

GAHC010148582023



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

**Case No. : WA/358/2023**

RANJAN SINGHA  
S/O LATE LAKHI SINGHA,  
R/O H/NO. 31, SATGAON MILANPUR, MANIPURI COLONY, MILIJULI PATH  
POST UDAYAN VIHAR, DIST KAMRUP M GUWAHATI 781171, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS.  
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM, JANATA  
BHAVAN, DISPUR, GUWAHATI-06.

2:COMMISSIONER AND SECRETARY  
TO THE GOVT. OF ASSAM

ANIMAL HUSBANDRY AND VETERINARY DEPARTMENT

JANATA BHAVAN  
DISPUR  
GUWAHATI -06.

3:PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM

PERSONNEL (B) DEPARTMENT

JANATA BHAVAN  
DISPUR  
GUWAHATI-06.

4:SECRETARY

ASSAM PUBLIC SERVICE COMMISSION  
JAWAHAR NAGAR

SIX-MILE  
KHANAPARA  
GUWAHATI -22.

5:UNDER SECRETARY

ASSAM PUBLIC SERVICE COMMISSION

JAWAHAR NAGAR  
SIX-MILE

KHANAPARA  
GUWAHATI-22.

6:DEPUTY SECRETARY

ASSAM PUBLIC SERVICE COMMISSION  
JAWAHAR NAGAR  
SIX-MILE

KHANAPARA  
GUWAHATI-22

For the Appellant(s) : Mr. H. Betala, Advocate  
Mr. D. Bhuyan, Advocate  
Mr. C. Kumar, Advocate

For the respondent(s) : Ms. R. B. Bora, Junior GA, Assam  
Mr. P. P. Dutta, SC, APSC  
Ms. P. Sarma, Advocate

– **BEFORE** –

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

Date of Hearing : 22.09.2023

Date of Judgment : 19.10.2023

**JUDGMENT & ORDER**

***(Sandeep Mehta, CJ)***

1. Heard Mr. H. Betala, learned counsel representing the appellant. Also heard Mr. P.P. Dutta, learned Standing counsel, APSC, and Ms. R.B. Bora, learned Junior Government Advocate, Assam, appearing for the respondents.
2. The instant intra-court writ appeal is directed against the judgment and final order dated 01.06.2023, passed by the learned Single Judge, whereby a bunch of writ petitions, led by WP(C) 6314/2018 came to be rejected.
3. The brief facts relevant and essential for disposal of the writ appeal are that the Assam Public Service Commission (hereinafter referred to as 'APSC' in short) issued an advertisement No. 1/2018, dated 17.02.2018 inviting applications from eligible candidates for 113 Class-II Gazetted (Junior) posts of Veterinary Officer/Block Development Veterinary Officer under the Animal Husbandry and Veterinary Department as well as for various other posts under different departments of the Government of Assam.

The appellant herein and other writ petitioners claim to be degree holders in Veterinary Science and Animal Husbandry, i.e. Bachelor of Veterinary Science and Animal Husbandry, from recognized universities. In pursuance to the advertisement dated 17.02.2018, the writ petitioners applied for the posts by depositing requisite fee through Challan. They also claim to be hailing from Other Backward Classes (OBC) and that they had enclosed documents/certificates affirming their OBC category. The APSC issued receipts to the writ petitioners acknowledging the receipt of the application forms.

While the writ petitioners were waiting for call letters for *viva voce* to be conducted by the APSC for the posts against which they had applied, they were

shocked to come across a list dated 06.09.2018 issued by the APSC displaying the names of the candidates whose applications stood rejected, which included the name of the appellant herein and the other writ petitioners. The list so issued by the Deputy Secretary, APSC, indicated that the applications submitted by those candidates, including the appellant herein, had been rejected on the ground of over age. The writ petitioners filed writ petitions projecting a case that since they belonged to OBC category, they were within the permissible age limit in terms of the Office Memorandum dated 03.03.2016, which fixed the upper age limit of OBC category candidates at 46 years; whereas the writ petitioners claimed to be less than 45 years of age on the date of submission of the application forms. The APSC issued a notification dated 29.08.2018 publishing list of dates for holding interview/ *viva voce* for the posts of Veterinary Officer/Block Veterinary Officer under the Animal Husbandry and Veterinary Department, Government Assam. The writ petitioners including the appellant herein filed writ petitions raising a grievance that Office Memorandum dated 27.03.2012, issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, was in force wherein age relaxation was provided to various categories, including OBC category, to the extent of 3 years on the basis of Office Memorandums dated 25.01.1995 and 22.10.1993 issued by the Government of India.

The writ petitioners including the appellant had submitted before the learned Single Judge that by virtue of the Office Memorandum dated 03.03.2016 they were entitled to be considered for grant of age relaxation in terms of the Office Memorandum dated 27.03.2012, issued by the Government of India. On this ground, the writ petitioners, questioned the legality and validity of the list dated 06.09.2018 rejecting their candidature as over age as well as

the notification dated 29.08.2018, issued by the APSC notifying the dates for interview/*viva voce*. These writ petitions filed by the candidates declared to be over aged, came to be instituted in the month of September, 2018. The learned Single Bench passed interim orders permitting the writ petitioners to provisionally participate in the selection process. However, it was made clear that such participation would remain subject to the final outcome of the writ petitions.

The APSC filed an affidavit-in-opposition in the writ petitions stating therein that the advertisement dated 17.02.2018 issued by the Commission clearly provided that the age of the aspirants should not be less than 21 years and more than 43 years as on 01.01.2018 as per the Government Office Memorandums dated 03.03.2016 and 26.09.2016. It was further indicated that the upper age limit was relaxable for the candidates of SC/ST (reserved) category only as per the existing legal provisions. As the writ petitioners were not found within the age limit, their candidature/application forms were rightly rejected on the ground of being over-aged. It was further stated in the affidavit that vide Office Memorandum dated 03.03.2016, the Personnel Department, Government of Assam, had decided to revise the upper age limit for entry into government services by 5 years from the existing 38 years and that SC/ST and all other reserved categories candidates, who had been enjoying relaxation in upper age limit, were entitled to additional age relaxation of 5 years in the existing relaxed upper age limit. However, no age relaxation was ever provided in the upper age limit to the candidates belonging to OBC and MOBC categories. Regarding the Office Memorandum dated 27.03.2012, issued by the Government of India, pertinent stand was taken by the APSC that the said Office Memorandum applied only to the services under the Central Government and

was never made applicable to the services under the State Government.

After the affidavit-in-opposition had been filed on behalf of the Commission, the writ petitioners in WP(C) 6314/2018 (which includes the appellant herein) filed an additional affidavit trying to develop their case claiming that they belonged to OBC category and were already serving under various departments of the government and, thus, the APSC ought to have considered the candidature of the writ petitioners for recruitment against the advertised posts by treating them to be within the permissible age limit. The petitioners also referred to the Office Memorandum dated 25.01.1995 issued by the Department of Personnel and Training, which provided that the upper age limit for direct recruitment shall be relaxed by 3 years in respect of the candidates belonging to OBC. By referring to the said Office Memorandum dated 25.01.1995, the writ petitioners craved for a direction upon the APSC to relax their age by 3 years since they belong to OBC category.

An affidavit-in-opposition was filed by the Principal Secretary, Government of Assam, Personnel Department, wherein it was stated that the Office Memorandum dated 03.03.2016, providing for relaxation in upper age limit for government jobs by 5 years, was valid for a period of two years from the date of issuance thereof and the terms and conditions of the said Office Memorandum expired on 02.03.2018. The advertisement was issued by the APSC on 17.02.2018 and, thus, age relaxation as per the Office Memorandum dated 03.03.2016 would mean that the candidates, who were 43 (38+5) years of age as on 01.01.2018, were eligible to apply in the subject recruitment process. For SC/ST and other categories, the years of relaxation would be added to 43 years. All the writ petitioners had crossed the age of 43 years as on 01.01.2018 and thus they were not entitled to any further relaxation in age. It

was further mentioned in the affidavit that the Office Memorandum dated 25.04.2018 giving benefit of upper age relaxation to the candidates belonging to OBC/MOBC categories was issued after the issuance of the advertisement in question and, hence, benefit thereof could not be claimed by the writ petitioners. The writ petitioners thereafter filed an affidavit-in-reply trying to take advantage of the Office Memorandum dated 25.04.2018 on the premise that the interview for the posts was scheduled on 26.09.2018 vide notification dated 20.09.2018 and thus the Office Memorandum dated 25.04.2018, which was given immediate effect, had to be applied so as to grant benefit of age relaxation to the writ petitioners.

Learned counsel representing the writ petitioners before the learned Single Judge tried to canvass their case on the principle of reservation laid down by the Hon'ble Supreme Court in the case of ***Indra Sawhney and others vs. Union of India and Others***, reported in ***(1992) Supp. 3 SCC 217***. The learned Single Judge, after considering the submissions advanced by rival counsel, came to the conclusion that the advertisement dated 17.02.2018 bore a specific clause at Sl. No. 6 regarding age limit stipulating that the candidates should not be less than 21 years and more than 43 years as on 01.01.2018, as laid down in the Government Office Memorandum dated 03.03.2016. It was further provided that upper age limit would be relaxable for the candidates of reserved categories as per existing provisions. The contention advanced on behalf of the petitioners that they were entitled to the benefit of Office Memorandum dated 25.04.2018 was repelled and it was held that the writ petitioners were not entitled to any relaxation in age. The conclusions drawn by the learned Single Judge at paragraph 40 of the impugned judgment is reproduced hereinbelow for the sake of ready reference:

*“40. Applying the said principle, it would be seen that as per the advertisement dated 17.02.2018, the last date for filing up the forms was 19.03.2018. On that date, the petitioners were not eligible as they were over aged and there was no relaxation of the age limit in respect to OBC candidates. The Office memorandum came into existence on 25.04.2018, after the last date for submission of the forms and as such, on the ground that the petitioners have filled up the forms though not eligible at that point of time and now if benefits are given on the basis of the Office Memorandum dated 25.04.2018, it would be giving preferential treatment to the petitioners which would violate the mandate of Article 14 and 16 of the Constitution.”*

The writ petitions were dismissed as aforesaid by the judgment dated 01.06.2023. The lead petitioner in WP(C) 6314/2018, Mr. Ranjan Singha has approached this Court by way of the instant writ appeal for assailing the impugned judgment.

4. Mr. H. Betala, learned counsel representing the appellant vehemently and fervently contended that the Office Memorandum dated 25.04.2018 had come into immediate effect during pendency of the ongoing recruitment process and it being in the category of beneficial legislation, the advantage thereof should have been extended to the appellant/writ petitioner and similarly situated persons. He urged that the Office Memorandum dated 25.04.2018 clearly provides that the same was being made applicable with immediate effect and, thus, mandate of age relaxation of 3 years from the existing upper age limit in respect of the candidates belonging to OBC/MOBC came into force with effect from 25.04.2018 and hence the said Office Memorandum had to be applied even to the ongoing selection process. He thus urged that the learned writ court was not justified in rejecting the prayer of the appellant/writ petitioner for grant of age relaxation by ignoring the mandate of the aforesaid government circular. Mr. Betala implored the court to accept the writ appeal, set aside the impugned order and direct selection of the appellant on the post of Veterinary

Officer/Block Veterinary Officer, because the appellant has succeeded in the interview/viva voce process after being provisionally permitted to participate therein.

5. Per contra, Ms. R.B. Bora, learned Government Advocate, and Mr. P.P. Dutta, learned Standing Counsel, APSC, appearing for the respondents vehemently and fervently opposed the submissions advanced by the learned counsel for the appellant. They urged that the terms and conditions of the advertisement, more particularly the condition regarding upper age limit, as provided in clause 6 thereof, clearly provided that the upper age of the candidates belonging to General Category (un-reserved category) would be 43 years as on 01.01.2018. This clause also provided that upper age relaxation would be admissible only to the candidates of reserved category as per existing provision. It was contended by the learned counsel for the respondents that as OBC candidates are not covered under any reserved category, no age relaxation could have been extended to them in the subject recruitment process. As the appellant and the other writ petitioners participated in the selection process being aware of the aforesaid condition of the advertisement without challenging the same, they cannot now be permitted to turn around and claim that the condition is bad in the eyes of law. On these submissions, learned counsel for the respondents implored the court to dismiss the writ appeal and affirm the impugned judgment passed by the learned Single Judge.

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

7. It is an admitted case of the appellant herein that he had crossed the upper age limit of 43 years as on 01.01.2018 while filing the application form in

the subject recruitment process. Condition no. 6 of the advertisement, which is quoted at paragraph 27 of the impugned judgment, clearly provided that the candidates should not be less than 21 years and more than 43 years of age as on 01.01.2018 as laid down in the Office Memoranda dated 03.03.2016 and 26.09.2016. This clause further provided that relaxation of upper age limit would be admissible for the candidates of reserved category as per existing provisions. There cannot be two views on the aspect that OBC category candidates, to which the appellant belongs, do not fall under any reserved category and thus they were not entitled to any age relaxation in the subject recruitment notification. Having participated in the selection process without any protest on the aspect of upper age limit as provided in Clause 6 of the advertisement, the appellant cannot be allowed to take a U-turn and claim that he ought to be given the benefit of age relaxation beyond what is provided in the advertisement. Doing so would tantamount to changing the rules of the game after the ball is set rolling. Such an interpretation would affect other similarly situated persons who could have applied for the post/posts in question if age relaxation provided by the Office Memorandum dated 25.04.2018 was made applicable to the subject selection process.

8. The Office Memorandum dated 25.04.2018 on which the appellant's counsel heavily relied was made effective from the date of publication. This clearly means that the effect of the Office Memorandum was prospective in nature. Any attempt to apply the Office Memorandum dated 25.04.2018 to the subject selection process which was initiated on 17.02.2018 would have the effect of making it retrospective, which is not the intention of the Office Memorandum.

Thus, there is no merit in the contention of Mr. Betala that the appellant is

entitled to the benefit of the aforesaid Office Memorandum.

9. The judgment in the case of **Indra Sawhney** (supra), which was heavily relied upon by the learned counsel for the writ petitioner/appellant, deals with the scope and ambit of Article 16(4) of the Constitution of India providing for reservation. The concept of reservation cannot be equated with or applied to the concept of age relaxation. The argument of Mr. Betala, learned counsel for the appellant that the instructions/Office Memorandums issued by the Government of India would come to the rescue of the appellant is also misconceived, because it is the clear stand of the APSC that the said Office Memorandums are limited to their application to the services under the Government of India.

10. In the wake of the discussion made hereinabove, we are of the firm view that the conclusions drawn by the learned Single Judge in the impugned judgment dated 01.06.2023 while dismissing the writ petitions, including the writ petition filed by the appellant herein does not suffer from any infirmity warranting interference.

Hence, the writ appeal fails and is dismissed as being devoid of merit.

No order as to costs.

**JUDGE**

**CHIEF JUSTICE**

**Comparing Assistant**