

GAHC010084512023



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

**Case No. : WP(C)/2205/2023**

FARIDA KHANAM AKANDA  
W/O- MD. SAFIUR RAHMAN,  
R/O- VILLAGE- SHALKATI PATHER,  
P.O.- SHALKATI PATHER,  
P.S.- DHING, PIN- 782126,  
DISTRICT- NAGAON, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS.  
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,  
EDUCATION DEPARTMENT,  
DISPUR, GUWAHATI-6.  
2:DIRECTOR OF SECONDARY EDUCATION  
ASSAM  
KAHILIPARA  
GUWAHATI-19.  
3:DISTRICT LEVEL SELECTION COMMITTEE (DSC)  
NAGAON.  
4:INSPECTOR OF SCHOOL  
NAGAON DISTRICT CIRCLE  
DISTRICT- NAGAON  
ASSAM  
PIN- 782001

**Advocate for the Petitioner : MR H DAS**  
**Advocate for the Respondent : SC, SEC. EDU.**

**BEFORE**  
**HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

**ORDER**

**08.05.2023**

Heard Mr. H Das, learned counsel for the petitioner and Mr. SMT Chistie, learned Standing counsel, Department of School (Secondary) Education, Assam for all the official

respondent Nos. 1 to 4.

**2.** Petitioner passed Graduation in Arts in the year 1999 from the Gauhati University and has also obtained B.Ed. Degree in the year 2013 from the Gauhati University and presently, she is serving as an Assistant Teacher in Kasturba Gandhi Balika Vidyalaya, Batadrava, Nagaon on being selected by the District Mission Coordinator, Assam Sarba Siksha Abhijan, for which appointment order was issued to her by the said authority on 04.01.2018.

**3.** Pursuant to her said appointment, the petitioner on 12.01.2019 joined her service as an Assistant Teacher of Arts in said Kasturba Gandhi Balika Vidyalaya, Batadrava, District-Nagaon and is serving till date.

**4.** Moreover, the petitioner, who belongs to OBC category has also passed Assam Teacher Eligibility Test (TET) for Secondary Education in the subject of Hindi in the year 2016 as well as the Assamese Medium Secondary TET, in July, 2020.

**5.** The Director of Secondary Education, Assam on 28.12.2022 issued an Advertisement for filling up of altogether 7500 vacant posts of Graduate Teachers in (i) Arts, (ii) Science, (iii) Hindi and (iv) Sanskrit in different Provincialised Secondary Schools under the Directorate of Secondary Education, Assam in the Scale of Pay of Rs. 14,000/- to Rs. 70,000/- with Grade Pay of Rs. 8,700/- P.M., under Pay Band II and other allowances as admissible under the Rules.

**6.** In the said Advertisement dated 28.12.2022, under the heading "Other Criteria" at Clause-2 regarding age it is prescribed that the candidate should not be less than 18 years and not more than 40 years for Un-reserved category, 42 years for Ex-Serviceman category, 43 years for OBC/MOBC category and 45 years for SC/ST(P)/ST(H) category and 50 years for Persons with Disability (PwD) category as on 01.01.2022 as per the Government Office Memorandum No. ABP.6/2016/51 dated 02.09.2020 and subsequent Corrigendum No. ABP.6/2016/52 dated 20.02.2021, amongst others.

**7.** Moreover, in the said Advertisement dated 28.12.2022 under the heading "*Please Note*" at Clause-f it is provided that- "*application seeking condonation/relaxation of any criteria should be made to appropriate authority as per applicable norms at least 7 days prior to filing up of online applications*".

**8.** The DSE, Assam by Notice dated 14.02.2023 published in the newspaper notified that the provisions of online application will open from 12:00 O' clock at Mid Night of 12.02.2023 and the last date for submissions of online applications will end at 12:00 O' clock at Mid Night of 28.02.2023.

**9.** The petitioner earlier approached this Court in WP(C) No. 7020/2019 with regard to the advertisement issued earlier in the year 2019 for relaxation of her upper age. But as the petitioner approached the Court after the last date of submission of applications being 31.08.2019 with regard to the said advertisement of the year 2019, the Court by order dated 18.09.2019 passed in said WP(C) No. 7020/2019 directed the petitioners that in the event of any subsequent advertisement, if issued and if there be any issue relating to age bar, the petitioners may approach the competent authorities for relaxation of the same.

**10.** Accordingly, pursuant to said order dated 18.09.2019 passed in WP(C) No. 7020/2019, noted above, the petitioner on 12.01.2023 submitted an application before the Secretary to the Government of Assam in the Department of School Education stating that as she has crossed the upper age of 43 years as on 01.01.2022 in terms of the said advertisement dated 28.12.2022, and prayed for condonation of her upper age, enabling her to participate in the selection process for the post of Hindi Graduate Teacher as well Arts Graduate Teacher in Assamese Medium pertaining to the said Advertisement dated 28.12.2022 issued by the DSE, Assam.

**11.** Later, the petitioner preferred another writ petition being WP(C) No. 600/2023 for condonation of her upper age of 43 years and to dispose of her application dated 12.01.2023 and enabling her to submit forms on off line mode relaxing her upper age with regard to said advertisement dated 28.12.2022.

**12.** After hearing the learned counsels for the parties and considering the entire aspect of the matter, the Court by order dated 10.03.2023 disposed of said WP(C) No. 600/2023, directing the Secretary to the Government of Assam in the Department of School Education to dispose of the said representation of the petitioner dated 12.01.2023 following the provisions of the Notification No. AAP.34/50/27 dated 03.05.1951 regarding relaxation of age limit as provided by the State Government, within a period of 15 days from the date of receipt of

certified copy of the said order.

**13.** However, prior to passing of the said order dated 10.03.2023 in WP(C) No. 600/2023, the Secretary to the Government of Assam in the Department of School Education by the impugned order No. ASE.402/2022/Pt/346 dated 28.02.2023 rejected petitioner's said application dated 12.01.2023 regarding condonation of her over age.

**14.** The Advertisement dated 28.12.2022 for the post of Graduate Teacher in Provincialised Secondary Schools has been issued by the DSE, Assam in compliance of the provisions of the Assam Secondary Education (Provincialised Schools) Service Rules, 2018, a Statutory Rule under Article 309 of the Constitution of India that came into force w.e.f. 10.10.2019.

**15.** Rule 8 of the said 2018 Rules relates to recruitment to the post of Graduate Teacher, Post Graduate Teacher and selection procedure thereof.

**16.** Rule 9 of the said 2018 Rules relates to age of a candidate for direct recruitment to the service which provides that it shall be within the age limit prescribed by the Government Notification issued from time to time, provided that the upper age limit may be relaxed for the candidates belonging to the Schedule Caste and the Schedule Tribes as per Government order issued from time to time.

**17.** As per the provisions of Rule 8 of the said 2018 Rules, a post of Graduate Assistant Teacher is to be filled up by way of Direct Recruitment through advertisement and selection, on merits, as provided under the said 2018 Rules.

**18.** Schedule (II) (2) of the said 2018 Rules provides for Criteria for Selection of Graduate Teacher in Provincialised Secondary Schools of the State.

**19.** Rule 33 of the said 2018 Rules provides for relaxation, which reads as follows:

*“Where the Government is satisfied that operation of any of these rules leads to undue hardship in any particular case, it may, dispense with or relax the requirement of that rule to such extent and subject to such conditions as it may consider necessary dealing with the case in a just and equitable manner:*

*Provided that the case of any person shall not be dealt with any manner less favourable to him than provided in these rules”.*

**20.** A Coordinate Bench of this Court by common Judgment and Order dated 03.08.2015 passed in WP(C) 845/2014 (*Pranab Kumar Deka & 36 Ors. -Vs- the State of Assam & 25 Ors.*) and other connected cases upheld the Notification No. AAP.34/50/27 dated 03.05.1951 issued by the State Government under Article 309 of the Constitution of India available in the Handbook of General Circulars of Government of Assam (Blue Book) that reads as follows:

*“AAP.34/50/2017, General Rules for Relaxation of Age Limits*

*03.05.1951,*

4. *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 of 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.”*

**21.** The Court by the said common judgment and order dated 03.08.2015, noted above, have categorically observed and directed as follows:

*“..... it needs to be pointed out that relaxation of upper-age limit in the case of a candidate seeking public employment is not to be granted in a routine manner. No candidate can demand as a matter of right that the upper age limit should be relaxed in his case. As noticed above, such relaxation would be permissible only in the interest of fair dealing or in the public interest. This was the object of the original OM dated 03.05.1951 as well as of the impugned OM dated 27.03.1980. While the OM dated 03.05.1951 did not prescribe any fixed age up-to which relaxation was permissible, the impugned OM as modified by the subsequent OM dated 04.01.1992 has extended the benefit upto 45 years.”*

**22.** Since the Court by order dated 10.03.2023 passed in WP(C) No. 600/2023 directed the Secretary to the Government of Assam in the Department of School Education to dispose

of the said representation of the petitioner dated 12.01.2023 following the provisions of said Notification No. AAP.34/50/27 dated 03.05.1951 regarding relaxation of age limits, noted above, the impugned order No. ASE.402/2022/Pt/346 dated 28.02.2023 of the Secretary to the Government of Assam in the Department of School Education rejecting the application of the petitioner regarding condonation of her over age is hereby set aside and quashed.

**23.** Petitioner shall submit a certified copy of this order along with a copy of this writ petition including the Annexures appended thereto, and also a copy of the order dated 10.03.2023 passed in WP(C) No. 600/2023 before the Secretary to the Government of Assam in the Department of School Education providing her full Address, Mobile Number, E-mail Address etc. on or before 18.05.2023, obtaining necessary acknowledgment from the said authority in that regard.

**24.** The Secretary to the Government of Assam in the Department of School Education shall reconsider the application of the petitioner dated 12.01.2023 afresh, as directed earlier by order dated 10.03.2023 passed in WP(C) No. 600/2023 as well as in terms of this order within a period of 15 days from the date of receipt of the certified copy of this order, intimating the petitioner about the outcome of the same.

**25.** With the above observation and direction, this writ petition stands disposed of.

**JUDGE**

**Comparing Assistant**