

GAHC010224862022



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

Case No. : WP(C)/7151/2022

BIPUL DAS
S/O- BHABENDRA NATH DAS,
R/O- C/O- DINESH CH. DAS,
GEETANAGAR, OPPOSITE BSF CAMP,
GUWAHATI, DISTRICT- KAMRUP(M),
ASSAM- 781021.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
HIGHER EDUCATION DEPARTMENT,
DISPUR, GUWAHATI- 781006,
ASSAM.

2:THE ADDITIONAL SECRETARY TO THE GOVERNMENT OF ASSAM
HIGHER EDUCATION DEPARTMENT

DISPUR
GUWAHATI- 781006.

3:THE DIRECTOR
HIGHER EDUCATION
ASSAM
GUWAHATI- 19
ASSAM.

4:THE PRINCIPAL

PRAGJYOTISH COLLEGE
BHARALUMUKH
GUWAHATI

ASSAM- 781009

Advocate for the Petitioner : MR B D DAS

Advocate for the Respondent : SC, HIGHER EDU

**BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO**

ORDER

13.10.2023

1. Heard Mr. B.D. Das, learned Senior Counsel, assisted by Mr. K. Kalita, learned counsel appearing for the writ petitioner. Also heard Mr. K. Gogoi, learned Standing Counsel, Higher Education appearing for the respondent Nos. 1, 2 and 3. None appears for the respondent No. 4.

2. This is the second time the writ petitioner is before this Court. The first writ petition being 4229/2022 was disposed of vide order dated, 23.06.2022 by directing the petitioner to approach the Secretary to the Government of Assam, Higher Education Department (respondent No. 1) for relaxation of his upper age in terms of the Office Memorandum of the State Government in force. Further, the petitioner was allowed to submit his application against the advertised post of Library Assistant in Pragjyotish College, Guwahati dated

03.06.2022 along with his testimonials. It was further observed that the selection of the petitioner will be subject to his selection in terms of the relevant recruitment rules in force and subject to the condonation of his upper age for recruitment to the post concern.

3. In terms of the above direction the petitioner participated in the selection process and at the same time submitted his application for condonation of his age to the respondent No.1 on 30.06.2022. However, his application for condonation of his age was rejected and communicated to him vide letter dated 15.10.2022 (Annexure-14). Aggrieved, the petitioner is again before this Court.

4. Mr. B.D. Das, learned Senior Counsel submits that in rejecting the application of the petitioner, the respondent authority concerned did not assign any reason apart from saying that there is no provision for relaxation of upper age limit for entering into Government service other than the existing relaxation of 5 years for ST/ST(P)/ST(H) candidates from 40 to 45 years.

5. The learned Senior Counsel submits that in a bunch of cases of similar nature, one of the case being WP(C) No. 7832/2018 (***Rabita Deka Vs. The State of Assam & Ors.***) this Court vide common order dated 26.02.2019 directed the respondent authorities concerned to favourably consider

the case of the petitioners therein for relaxation of their age in terms of Government Notification dated 03.05.1951 and to issue necessary appointment orders as the petitioners therein were already found to be suitable for appointment to the posts concerned in the recruitment process which they had already taken part.

6. The learned Senior Counsel submits that the Government notification dated 03.05.1951 issued vide Memo. No. AAP.34/50/27 which has been abstracted in the said judgment clearly provides that relaxation of maximum or minimum age for recruitment to a service or post in connection with the affairs of the State of Assam can be relaxed in favour of any candidate or class of candidate by the appointing authority concerned in the interest of fair dealing or in public interest.

7. The learned Senior Counsel submits that the said notification dated 03.05.1951 being applicable to the case of the petitioner, a similar direction may be issued to the respondent authority concerned for relaxing the age of the petitioner. He submits that the petitioner participated in the selection process as was permitted by this Court and that he was selected and recommended to be appointed to the post of Library Assistant in the College concerned and therefore, the age of the petitioner may be directed to be condoned to

felicitate his appointment to the said post.

8. The learned Senior Counsel submits that the petitioner applied for the post of Library Assistant in the college concerned, wherein as per the Advertisement, the maximum age limit for general candidate is 40 years. The petitioner being from the schedule caste category, the upper age limit is relaxable by five years. However, as the petitioner has crossed the age limit of 45 years by 8 months and therefore, he requires age relaxation by 8 months to be considered for appointment to the post concerned. According to the learned Senior Counsel, the benefit of the notification dated 03.05.1951 should therefore be given to the petitioner as was done in the case of ***Rabita Deka***(supra).

9. Mr. K. Gogoi, learned Standing Counsel, Higher Education, on the other hand, submits that the appointing authority for the post of Assistant Library being the Director of Higher Education (respondent No. 3), the respondent No. 3 is competent to file the affidavit-in-opposition in the matter apart from the fact that he has been arrayed as respondent No. 3 in the writ petition.

10. The learned Standing Counsel submits that a candidate has to be eligible for selection at the time when he or she appeared in the written test, interview, or viva-voce for selection to the post concerned. Merely because the candidate

appeared in the written test, interview and viva-voce will not make the candidate eligible if he or she was otherwise ineligible unless such disqualification or ineligibility was removed or relaxed before he or she appeared in the written test, interview or viva-voce and/or unless the relevant recruitment rules provide for the same. Relaxation of age after the interview is completed cannot be treated in absence of any specific rules or government policy, a valid ground for making the candidate eligible.

11. The learned Standing Counsel submits that in the present case as well, the petitioner may have participated in the selection process but, since his upper age has not been relaxed, he is not eligible to be appointed to the post of Library Assistant. In support of his submission Mr. K. Gogoi, relies upon in the case of ***Dr. Mahesh Gogoi Vs. State of Assam & Ors.*** (2010) 6 GLR 147 and ***Jyotima Phukan Vs. State of Assam & Ors.*** (2009) 3GLR 321.

12. The learned Standing Counsel further submits that merely because there was no recruitment process for a long time, the petitioner cannot seek condonation of age. In this connection, the learned Standing Counsel relies upon the Judgment and Order of Punjab & Haryana High Court rendered in ***Navdeep Singh Brar & Ors. Vs. State of Punjab & Anr.*** (CWP No. 12723/2021) (O&M) decided on 11.08.2021. He

therefore submits that the writ petition should be dismissed.

13. I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

14. The petitioner participated in the selection process for the post of library assistant in terms of the permission given by this Court, vide order dated 23.06.2022 in WP (C) No. 4229/2022. The petitioner also submitted his application for condonation of age on 30.06.2022 to the respondent authority concerned. However, the same was rejected vide communication dated 15.10.2022 by stating that the maximum upper age limit that can be relaxed for candidates belonging to SC/ST is for 5 years only, i.e. up to 45 years. There is however no mention about the Notification No. AAP-34/50/27 dated 03.05.1951 which provides for the general rules for relaxation of age limit. The notification was also considered in the Order of this Court in ***Rabita Deka***(supra). Similarly, the same was also considered in the case of ***Kunjalata Gogoi & 3 Ors. Vs. The State of Assam & Ors.*** (WP (C) No. 573/2020) which was disposed of alongwith other similar cases vide a common judgment dated 28.02.2022. Therefore, in absence of any materials to the contrary, the notification appears to be in existence as on date. Although the respondent No. 3 in its affidavit dated

11.10.2023 has denied the applicability of the Notification dated 03.05.1951, but a perusal of the impugned communication dated 15.10.2022 does not reflect that the application for condonation of age submitted by the petitioner was considered by the respondent authority concerned in terms of the Notification dated 03.05.1951. Therefore, the contention made in the affidavit-in-opposition of the respondent No. 3 cannot be accepted on the principle that one's case cannot be improved upon merely by filing affidavits.

15. The contention of the learned Standing Counsel for the Department that the petitioner being ineligible as per the Advertisement at the outset and therefore, cannot claim for appointment on the ground of being selected and recommended for the post also cannot be accepted in view of the fact that the petitioner participated in the selection process on being permitted by this Court vide order dated 23.06.2022 and there are no materials on record challenging the permission given. As such, the authorities relied upon by the learned Standing Counsel for the Department are only distinguishable. As for the case of **Navdeep Singh Brar & Ors.** (supra) relied upon by the learned Standing Counsel for the Department, the same does not require consideration since the learned Senior Counsel for the petitioner has not pressed the case of the petitioner for relaxation on account of the late

recruitment process.

16. Thus, upon due consideration of the case in its entirety, the grievance of the petitioner is found to be legitimate. Accordingly, the writ petition is disposed of with a direction to the respondent No. 1 to consider the relaxation of age of the petitioner in terms of the Notification dated 03.05.1951 by taking note of the observations and findings of this Court and also the fact that the petitioner had participated in the selection process and was found suitable for the post. Such exercise shall be carried out by the respondent No. 1 within a period of 1(one) month from the date of receipt of a certified copy of this Order. Till such consideration is done, the interim order passed by this Court on 22.12.2022 in I.A. (C) No. 3794/2022 shall continue. The impugned communication dated 15.10.2022 (Annexure-14) is set aside.

17. With the above observations and directions, the writ petition stands disposed of. No cost.

JUDGE

Comparing Assistant