

GAHC010092522023



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

WP(C) No.2555 of 2023

1. Smt. Nijara Borah,
Wife of Bhadreswar Borah,
Resident of Village: Dimoruguri, Amtal Path,
PO: Dimoruguri, District: Nagaon, Assam, PIN – 782003.

2. Smt. Ranu Moni Handique,
Wife of Shri Rabindra Gogoi,
Resident of Village: Ghilamara Milon Nagar, PO & PS:
Ghilamara, District: Lakhimpur, Assam, PIN – 787053.

3. Smt. Mery Borgohain,
C/o Shri Krishna Bhuyan,
Resident of Village: Sissiborgaon, PO: Sissiborgaon,
District: Dhemaji, Assam, PIN – 787110.

....Petitioners

-Versus-

1. The State of Assam, represented by the Principal
Secretary to the Government of Assam, Personnel (B)
Department, Dispur, Guwahati-781006.

2. The Commissioner & Secretary, Education
(Secondary) Department, Dispur, Guwahati – 781006,
Assam.

3. The Director of Secondary Education, Assam,
Kahilipara, Guwahati.

....Respondents

- B E F O R E -
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

For the Petitioner : Mr. S. Biswas, Advocate.

For the Respondents : Mr. B. Deori, Junior Government Advocate, Assam for respondent No.1.
: Mr. U. Sharma, Standing Counsel, Education (Secondary) Department, for respondent Nos.2 & 3.

Date of Judgment : 15.12.2023.

JUDGMENT & ORDER (ORAL)

Heard Mr. S. Biswas, learned counsel for the petitioners. Also heard Mr. B. Deori, learned Junior Government Advocate, Assam, representing the respondent No.1 and Mr. U. Sharma, learned standing counsel, Education (Secondary) Department, representing the respondent Nos.2 & 3.

2. The petitioners, who were aspirants for the posts of Graduate Teacher in the Secondary Education Department, had instituted the present writ petition assailing an order dated 28.02.2023, by which their applications for condonation of their over age was rejected by the Secretary to the Government of Assam, Department of School Education.

3. The petitioners, who, as projected in the writ petition, possessed the requisite qualifications for having their cases considered against the posts of Graduate Teachers existing in the Secondary Education Department, had earlier approached this Court by way of instituting WP(C) No.280/2022, wherein it was submitted that their applications for recruitment against the advertisement dated 15.09.2021 was not being accepted because of the petitioners being over aged. The said writ petition was disposed of by this Court vide order dated 09.02.2022 providing as follows:-

“5. In the aforesaid factual circumstance, we are of the view that it would be inappropriate to interfere with the selection process and pass an order in favour of the petitioners requiring the respondents to accept their applications now at such a belated stage. However, Ms. N Saikia, learned counsel for the petitioners states that there is a likelihood of a further advertisement being issued. Accordingly, we provide that in the event, a further advertisement is issued and the same problem of the application of the petitioners being not accepted by the on-line system persists, the petitioners shall immediately file a representation before the Director of Secondary Education Assam and the Director shall forthwith entertain such representation and pass a reasoned order enabling the petitioners to submit their applications within time.”

4. Thereafter, an advertisement dated 28.12.2022 came to be issued inviting applications for Graduate Teachers. Herein also, the petitioners being over aged, could not submit their respective applications. The petitioners preferred individual applications before the Secretary, Department of School Education, Government of Assam on 02.01.2023 praying for condonation of their over age. It is these applications that were rejected vide the order dated 28.02.2023.

5. Being aggrieved by the rejection of their applications, the petitioners preferred the instant writ petition.

6. I have considered the submissions advanced by the learned counsel appearing for the parties and have also perused the materials available on record.

7. Before considering the issues arising in the present proceeding, a reference is to be made to the power available with the authorities for condonation of the over age. The said issue was considered by this Court in the case of **Kunjalata Gogoi & Ors. -Vs- State of Assam & Ors.**, reported in **2022 0 Supreme (Gau) 154**, wherein this Court upon consideration of the matter, concluded as follows:-

“13. The notification dated 03.05.1951 being relevant for determination of the present case is quoted hereinbelow:

‘AAP.34/50/27, General rules for relaxation of age limits

3.5.1951

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 of 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.”

14. While the said Rule was holding the field, the Government of Assam issued the office memorandum dated 27.03.1980 to lay down revised principles for guidance in dealing with cases of relaxation of age limit under the notification dated 03.05.1951. Such notification was challenged before this court and this court in *Pranab Kumar Deka & Ors. Vs. State of Assam & Ors. (supra)* held the notification dated 27.03.1980 to be violative of Article 14 of the Constitution of India and accordingly struck down the same. This court in *Pranab Kumar Deka (supra)* held that the OM dated 27.03.1980 has made classification between two groups i.e. one group, who are in the Government Services of Assam and the other group who are not in services in the Government of Assam and both were treated differently. Accordingly, this court in *Pranab Kumar Deka (supra)* at paragraph 36 and 39 held as follows:

‘36. In so far the present case is concerned the object sought to be achieved by the impugned OM by providing for age relaxation is to ensure a fair dealing to a deserving individual candidate or in the public interest. The classification made is Government servants serving under the Govt. of Assam as one group on the one hand and

those who are not serving under the Govt. of Assam as the other group on the other hand. Is this classification reasonable? Is this classification rational? What is the intelligible differentia applied while classifying the two groups? In the affidavit filed by the Personnel Department, the justification given for the classification is that those who were in the service of the State Government of Assam have already gained valuable experience while working under the Government. Therefore, to utilise their services, they should be given the benefit of age relaxation to the exclusion of others.

39. Following the above discussion, this Court is of the unhesitant view that such a classification as made out in the impugned OM dated 27.03.1980 cannot stand the test of Article 14 of the Constitution and is liable to be struck down as such. Therefore, OM dated 27.03.1980 is held to be invalid on both the grounds as discussed above."

15. The Rule confers power on the Government to relax the maximum and minimum age of requirement to the extent when it is considered necessary in the interest of fair dealing or in the public interest. Therefore, such power needs to be exercised while dealing with a case in a just and equitable manner. The object and purpose of conferring this power on the Government is to fairly deal with a particular case or in the public interest. If any fixation of upper or lower age limit given any recruitment rule treats any candidate or class of candidates unfairly, the government is empowered to relax such rule of upper or lower age limit, already provided. The Rule does not restrict the exercise of power to individual cases. The Government may in the circumstances provided in Rule 1 be able to age limit to remove unfair dealing to a candidate or class of candidates or in public interest.

16. The scope of Rule is wide enough and confer power on the State Government to relax the upper or lower age limit in recruitment, notwithstanding anything to contrary in rules regulating the maximum or minimum age, in respect of an individual or class of individuals to the extent it may consider necessary for dealing with the case in a fair manner or in public interest. In the case in hand it is submitted that there is no service rule fixing any upper or lower age limit. And accordingly, the recruiting authority has fixed the upper age limit. This court is of the opinion that even in absence of rules; the competent authority can still deal with the present case in exercise of power under the General Rule of Relaxation. The reading of the Rule clarifies that the General Power of Relaxation of Age limits has been enacted is enacted with a view to mitigate a particular situation generally contained in the Rules. Many a times strict application of fixation of age limits may create a situation where a particular individual or a set of individuals may suffer unfair dealing and further there may be a situation where requisite qualified persons may not be available for appointment to the service or in the public

interest. In such a situation the Government has power to relax requirement of Rules fixing upper or lower age limit.”

8. The legal position having been noticed, the impugned order dated 28.02.2023 is taken up for consideration.

On a perusal of the said order dated 28.02.2023, it is seen that the State Authorities have stated therein that the Department of School Education is not in a position or empowered to relax or condone the upper age limit of the petitioners facilitating them to apply against the posts advertised vide the advertisement dated 28.12.2022.

9. The said conclusion, on the face of it, erroneous and cannot be given any sustenance. The Departmental Authorities having been specifically vested with power under the earlier Notification dated 03.05.1951, they could not have washed away their hands and refused to exercise the jurisdiction vested in law. Accordingly, in view of the said conclusions and the Notification dated 03.05.1951 still holding the field as on date and as submitted by the parties to this proceeding at the bar that the Notification dated 03.05.1951 has not been modified and/or repealed by any other Rule and/or Notification, it is the prescriptions made in the said Notification dated 03.05.1951 that shall be applicable for condonation of over age of any candidate.

10. Consequently, this Court is of the considered opinion that the respondent authorities have failed to exercise the power vested on them while dealing with the applications of the petitioners for relaxation of their over age. The impugned order clearly reflects non-application of mind to relevant factors and the said order stands vitiated and requires interference by this Court.

11. The position as emerging in the matter, the following directions are

required to be issued to the respondents:-

(i) The impugned order dated 28.02.2023 issued by the Secretary to the Government of Assam, Department of School Education stands interfered with. The Secretary, Government of Assam, Department of School Education shall consider the applications submitted by the petitioners for condonation of their over age strictly in accordance with the general rule of relaxation as contained in the Notification dated 03.05.1951 taking the observations and findings recorded hereinabove in this order.

(ii) In the event the over age of the petitioners are condoned and there exist unfilled posts amongst the posts advertised vide the advertisement dated 28.12.2022, the cases of the petitioners be considered thereunder.

(iii) The direction for condonation of over age shall be processed and concluded within a period of 30(thirty) days from the date of receipt of a certified copy of this order.

12. With the above observations and directions, the writ petition stands disposed of. There will be no order as to cost.

JUDGE

Comparing Assistant