

GAHC010048642017



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

**Case No. : Review.Pet./175/2017**

SMT JYOTSNA DEVI  
D/O LATE GAGAN NATH,  
VILL. NALBARI GOAN, CHATIA,  
P.O. CHATIA, DIST. SONITPUR, ASSAM.

VERSUS

1: THE STATE OF ASSAM REPRESENTED BY THE COMMISSIONER TO THE  
GOVT. OF ASSAM, EDUCATION DEPTT., DISPUR, GUWAHATI-6

2: THE DIRECTOR OF SECONDARY EDUCATION  
ASSAM KAHILIPARA GUWAHATI 781019

3: THE GOVERNING BODY BEHALI JUNIOR COLLEGE  
P.O. BORGANG DIST. SONITPUR ASSAM.

4: THE PRINCIPAL BEHALI JUNIOR COLLEGE  
P.O. BORGANG DIST. SONITPUR ASSAM.

5: SMTI BARNALI MAHANTA  
W/O SHRI GAUTAM PRASAD TALUKDAR  
KUSHAL KONWAR PATH KALYANPUR NEAR SDO C OFFICE  
BISWANATH CHARIALI DIST. SONITPUR PIN CODE-784176 ASSAM

For the Petitioner : Mr. M. Nath, Senior Advocate, assisted by Mr. A.  
Bhattacharjee, Advocate.

For the Respondents : Mr. R. Mazumdar, Standing Counsel, Education  
(Secondary) Department.  
: Mr. S.S. Goswami, Advocate for respondent No.5.

**- B E F O R E -**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MRs. JUSTICE MITALI THAKURIA**

**24.05.2023**

**[Sandeep Mehta, C.J.]**

The instant petition for review has been filed by the petitioner herein seeking re-consideration/review of the order dated 24.02.2012 passed by this Court, whereby Writ Appeal No.262/2011 filed by the respondent No.5 was accepted, thereby reversing the order dated 30.03.2010 passed in WP(C) No.1707/2007 negating the challenge laid by the respondent No.5 to the selection and appointment of the review applicant as Lecturer of History in Behali College (Junior), Borgang, Sonitpur. While accepting the appeal of the respondent No.5, the learned Division Bench held that the review applicant, who was about 39 years of age on the date of advertisement, i.e. 28.02.2006, had crossed the upper age ceiling for entry into Government service, i.e. 37 years, and hence, she could not have been appointed on the post of Lecturer in the College.

The said order was carried by the review applicant to Hon'ble the Supreme Court by filing Special Leave to Appeal (Civil) No.16230/2012, which was dismissed on 28.08.2017 in the following terms:-

*“We see no reason to interfere with the impugned judgment and order passed by the High Court. The special leave petition is, accordingly, dismissed.*

*However, liberty is granted to the petitioner to approach the High Court by filing Review Petition.*

*There shall be status quo, as it exists today, on the employment of the petitioner for a period of 12 weeks.*

*If the petitioner fails before the High Court, liberty is also granted to the petitioner to approach this Court once over again challenging the main order as well as the order passed in the Review Petition.”*

Taking recourse to the liberty granted by the Hon'ble the Supreme Court, as above, the instant application has been preferred by the applicant.

Mr. M. Nath, learned senior counsel representing the review applicant vehemently and fervently contended that no age limit was prescribed in the advertisement dated 28.02.2006 issued by the College soliciting candidature for the post of Lecturer of History. Thus, the review applicant *bonafide* applied and participated in the selection process, whereafter she was placed at merit position No.1, whereas the respondent No.5 in the present petition was placed at merit position No.2.

Even though the Assam Government Aided Junior College Management Rules, 2001 (hereinafter referred to as the "2001 Rule") did not prescribe any upper age limit for appointment, by way of abundant caution, the review applicant applied for and got an age relaxation order from the State Government vide the letter dated 15.10.2006 and immediately thereafter, as per her merit position, she joined the services as a Lecturer of History in the College and had been continuing as such. Mr. Nath thus, urged that as upper age limit was neither indicated in the Rule of 2001 nor in the selection advertisement, the review applicant *bonafide* applied for the post of Lecturer of History and was selected on the basis of her higher standing in merit. She has been working on the post for the last nearly 18 years. Thus, as per Mr. Nath, if the review applicant is denied the opportunity of continuing on the post of Lecturer despite being selected as per standing in the merit, she would lose all avenues of earning livelihood. He thus, implored the Court to accept the application and review the order dated 24.02.2012 with suitable modifications.

Per contra, Mr. R. Mazumdar, learned standing counsel, Education

(Secondary) Department and Mr. S.S. Goswami, learned counsel representing the respondent No.5, pointed out that the Hon'ble Supreme Court has dismissed the SLP of the review applicant with the observation that there was no reason to interfere with the impugned judgment & order passed by the High Court. In this view, there is no scope for this Court to review the order dated 24.02.2012 passed in Writ Appeal No.262/2011, which has received imprimatur of the Hon'ble the Supreme Court. They further urged that there is no dispute that at the relevant point of time, the upper age ceiling for entry into Government service was 37 years and hence, the review applicant having crossed the upper age was barred from applying for the post.

We have given our thoughtful consideration to the arguments advanced at bar and have gone through the material available on record.

Rule 19(iv) of the 2001 Rules clearly postulates that the Government Body of a Junior College would be authorized to appoint persons in connection with functions of the institutions in terms of the Rules framed by the Government and the Assam Higher Secondary Education Council in that regard. As, the Rules applicable to entry into Government service prescribe the upper age limit of 37 years, there cannot be any quarrel on the proposition that the review applicant having crossed the upper age limit of 37 years as on the date of the advertisement, was not entitled to apply for the post. The subsequent relaxation of age by the State Government would not, in any manner, validate the candidature of the review applicant, because the criterion of age to be applied would be relevant as on the date of issuance of the advertisement and the applicant being over-aged, could not have applied for the post.

Hence, we find no infirmity in the order dated 24.02.2012 passed in Writ Appeal No.262/2011 so as to review the same. Accordingly, the application for review fails and is dismissed as the same lacks merit.

**JUDGE**

**CHIEF JUSTICE**

**Comparing Assistant**