

GAHC010095702018



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

Case No. : WA/130/2018

MD FAIZUR RAHMAN AND 8 ORS
S/O LATE AZIR ALI, R/O VILL. SINGIMARI, P.O. KHANDAJAN, DIST.
DARRANG, ASSAM, PIN 784145

2: SMT. AFRUZA BEGUM
W/O LATE SAMADUL HAQUE
R/O VILL. KHAIRAPARA
P.O. MANDAKATA
DIST. KAMRUP
ASSAM
PIN

3: SRI BAHARUL ISLAM
S/O LATE IBRAHIMA ALI
R/O VILL. AGGATHURY
P.O. DADARA
DIST. KAMRUP
ASSAM
PIN 781104

4: SRI AMEN CHOUDHURY
S/O LATE BANAMALI CHOUDHURY
R/O VILL. MATHURA NAGAR
DISPUR
DIST. KAMRUP (M)
GUWAHATI 781006

5: SRI AINUL HOQUE CHOUDHURY
S/O ABDUL HEKIM
R/O VILL. HETAMTOLA
P.O. GANESHKUWARI
DIST. DARRANG
ASSAM
PIN 784145

6: SRI GOBINDA DEY
S/O NARAYAN DEY
R/O PANDU INSTITUTE COLONY
GUWAHATI
DIST. KAMRUP (M)
PIN 781012

7: SRI GANESH DAS
S/O DURGA DAS
R/O GATHUPATHARGAON
NAHARKATIA
DIST. KAMRUP
ASSAM
PIN 786610

8: SRI JYOTIRMOY KATAKI
S/O NABA KATAKI
R/O VILL. MILONPUR
NAGAON
ASSAM
PIN

9: SMT. BABITA BARMAN
W/O LATE TAPAN BARMAN
R/O VILL. JAPORIGOG
GUWAHATI
DIST. KAMRUP (M)
PIN 78100

VERSUS

MS NARJIMA BEGUM AND 8 ORS
D/O MD. NUR ISLAM ALI, R/O VILL. MARUA CHOWKI, P.O. SIPAJHAR, DIST.
DARRANG, ASSAM.

2:MRS. DHANMANI SAIKIA
W/O SRI KULENDRA KEOT
R/O VILL. PUNIA
P.O. DHEKIPARA
DIST. DARRANG
ASSAM.

3:SRI BIPUL CH. SARMA
S/O LT. BHUBAN CH. SARMAH
R/O VILL. GOALJHAR
P.O. DHEKIPARA
P.S. SIPAJHAR

DIST. DARRANG
ASSAM.

4:SRI PANKAJ SAIKIA
S/O LT. GOLOK CH. SAIKIA
R/O VILL. PUNIA
P.O. DHEKIPARA
P.S. SIPAJHAR
DIST. DARRANG
ASSAM.

5:SRI GOKUL SAIKIA
S/O SRI SUKLESWAR KEOT
R/O VILL. PUNIA
P.O. DHEKIPARA
P.S. SIPAJHAR
DIST. DARRANG
ASSAM.

6:SRI PRATUL BHATTACCHARYYA
S/O LT. TULENDRA BHATTACHARYYA
R/O RAJGARH ROAD
HOUSE NO. 6
CHANDMARI
GHY-3
DIST. KAMRUP
ASSAM.

7:THE STATE OF ASSAM

REP. BY THE SECY. TO THE GOVT. OF ASSAM
EXCISE DEPTT.
DISPUR
GHY-6

8:THE COMMISSIONER OF EXCISE
ASSAM
HOUSEFED COMPLEX
DISPUR
GHY-6

9:THE DIRECTOR OF EMPLOYMENT AND CRAFTSMEN TRAINING
ASSAM
REHABARI
GHY

Advocate for the Petitioner : MR. N J KHATANAR

Advocate for the Respondent : SC, EXCISE DEPTT.

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 22-06-2023

1. Heard the learned counsel for the parties.
2. The instant intra-court appeal is directed against the judgment dated 03.05.2018, passed by the learned Single Bench in WP(C) 1512/2011, whereby the writ petition preferred by the respondent nos. 1 to 6 in this appeal was accepted and the selection of the appellants herein on the posts of Excise Constable, pursuant to the advertisement dated 16.09.2010, was interfered with and the selections so made were directed to be set aside.
3. The issue involved in this writ appeal is regarding arbitrary and illegal exercise of power by the competent authority in granting age relaxation to the appellants herein in pursuance of the above-mentioned recruitment notification. It is not in dispute that the appellants herein were over-aged candidates when they filed their respective applications for selection.
4. In this regard, reference may be made to Rule 8 of the Assam Subordinate Excise Service Rules, 1990 (hereinafter referred to as "Rules of 1990" for short), which prescribes that the age of candidates for recruitment to the cadres of Assistant Inspector of Excise and Excise Constable to the service shall not be less than 18 years and more than 30 years on the 1st day of January of the year in which the recruitment is made with relaxation in the case of candidates belonging to special categories in accordance with general order issued by the Government from time to time.
5. While the writ petition was originally filed raising a grievance that some of the

selected candidates were not physically fit and were not having the minimum requirements of heights, etc. *qua* the respondent nos. 11 to 19 in the writ petition, a miscellaneous application was filed challenging consideration of their candidature by granting them age relaxation. The learned Single Bench discussed the entirety of the material available on record and came to the conclusion that even though specific pleadings were not available in the writ petition but such pleadings were made in the Impleadment Application, i.e. Misc. Case No. 2539/2014 and so also the compilation prepared there-from by the writ petitioners. The dates of birth of the over-aged candidates were available in the gradation list annexed with the record. On examining the Office Memorandums dated 27.03.1980 and 04.01.1992, by invoking which, the power of relaxation of age was exercised by the Commissioner of Excise, the learned Single Bench came to the conclusion that the contentious order(s) issued by the Commissioner of Excise did not suggest that the power was invoked in the public interest or in the interest of fair dealing. It was also held that since Excise Constables are to be deployed in field duties, it was a matter of concern whether physical fitness was compromised for the over-aged applicants. The learned Single Bench further observed that an aged person could also be a physically fit person but the justification of providing age relaxation was questionable when thousands of younger candidates were in the fray for consideration. Considering the ratio of the judgments rendered by the Hon'ble Supreme Court in the cases of ***Dr. Ami Lal Bhat vs. State of Rajasthan***, reported in (1997) 6 SCC 614 and ***Food Corporation of India vs. Bhanu Lodh***, reported in (2005) 3 SCC 618, the learned Single Bench held that respondent nos. 11 to 19 (appellants herein) could not be considered to be exceptionally deserving to be appointed by granting age relaxation particularly when younger candidates in large number were available for consideration in the recruitment process. A fortiori, it was held that the element of fair dealing or public interest was not attracted in the case so as to justify the action of age relaxation exercised by the Commissioner of Excise to lend validity to the candidature of respondent nos. 11 to 19 (appellant herein). The

grant of age relaxation was found to be unjustified and the selection and appointment of the respondent nos. 11 to 19 (appellants herein) was held to be vitiated and was thus interfered by the impugned judgment dated 03.05.2018. The writ petition was allowed by directing the respondent authorities to take steps for termination of the services of the over-aged category illegal appointees by issuance of notice and providing opportunities to them. This order of the learned Single Bench is challenged in this intra-court appeal by the nine appellants.

6. Mr. K. N. Choudhury, learned senior counsel, assisted by Mr. N. J. Khataniar, vehemently and fervently contended that the competent authority acted with a judicious and objective approach while granting age relaxation to the appellants and thus there is no justification warranting interference in the decision to relax the age of the appellants and, that too, while exercising the high prerogative writ jurisdiction. He tried to convince the court that the power to relax age is provided under Rule 27 of the Rules of 1990 and thus exercise of such power, upon being delegated to the appointing authority, cannot be termed to be illegal or arbitrary. He thus urged that the appellants herein, who have given satisfactory services as Excise Constables for the last more than 12 years are entitled to sympathetic consideration and their services deserve to be protected by the court.

7. Per contra, learned Advocate General Mr. D. Saikia, representing the State, and Mr. N. J. Gogoi, learned counsel representing the private respondents/writ petitioners vehemently and fervently opposed the submissions advanced by the appellants' counsel. Learned Advocate General submitted that the State Government also has taken a conscious decision to stand by and comply with the directions given in the judgment passed by the learned Single Bench and, that is why, no appeal was filed by the State against the said judgment. He thus urged that the impugned judgement does not warrant any interference.

Learned counsel Mr. N. J. Gogoi, representing the private respondents submitted

that a bare perusal of the age relaxation orders issued in favour of the appellants would be enough to satisfy the court that the competent authority acted arbitrarily and illegally while granting the age relaxation to the over-aged candidates, i.e. the appellants herein. No reasons were assigned in these orders and they clearly smack of nepotism and favouritism. He thus contended that the order passed by the learned Single Bench does not warrant any interference in this writ appeal.

8. We have given our thoughtful consideration to the submissions advanced at the Bar and have gone through the impugned judgment and the materials placed on record.

9. Rule 8 of the Rules of 1990 is quoted herein-below for the sake of ready reference.

“(8) The age of a candidate for recruitment to the cadres of Assistant Inspector of Excise and Excise Constable to the service shall not be less than 18 years and more than 30 years on the 1st day of January of the year in which the recruitment is made with relaxation in the case of candidates belonging to special categories in accordance with general order issued by the Government from time to time.”

A bare perusal of the above-quoted Rule would indicate that the upper age limit for recruitment as Excise Constable is prescribed in the Rules as 30 years. This very provision gives liberty to relax the age in case the candidates belong to special category in accordance with general order issued by the Government from time to time. It is not in dispute that the appellants herein neither fall within any of special category nor were they granted general age relaxation by the Government. A perusal of the notification of vacancies annexed to the writ petition would indicate that the recruiting authority breached

the provisions of the Rules in this notification while indicating that the upper age limit for the recruitment was 38 years. Perhaps, that by itself may be treated to be a general relaxation of age by the Government. Be that as it may. Since the said issue was not under consideration of the learned Single Bench, we refrain from making any

comment thereupon. However, having considered the reasoning assigned by the learned Single Bench while causing interference in the impugned action of age relaxation, we are fully satisfied with the discussions made and the finding recorded in the impugned judgment holding that the age relaxation granted to the private respondents (appellants herein) was not in accordance with the mandate of the Government Circular No. AAP 34/50/26 dated 03.05.1951, read with Office Memorandums dated 27.03.1980 and 04.01.1992 and it was done in gross contravention thereof, because, under this Circular, age relaxation could have been granted only in public interest or in the interest of fair dealing.

10. Upon a close scrutiny of the age relaxation orders passed in favour of the respondents (appellants herein), which were issued between 23.09.2010 to 12.01.2012 granting relaxation of age to some aspirants including the appellants herein up to the age of 45 years, we find that there is not even a whisper in these orders about public interest or fair dealing. Thus, there is no escape from the conclusion that the age relaxation exercise suffered from gross contravention of the mandate of the Government Circulars and the Office Memorandums referred to above (supra) in addition to being arbitrary and smack of favouritism. Thus, we are of the firm opinion that the learned Single Judge was perfectly justified in causing interference in the arbitrary and illegal exercise of age relaxation undertaken by the respondent authorities, as indicated (supra).

11. The argument of Mr. Choudhury that the appellants have already served for more than 12 years and thus their services should be saved is unacceptable in the light of the ratio of the Supreme Court judgment in the case of ***Alka Ojha vs. Rajasthan Public Service Commission and Another***, reported in ***(2011) 9 SCC 438***, wherein the Hon'ble Supreme Court upheld the cancellation of services of the appellants therein who, despite of being ineligible to hold the posts, were appointed as Motor Transport Inspectors. In the said case, the fact that the candidates had completed more than 5 years service was not considered a ground to continue them in

service by judicial fiat as the incumbents therein were ineligible for the posts. In the case at hand, the situation is more serious because the appellants have clearly gained entry into service by managing age relaxation in grossly illegal manner which is prohibited by the Rules and the prevailing circulars thereby depriving the more meritorious candidates of the opportunity to be so appointed.

12. In view of the above discussion, we are of the firm opinion that the impugned order dated 03.05.2018, passed by the learned Single Bench in WP(C) 1512/2011 does not suffer from any infirmity warranting interference in exercise of intra-court appellate jurisdiction.

Consequently, we find no merit in this appeal and the same is dismissed as such.

JUDGE

CHIEF JUSTICE

Comparing Assistant