years 10 months and, thus, she was over age as she had crossed the age limit of 38 years as on 01.01.2014, as prescribed in the advertisement notification. It was further stated that the advertisement stipulated for condonation of over age, provided that prayer was made in the prescribed format and if the authorities were satisfied, Age Condonation Code was to be issued. The Age Condonation Code issued to the writ petitioner for the selection process undertaken in the year 2011-2012 was not considered valid for the recruitment process held in 2014 and, thus, the writ petitioner was not selected despite standing in merit.

4. The learned Single Bench, considered the criterion No. 5 of the recruitment notification and held that the application of the writ petitioner was not rejected on scrutiny. On the contrary, she came out successful and her name figured in the merit list published by the authorities for Barpeta District. Reference was given to the Age Condonation Approval Code issued by the Director of Elementary Education for the recruitment process undertaken in the year 2011-2012 wherein, an endorsement was made that the Age Condonation Approval Code was to be saved for future references. This Approval Code number was mentioned by the writ petitioner in the application form. It was observed that there was no indication in criterion no. 1 of the recruitment notification that a fresh age condonation application would have to be filed by the candidate who had been granted age condonation earlier and that the writ petitioner

was allowed to appear in interview after scrutiny of documents. The learned Single Bench held that there was an element of ambiguity and the writ petitioner did not suppress any material nor had she taken any undue advantage and accordingly, she was entitled to equitable relief.

5. It is an admitted position from record that name of the respondent/writ petitioner appeared in the merit list issued for the Barpeta district on basis of the marks secured by her in the examination. The Age Condonation Code provided to the writ petitioner in the selection process undertaken for the year 2011-12 bears an endorsement that the same was to be saved for future references. It is not in dispute that the respondent after relaxation, was within the age limit in the subject recruitment process. There was no stipulation in criterion no.1 of the recruitment notification that candidates holding the Age Relaxation Code issued earlier would be required to procure a fresh age relaxation in the recruitment process 2014, the respondent/writ petitioner was well within her rights to stake a claim for selection on the basis of the Code provided to her by the very same authority in the recruitment process 2011-12. The application form of the respondent/writ petitioner was not rejected during scrutiny of the documents. Apparently thus, action of the respondent authorities in rejecting the candidature of the respondent/writ petitioner on the ground that she did not acquire a fresh Age Relaxation Code bears an apparent element of ambiguity entitling the respondent/writ petitioner to seek equitable relief.

6. In this background, we are of the firm view that the learned Single Bench was perfectly justified in granting equitable relief to the respondent/writ petitioner as she secured more marks than the last candidate selected against the advertised posts.

7. In the wake of the discussion made hereinabove, we are not inclined to interfere with the impugned order. However, it is made clear that the respondent's (writ petitioner) name shall be shown at the bottom of the seniority list just below the last selected candidate. She shall be entitled to notional benefits from the date of

issuance of the final select list till the date she joins the post.

8. The appeal is disposed of in these terms. No orders as to cost.

JUDGE

CHIEF JUSTICE

Comparing Assistant