

GAHC010239102023



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

Case No. : WP(C)/6328/2023

FARIDA KHANAM AKANDA
W/O- MD. SAFIUR RAHMAN,
R/O- VILLAGE- SHALKATI PATHER,
P.O.- SHALKATI PATHER,
P.S.- DHING,
PIN- 782126,
DISTRICT- NAGAON, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
EDUCATION DEPARTMENT, DISPUR,
GUWAHATI-6.

2:DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

3:DISTRICT LEVEL SELECTION COMMITTEE (DSC)
NAGAON.

4:INSPECTOR OF SCHOOL
NAGAON DISTRICT CIRCLE
DISTRICT- NAGAON
ASSAM

PIN- 782001

Advocate for the Petitioner : MR H DAS

Advocate for the Respondent : SC, SEC. EDU.

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

08.11.2023

Heard Mr. H. Das, learned counsel for the petitioner. Also heard Mr. S.M.T. Chistie, learned Standing Counsel, School Education Department representing the respondent nos. 1, 2 & 4 and Mr. P. Saikia, learned counsel for the respondent no. 3.

2. In brief, the case of the petitioner is that she is a Special Teacher Eligibility Test (TET) qualified candidate having cleared the test held in the year 2016. The petitioner is also TET qualified for Arts Graduate Teacher having cleared the examination held in the year 2020. Being otherwise eligible, the petitioner had applied for being appointed as Graduate Teacher (Arts.) as well as Graduate Teacher (Hindi) pursuant to an advertisement dated 28.12.2022.

3. As the petitioner had attained the age of 43 years then, she approached this Court by filing a writ petition which was registered as WP(C)/2205/2023 for a direction upon the respondent authorities for considering the relaxation of upper age beyond 43 years and to allow her to submit forms on offline mode as the application before the authorities was rejected on 28.02.2023.

4. This Court vide and order dated 08.05.2023 passed in WP(C)/2205/2023 had directed the respondent authorities to consider the prayer for relaxation of the upper age of the petitioner. Thereafter, the Secretary to the Government of Assam, Department of School Education vide an order bearing No. E-294917/72 dated 08.09.2023 had rejected the prayer for relaxation of the upper age of the

petitioner in view of the Office Memorandum No. ABP.6/2016/51 dated 02.09.2020.

5. Accordingly, by filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the said order dated 08.09.2023.

6. Having heard the learned counsel for the petitioner as well as the learned Government Advocate and learned Standing Counsel, Secondary Education Department, this Court is of the considered opinion that High Court while exercising the writ jurisdiction under Article 226 of the Constitution of India can only examine the legality of the decision making process and it would not exercise the appellate jurisdiction as if entertaining an appeal against the impugned order dated 08.09.2023. Moreover, it is also noticed that in the impugned order, reference is made to the limit for relaxation of age vide Office Memorandum dated 02.09.2020 whereby the Government had raised the Upper Age Limit from 38 years to 40 years for Grade III and Grade IV post and also had decided to further raise the Upper age by 5 years over the general age limit i.e. up to 45 years from the existing 43 years for entry in the State Government Services in respect of SC & ST and 3 years i.e. up to 43 years in respect of OBC/MOBC, 2 years i.e. up to 42 years in respect of Ex-Service Man and 10 years i.e. up to 50 years in respect of Person with Disabilities.

7. It is seen from the affidavit filing in support of this writ petition that the petitioner is already 45 years of age. Therefore, considering her age, this Court is of the further considered opinion that a writ of mandamus ought not to be issued in this case as direction to relax the age of the petitioner would amount to direct the respondent authorities to violate the clauses of the Office Memorandum dated 02.09.2020 which disentitles the respondent authorities to relax the age beyond what is prescribed therein.

8. Under such circumstances, this Court is not persuaded by the submission made by the learned counsel for the petitioner and accordingly, this writ petition stands dismissed at the "motion stage" without issuance notice to the respondents.

JUDGE

Comparing Assistant