

GAHC010089322018



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

Case No. : WA/119/2018

DR ASUTOSH KUNDU
S/O- LATE MADAN MOHAN KUNDU, R/O- H NO. 42, MADHABDEV ROAD,
P.O- REHABARI, GHY- 08, DIST- KAMRUP(M), ASSAM

VERSUS

SRI AMARJYOTI SARMA AND 7 ORS
S/O- GOLOKESWAR SARMA, R/O- BIKAS NAGAR, KAHILIPARA, GHY- 19,
PRESENTLY WORKING AS A WHOLE TIME LECTURER, B R M GOVT LAW
COLLEGE, PANJABARI, GUWAHATI

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
EDUCATION (HIGHER) DEPTT
DISPUR
GUWAHATI- 06

3:THE ADDITIONAL CHIEF SECRETARY
TO THE GOVT OF ASSAM
EDUCATION HIGHER DEPTT
DISPUR
GHY- 06

4:THE SECRETARY
DEPTT OF EDUCATION HIGHER
DISPUR
GHY- 06

5:THE DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GHY- 781019

ASSAM

6:THE ASSAM PUBLIC SERVICE COMMISSION
REP. BY THE CHAIRMAN
ASSAM PUBLIC SERVICE COMMISSION
JAWAHARNAGAR
KHANAPARA
GHY- 22

7:THE PRINCIPAL
B R M GOVT LAW COLLEGE
PANJABARI
GHY- 37

8:DHANAMANJURI LAIREMJAM
WO- SANJIB NYGOMBOM
R/O- JAPORIGOG
NAYANPUR
GHY- 6
PRESENTLY WORKING AS WHOLE TIME LECTURER
PANJABARI
GHY- 3

- B E F O R E -

HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE KARDAK ETE

For the Appellant : Mr. K.n. Choudhury, Sr. Advocate,
assisted by Ms. R.r. Kakati, Advocate.

For the Respondents : Mr. Z. Mukit, Advocate for respondent No.1.

: Mr. S. Das, Standing Counsel,
Education (Higher) Department for
respondent Nos. 2, 3, 4 & 5.

Date of Hearing : 16.07.2024.

Date of Judgment : **22.07.2024**

JUDGMENT & ORDER (CAV)

(Vijay Bishnoi, CJ)

Heard Mr. K. N. Choudhury, learned senior counsel, assisted by Mr. R.R. Kataki, learned counsel appearing for the appellant. Also heard Mr. Z. Mukit, learned counsel appearing for the respondent No.1/private respondent and Mr. S. Das, learned Standing Counsel, Education (Higher) Department, Assam, appearing for the respondent Nos. 2, 3, 4 and 5.

2. This intra-Court writ appeal is filed by the appellant being aggrieved with the order dated 24.04.2018 passed by the learned Single Judge in WP(C) No.1379/2011, whereby the learned Single Judge has allowed the writ petition and set aside the selection and appointment of the appellant/respondent No.7 in the writ petition for the post of Whole Time Lecturer in the Bishnu Ram Medhi Government Law College, Guwahati (hereinafter referred to as "Law College") by treating the selection of the appellant/respondent No.7 in the writ petition as unmerited.

3. The brief facts of the case are that the respondent Assam Public Service Commission (APSC) had issued an advertisement dated 20.05.2009 for appointment on a post of Whole Time Lecturer in the Law College. Both the appellant and the private respondent Amarjyoti Sarma applied for the said post. After the selection was over, the APSC issued a Select List dated 19.11.2000, wherein the name of the appellant figured at first position whereas the name of the private respondent Amarjyoti Sarma was placed at second position. Pursuant to the said selection, the appellant was appointed on the said post on

27.01.2010 as per recommendation of the APSC.

4. The said selection and appointment of the appellant was challenged by the private respondent Amarjyoti Sarma by filing the writ petition on the ground that the appellant was an over aged candidate and he could not have been selected without relaxation in the upper age limit. It was also contended that the appellant was serving as a clerk in the office of the Accountant General, Assam and he was not entitled for relaxation in the upper age limit under the Government Office Memorandum dated 27.03.1980, as relaxation in the upper age limit is applicable only for those who are in service of the State Government and relaxation in the upper age limit could not be given to an undeserving candidate. It was further contended on behalf of the writ petitioner that the appellant did not have any experience in academic field as he was serving as a clerk in the Accountant General's office.

5. It is to be noted that the appellant was appointed as a Whole Time Lecturer in the Law College on 27.01.2010 and the writ petition challenging his selection and appointment was filed in the year 2011.

6. The learned Single Judge, after considering the arguments advanced on behalf of the rival parties, quashed the appointment of the appellant on the post of Lecturer in the Law College mainly on the ground that the relaxation in upper age limit should not have been granted to the appellant for appointment to the post of Whole Time Lecturer in the Law College in view of the fact that the appellant was not having any experience in the academic field as he was working as a clerk in the office of the Accountant General, Assam. Relying on the decisions of the Hon'ble Supreme Court rendered 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**, it was held by the learned Single Judge that without any background in the academic field, the appellant/respondent No.7 in the writ petition can hardly be categorized as an exceptional or deserving candidate who is entitled for relaxation in the upper age limit.

The learned Single Judge has also opined that a clerk's job in the office of the Accountant General may not also qualify the respondent No.7 to earn the permissible relaxation intended for the State Government employees as per the specification contained in the O.M. dated 27.03.1980.

The learned Single Judge has further recorded a specific finding that as per the O.M. dated 27.03.1980 only the APSC can grant relaxation in the upper age limit, however, in the present case there is no evidence available on record which states that the APSC has ever granted age relaxation to the appellant/respondent No.7 in the writ petition. While allowing the writ petition, the learned Single Judge has also rebutted the arguments advanced on behalf of the private respondent Amarjyoti Sarma regarding the delay in filing the writ petition challenging the selection and appointment of the appellant on the post of Whole Time Lecturer in the Law College.

7. The learned senior counsel appearing on behalf of the appellant has vehemently contended that the learned Single Judge has committed error in observing that the APSC has never granted relaxation in the upper age limit to the appellant while recommending the appellant for appointment on the post of Whole Time Lecturer in the Law College. It is contended that the fact that the APSC has recommended the name of the appellant for appointment vide recommendation dated 19.11.2009 itself is sufficient to suggest that relaxation

in the upper age limit has been granted to the appellant by the APSC.

It is also contended that there is no dispute that the appellant possesses requisite qualification for appointment on the post of Whole Time Lecturer in the Law College and, in such circumstances, it cannot be said that relaxation in the upper age limit has wrongly been granted to the appellant.

Learned senior counsel appearing for the appellant has also tried to convince this Court that the case of the appellant for relaxation in the upper age limit has rightly been considered as per the O.M. dated 27.03.2018.

Lastly, the learned senior counsel for the appellant has contended that the appointment of the appellant on the post of Whole Time Lecturer in the Law College took place on 27.01.2010 and after a period of nine years of his appointment his appointment has been quashed by the learned Single Judge, which is unfair looking to the fact that there is no misrepresentation on behalf of the appellant and even if any mistake was committed, that was on the part of the State as well as the APSC and, therefore, the appellant cannot be punished for the fault of others.

It is further contended that at present the appellant is not in service as he has already superannuated on attaining the age of retirement and, moreover, the writ petitioner/private respondent has also been appointed as a Whole Time Lecturer in the Law College. Learned senior counsel for the appellant has therefore prayed that in view of the above submissions, the impugned judgment is liable to be set aside.

8. Per contra, the learned counsel appearing for the private respondent and other respondents have vehemently opposed the appeal and have argued that there is no illegality in passing of the impugned judgment and, hence, no interference is called for.
9. Having heard the learned counsel appearing for the parties and after going through the impugned judgment as well as the material available on record, we are of the view that the learned Single Judge has rightly raised doubt about the manner in which the appellant was selected and appointed on the post of Whole Time Lecturer in the Law College.

Though the appellant was having the requisite qualifications for appointment on the post of Whole Time Lecturer in the Law College but he has no background in the academic field as he was working as a clerk in the office of the Accountant General, Assam. It is true that relaxation in the upper age limit in the matter of recruitment on a public post is a matter of discretion with the employer, however, it is well settled that the power of relaxation in the upper age limit is intended to be used only in exceptional cases and such power cannot be exercised in an arbitrary manner. In the present case, it appears that no such exceptional circumstance exists.

The learned Single Judge has also rightly come to the conclusion that the appellant's job as a clerk in the office of the Accountant General may not qualify him for the permissible relaxation in the upper age limit in terms of the O.M. dated 27.03.1980, because the same is in relation to the State Government employees and the service of the appellant as a clerk in the Accountant

General's office is not a State Government job.

10. From the record, it is clear that though the APSC had recommended the name of the appellant for selection and appointment on the post of Whole Time Lecturer in the Law College, but no specific order relaxing the upper age of the appellant is available on record. However, it is to be taken into consideration that the selection and appointment of the appellant on the post of Whole Time Lecturer in the Law College was not on account of misrepresentation or fraud at the instance of the appellant and, in such circumstances, we may not agree with the view of the learned Single Judge of quashing the selection and appointment of the appellant on the post of Whole Time Lecturer in the Law College after around nine years of his appointment.

However, taking into consideration the facts that the appellant has already superannuated and, in the meantime, the writ petitioner/private respondent has also been appointed as a Whole Time Lecturer in the Law College, we deem it appropriate to dispose of this writ appeal without interfering with, or affirming the impugned order.

11. Accordingly, this writ appeal is disposed of with the above observations.

JUDGE

CHIEF JUSTICE

Comparing Assistant