



IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WRIT APPEAL No.396 OF 2022

1. Sri Naren Das,
Son of Late Dandiram Das,
Resident of Village: Sulikata, Mouza:
Rampur, Palashbari, Kamrup,
Assam, PIN – 781128.

2. Sri Prabin Baruah,
Resident of Mouza: Chayani, Village:
Kokjhar, Palashbari, Kamrup,
Assam, PIN – 781128.

3. Sri Lal Charan Das,
Son of Late Bhakat Charan Das,
Resident of Village: 1 No. Amtola
Bamunpara, Mouza: Dakhin Saru
Bansar, Palashbari, Kamrup, Assam,
PIN – 781128.

4. Sri Bhabesh Das,
Son of Late Kamala Das,
Resident of Village: Nalgaon,
Mouza: Kurua, PIN – 781128.

.....Appellants

-Versus-

1. The State of Assam, represented
by the Chief Secretary of the
Government of Assam.

2. The Commissioner & Secretary,
Government of Assam, Department
of Revenue & Disaster Management,
Dispur, Guwahati – 781006.

3. Deputy Commissioner, Kamrup,
Amingaon District: Kamrup.

.....Respondents

- B E F O R E -
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

For the Appellants	: Mr. Mr. S.K. Goswami, Advocate. Ms. S. Goswami, Advocate. Mr. P. Kalita, Advocate.
For the Respondents	: Mrs. R.B. Bora, Junior Government Advocate, Assam for respondent Nos.1 & 3. : Mr. J. Handique, Standing Counsel, Revenue Department for respondent No.2.

Date of Judgment & Order : **3rd March, 2023.**

JUDGMENT & ORDER (ORAL)

[Sandeep Mehta, C.J.]

This intra-Court writ appeal is directed against the judgment & order dated 27.09.2022 whereby, WP(C) No.794/2022 preferred by the petitioners/appellants was dismissed and the challenge laid therein to the common Notification dated 26.08.2021 issued by the Commissioner & Secretary to the Government of Assam, Revenue & Disaster Management Department notifying the upper age limit of Gaonburas was negated.

2. Mr. S.K. Goswami, learned counsel representing the appellants/writ petitioners vehemently and fervently contended that the appellants/writ petitioners were appointed as Gaonburas (substituted by the word Gaon Pradhan) under the Notification, which did not provide for

any upper age limit. Rule 162A of the Notification whereunder, the appellants/writ petitioners were appointed as Gaonburas, did not stipulate any upper age limit and thus, the appellants/writ petitioners were holding a reasonable expectation and a virtual assurance of lifetime service benefit/engagement by virtue of their appointment under the Notification. It was contended that the amendment Notification of 2021 whereby, an upper age limit of 65 years was imposed is *ultra vires* the constitutional mandate. In the alternative, it was submitted that as the amendment Notification was issued in the year 2021, the same cannot be given a retrospective effect.

3. It was thus contended that the learned Single Bench was unjustified in turning down the challenge made by the appellants/writ petitioners to be patently illegal Notification of 2021.

4. Per Contra, learned counsel for the respondents opposed the submissions advanced by the learned counsel for the appellants and urged that the impugned judgement lays down correct interpretation of law and, hence, the same is not liable to interference.

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

6. For the purpose of adjudicating upon the submissions of the learned counsel for the appellants/writ petitioners, it would be fruitful to quote the existing

provision of the Notification dated 23.04.2018 on which, the learned counsel for the appellants/writ petitioners placed heavy reliance. Clause 162A of the said Notification reads as under:-

“162-A. Removal from the job:

- (1) *Gaonbura can continue to function till the time he is physically and mentally fit to carry out the duties and responsibilities assigned to him.*
- (2) *He/She can be removed from the post by the Deputy Commissioner/Principal Secretaries of Autonomous Council areas on the following grounds-*
 - (i) *He/She is either physically or mentally unfit for the job;*
 - (ii) *Negligence or dereliction of duty;*
 - (iii) *Involvement in any financial wrong-doing;*
 - (iv) *Corrupt behaviours, as defined in the Prevention of Corruption Act, 1988;*
 - (v) *Moral turpitude;*
 - (vi) *Conviction in any court of law in criminal cases.*
- (3) *Deputy Commissioner/Principal Secretaries of Autonomous Council areas may place a Gaonbura under suspension pending formal enquiry against him on any of the ground mentioned in sub-clause (2) above.*
- (4) *The Deputy Commissioner/Principal Secretaries of Autonomous Council areas may dismiss a Gaonbura from office after giving opportunity of hearing and recording his reasons in writing.”*

7. Apparently, on a plain reading of the said Notification/Executive Instruction, it is stipulated that the Gaonbura (now designated as a Gaon Pradhan) **can** continue to function till the time he is physically and mentally fit to carry out the duties and responsibilities assigned to him. Thus, even under the old Rule, the assignment of responsibility as Gaonburas/Gaon Pradhans was not absolute in nature. By virtue of the questioned

amendment in the Executive Instruction, the following change has been introduced:-

“(1) The Gaon Pradhan shall hold his/her post up to the age of 65 years unless is removed from the post, before attaining the age of 65 years by the concerned Deputy Commissioner of the District or Principal Secretaries of the Autonomous Council areas on any of the ground mentioned in clause (2) of this instruction.”

8. The said amendment stipulates that the Gaon Pradhan shall hold his/her post up to the age of 65 years unless removed from the post before attaining the age of 65 years by the concerned Deputy Commissioner or Principal Secretaries of the Autonomous Council areas on any of the ground mentioned in Clause (2) of the Executive Instruction. The assignment of a position of Gaonbura/ Gaon Pradhan does not have the implication of conferring any civil rights upon the persons selected. The selection process is based on a general assessment of the leadership qualities of the candidates along with his/her ability to teach the values of life and to inspire to be law abiding citizens. The existing provision of Clause 162A also incorporated within its ambit, procedure for removal of a Gaonbura.

9. As the intent behind the Executive Instruction was to select people from village as Gaon Pradhans so as to utilize the leadership qualities, it is axiomatic that such process should not be static. Opportunity to display the qualities of leadership should be shared and afforded to all eligible persons.

10. The learned Single Judge, considered in detail the implications of the amendment in the Executive Instruction and rightly held that the appellants/writ petitioners had no vested or crystallized right to hold on to the position of Gaonburas. The post of Gaonbura/Gaon Pradhan is not a civil post as rightly concluded by the learned Single Judge and as such, the Executive Instruction whereby, the employer being the Government of Assam has decided the outer age limit for the persons selected on the post of Gaon Pradhan to be 65 years cannot be said to be unreasonable, arbitrary or violative of any of the provisions of the Constitution of India.

11. Hence, we find no reason to interfere with the well reasoned and well considered judgment of the learned Single Judge, which does not suffer from any infirmity whatsoever. As a consequence, the appeal fails and is dismissed as being devoid of merit.

JUDGE

CHIEF JUSTICE

Comparing Assistant