

GAHC010050362023



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

Case No. : WP(C)/1289/2023

DHRUPAD SARMA
S/O- LATE BIMAL SARMA, R/O- VILL.- BAKHARAPARA PART-I, DIST.
BONGAIGAON, ASSAM, PIN- 783380.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM, HIGHER EDUCATION (TECHNICAL) DEPARTMENT, HAVING HIS
OFFICE AT ASSAM SECRETARIAT, DISPUR, GUWAHATI, DIST. KAMRUP
METRO, ASSAM, PIN- 781006.

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
HIGHER EDUCATION (TECHNICAL) DEPARTMENT
HAVING HIS OFFICE AT ASSAM SECRETARIAT
DISPUR
GUWAHATI
DIST. KAMRUP 9M)
ASSAM
PIN- 781006.

3:THE DIRECTOR OF TECHNICAL EDUCATION
ASSAM
HAVING HIS OFFICE AT KAHILIPARA MAIN ROAD
KAHILIPARA
GUWAHATI
DIST. KAMRUP (METRO)
ASSAM
PIN- 781019.

4:THE ASSAM ENGINEERING SERVICE RECRUITMENT BOARD

REPRESENTED BY ITS CHAIRMAN
HAVING HIS OFFICE AT TEXTILE INSTITUTE CAMPUS
AMBARI
GUWAHATI
DIST. KAMRUP(M)
ASSAM
PIN- 781001

Advocate for the Petitioner : MR. H. BURAGOHAIN

Advocate for the Respondent : SC, HIGHER EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

10-03-2023

Heard Mr. H. Buragohain, learned counsel for the petitioner and Mr. S. Das, learned Standing counsel, Higher Education Department, Assam for the respondent Nos. 1 to 4.

The Chairman of the Assam Engineering Service Recruitment Board, respondent No. 4 on 21.02.2023 issued an advertisement for filling up of 61 Nos. of vacant posts of Assistant Professors in Government Engineering Colleges in the State of Assam, including 15 Nos. of posts of Assistant Professors in Mechanical Engineering, out of which six posts are earmarked for "un-reserved" category, two for "women" under "un-reserved" category; six for "OBC/MOBC" category, two for "women" under "OBC"/MOBC" category; one for "Scheduled Caste" category; one for "Scheduled Tribes (Plains)" category and one for "Scheduled Tribes (Hills)" category.

The petitioner obtained his Master Degree in Mechanical Engineering and currently pursuing his Ph.D. Degree in the Mechanical Engineering Department at Jorhat Engineering College, Jorhat under Dibrugarh University. It is stated that since 06.09.2021 he is serving as an Assistant Professor on Part-time basis in the Mechanical Engineering Department of said Jorhat Engineering College under the Director of Technical Education, Assam.

Though the petitioner has the requisite eligibility for the post of Assistant Professor in Mechanical Engineering in the Government Engineering Colleges of Assam as advertised on 21.02.2023, but as provided in his duplicate Admit Card for the Class-X High School Leaving Certificate

Examination, 2000 issued by the authorities of the Board of Secondary Education, Assam on 01.08.2016, his date of birth is 01.12.1984 and as such, he has crossed the upper age limit of 38 years on 01.01.2023, just by one month, in terms of said advertisement dated 21.02.2023, noted above.

Therefore to condone his over age of one month enabling him to apply for the post of Assistant Professor in Mechanical Engineering in the Government Engineering Colleges of the State as advertisement on 21.02.2023, the petitioner on 02.03.2023 filed an application before the Principal Secretary to the Government of Assam in the Higher Education (Technical) Department, which is yet to be disposed of.

Since nothing progressed and the time was running out of hand, the petitioner has filed this writ petition praying amongst others for direction to the respondent authorities to condone his overage of one month so that he can participate in the selection process for the post of Assistant Professor in Mechanical Engineering in the Government Engineering Colleges of the State in terms of said advertisement dated 21.02.2023.

With regard to the power of the Government in relaxing the upper age limit for recruitment to the public post in connection with the affairs of the State, the petitioner has placed before the Court a copy of the Notification No. AAP.34/ 50/27 dated 03.05.1951 of the State Government available in the Handbook of General Circulars of Government of Assam (Blue Book) which reads as follows:

“General Rules for relaxation of Age Limits-

In pursuance of the provisions of Article 309 of the Constitution of India, the Governor of Assam is pleased to make the following general rules regarding relaxation of the age limit for recruitment to civil services or civil posts in connection with the affairs of the State of Assam—

- (1) *Notwithstanding anything to the contrary in rules regulating the maximum or minimum age of recruitment to a service or post in connection with the affairs of the State of Assam, the age limit may be relaxed in favour of any candidate or class or candidates only if (i) in cases in which the appointing authority is the Governor, or (ii) in other cases, the Head of the Department, considers this necessary in the interest of fair dealing or in the public interest.*
- (2) *In this rule ‘Head of Department’ means the authority who is declared to be the Head of the Department for the purpose of the Fundamental Rules and of the Subsidiary and Supplementary Rules made by the State Government, and includes a District and Sessions Judge.*
- (3) *In case in which recruitment is made through the Public Service Commission, the Commission shall be consulted before the rule is relaxed.”*

A Co-ordinate Bench of this Court in the case of *Pranab Kumar Deka and 36 others Vs. State of*

Assam and 25 others [WP(C) No. 845/2014 and other connected cases] vide common order dated 03.08.2015 have held that said Notification dated 03.05.1951 was issued by the Government of Assam in exercise of the power conferred under Article 309 of the Constitution of India and as such, it has a statutory force and it would continue to hold the field until the provision in that behalf is made by or under an Act of the appropriate Legislature.

The Assam Technical Education Service Rules, 1981, which is also a statutory Rule framed under Article 309 of the Constitution of India, regulates the recruitment and the conditions of service of the persons appointed to the Assam Technical Education Service including the post of Assistant Professor in the Government Engineering Colleges of the State.

Rule 7 of the said 1981 Rules relates to “the age for direct recruitment” which provides that — *a candidate for direct recruitment to a cadre of the service of Assistant Professor in Engineering Colleges of the State, the minimum age limit is 21 years and the maximum age limit is 38 years as on the first January of the year of recruitment with relaxation in case of candidates belonging to special categories like Scheduled Caste, Scheduled Tribes and any other category as laid down by the Government.”*

Rule 28 of said 1981 Rules provides for “relaxation” and stipulates that —*“Where the Government is satisfied that the operation of any of these rules causes under hardship in any particular case, it may, dispense with or relax the requirement of that rule to such an extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equi-table manner. Provided that the case of any person shall not be dealt with in any manner less favourable to him than that provided in these rules.”*

Mr.Buragohain, learned counsel for the petitioner, on specific instructions submitted that the Chairman of the Assam Engineering Service Recruitment Board by a corrigendum extended the date of filing up of application for the posts of Assistant Professors in Government Engineering Colleges, Assam advertised on 21.02.2023 upto 20.03.2023.

After hearing the learned counsels for the parties and considering the entire aspect of the matter, the petitioner is directed to submit a certified copy of this order along with the copy of this writ petition including the annexures appended thereto and a copy of his said representation dated 02.03.2023, with his detail address, telephone/mobile number and e-mail address etc. before the Principal Secretary to the Government of Assam in the Higher Education (Technical) Department, respondent No. 1, **on or before 14th March, 2023** obtaining necessary acknowledgment from the said authority in the regard.

In the event of filing such representation by the petitioner as noted above within the time so specified, the Principal Secretary to the Government of Assam in the Higher Education (Technical) Department, respondent No. 1, shall dispose of the said representation of the petitioner dated 02.03.2023 with a reasoned order **on or before 18th March, 2023**, considering his case with regard to relaxation of his upper age limit in accordance with law, following the relevant provisions of said Notification of the State Government dated 03.05.1951 and Rule 28 of the Assam Technical Education Service Rules, 1981, noted above, intimating the petitioner about the outcome of his said representation.

With above the observation and the directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant