

GAHC010123802024



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

Case No. : WP(C)/3208/2024

AJANTA DASTIDAR AND 36 ORS.

D/O.- PRAFULLA DASTIDAR

R/O.- VILL.- BISHNUPUR, P.O.- MORANHAT, WARD NO.- 10, DIST.-
CHARAIDEO, PIN-785670.

2: SMTI TAPASI CHAKRABORTY

W/O. - MONOJIT CHAKRABORTY

R/O. - H.NO.-15

ANUPAM PATH

RUKMINIGAON

P.O.-KHANAPARA

GUWAHATI-781022.

3: SUSHIL SAHARIA

SON OF LT. RAMESWAR SAHARIA

RESIDENT OF - VILL. AHATGURI

P.O.- NATUNGAON

P.S.- MORIGAON

DIST.- MORIGAON

ASSAM.

4: SMTI. KABITA DUTTA

D/O. DEBEN DUTTA

R/O.- NAMRUP

PARBATPUR

PIN-786623

DIBRUGARH

ASSAM.

5: SMTI. BIJOYA SARMA

W/O. - MONMOHAN GOSWAMI

R/O. VILL. - CHAULDHOWA BATE GAON

P.O. AND P.S.- GOGAMUKH

DIST.- DHEMAJI

PIN-787034

ASSAM

6: SMTI. CHINTU MONI RAJLKHOWA
WIFE OF SRI DIPAK DEKA
R/O.- VILL.- CHAMUAGAON
P.O.- JAMUGURI
DIST.-NAGAON
PIN-782142
ASSAM

7: SMTI. URMI DEKA
D/O.- TANURAM DEKA
R/O.- DAGAON
P.O.- AHATGURI
P.S.- DHARAMTUL
DIST.- MARIGAON
PIN-782105

8: SMTI. JOGA PROVA DIHINGIA
D/O.- PURNA KANTA DIHINGIA
R/O.- NTPS COLONY
QTR NO.37/IV
P.O. NTPS
NAMRUP
DIBRUGARH

9: SMTI. SWAPNA MAZUMDAR
WIFE OF SANJAY KUMAR CHANDA
R/O. - QTR. NO. D.12
CSIR -NEIST
JORHAT
ASSAM
PIN-785006

10: TARIK UDDIN AHMED
SON OF MD. TAZ UDDIN
R/O.- VILL. AND P.O.- TUKTUKI
P.S.- DHING
DIST.- NAGAON
PIN-782123.

11: SMTI. MADHUMITA BARUAH BORAH
WIFE OF - SRI RANJAN BORAH
RESIDENT OF - SEUJ PATH
PUB BORAGAON
GARCHUK
GUWAHATI-781035
ASSAM.

12: SMTI. DALIMI KALITA
D/O. NABIN KALITA
R/O.- VILL.- JAPARKUCHI
P.O.-CHOWKBAZAR
P.S. AND DIST.- NALBARI
PIN-781335
ASSAM

13: SMTI DALI DEKA
WIFE OF SRI KULEN BAISHYA
R/O.- VILL. AND P.O.- KAMARKUCHI
P.S. AND DIST.- NALBARI
PIN-781347
ASSAM.

14: SMTI. GITIMA BARUAH
D/O. - LT. KESHAB CH. BARUAH
R/O. - BRAHMAPUTRA HOUSING COMPLEX
BHETAPARA
P.S.-HATIGAON
PIN-781028.

15: NAZMUL HUSSAIN
S/O.- ABDUL HAMID
VILL.- BORBARI
P.O.- LAHARIGHAT
DIST.- MORIGAON (ASSAM).

16: SHAHIDUL ISLAM
SON OF SHAHEB UDDIN
R/O.- VILL.- THANAGARA
P.O.- BHURBANDHA
P.S. AND DIST.- MORIGAON (ASSAM)
PIN-782104.

17: SMTI JURI BHARALI
D/O.- GIRIN BHARALI
R/O.- NO.2 BOKULONI
P.O.- BOKULONI CHARIALI
DIST.- DIBRUGARH
PIN-786191.

18: MIJANUR RAHMAN
SON OF KALIM UDDIN
R/O. - MADHAPUR
P.S.- BARPETA
DIST.- BARPETA
PIN-781352.

19: SMTI. SUBARNA PHUKAN
WIFE OF KAMALESWAR BORAH
R/O. VILL.- CHOUDHURYPARA
KOKJHAR
P.O.- MIRZA
DIST.- KAMRUP(M)
PIN-781125

20: SMTI. MAMU BORAH
WIFE OF DIP DUTTA KALITA
R/O. - PARBATPUR
NAMRUP
SECTOR F (NEW COLONY)
PIN-786623
ASSAM.

21: SMTI. SANDHYAJYOTI BHARALI
D/O. - RATNESWAR BHARALI
R/O.- TARA JAN GUAL GAON
DIST.- JORHAT
PIN-785001.

22: SMTI. PREETI PATHAK
W/O. K. DEKA
R/O.- H.NO.456
HENGRABARI MAIN ROAD
P.O.- HENGRABARI
P.S.-DISPUR
DIST.- KAMRUP(M)
PIN-781036.

23: SMTI. MONALISHA SAIKIA
D/O.- LT. PURNANANDA SAIKIA
RESIDENT OF - TAPAN NAGAR
WARD NO.-05
GOLAGHAT.

24: SMTI. PRANAMI PHUKAN
D/O.- SRI DEBANANDA PHUKAN
R/O.- NAMGHAR ROAD
NEAR NAMGHAR
NARTAM GAON
NAGAON
P.O.-ITACHALI
PIN-782003
ASSAM.

25: MEENAKSHI MEDHI
D/O. UDDHAB MEDHI
R/O.- VILL.- BAMUNPARA
P.O.-SATHISAMUKA
DIST.- BARPETA
PIN-781355.

26: SMTI. LALITA PATOWARY
D/O.- SARUNATH PATOWARY
R/O.-KAMRUP (M)
ASSAM.

27: SMTI. RANJU BOIRAGI
D/O. LILA KANTA BOIRAGI
R/O.- ARJUNGURI
P.S.- SIVASAGAR
PIN-785640
DIST.- SIVASAGAR.

28: SMTI NITUMONI MAHANTA
D/O.- KESHAB MAHANTA
R/O. VILL.- BARPARA
PIN-781123
DIST.- KAMRUP.

29: MOFIDA BEGUM
D/O. - MANTAZ ALI
R/O. - DAGAON NO.2
P.O.-DAGAON
DIST.- KAMRUP
PIN-781380.

30: SMTI RUPALI BORAH TAMULI
D/O. - SUBHARAM BORA
R/O. - VILL. - PENSION COLONY
WARD NO.-06
P.O.- DERGAON
P.S.-DERGAON
DIST.- GOLAGHAT
PIN-785614.

31: AHMADUR RASHID
SON OF LT. AMIR ALI
R/O.- WARD NO.14
POOGOTI NAGAR
P.O.- KHALILPUR
DIST.- DHUBRI.

32: SMTI GITANJALI PATGIRI
W/O. MANIK DAS
R/O.- TIHU
3 NO. WARD
DIST.- NALBARI
ASSAM.

33: JITUMONI SARMA
S/O. PUSPADHAR SARMA
R/O.- VILL.- NAYAKPARA
P.O.- DHEKIPARA
DIST.- DARRANG
PIN-784145
ASSAM.

34: SMTI. JABA RANI KALITA
WIFE OF BHASKARJYOTI SALOI
P.O.-CHAYGAON
DIST.- KAMRUP
PIN-781124.

35: SMTI. NEELIMA CHOUDHURY
W/O.- MIR JAHIDUL ISLAM
R/O.- VILL.- BARBHITHA
P.O.- JATRADIA
DIST.- BARPETA
PIN-781315
ASSAM.

36: SMTI. SHIKHAMONI DOWANIA
D/O. SARBESWAR DOWANIA
R/O.- BONGAON
DIST.-GOLAGHAT
PIN-785611.

37: NARAYAN DEY
SON OF LT. ARUN DEY
R/O.- VILL.-SHYMAPOLLY
P.O.-JAGIROAD
DIST.-MORIGAON
PIN-782410

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE SECRETARY DEPARTMENT OF SCHOOL
EDUCATION (SECONDARY), DISPUR, GUWAHATI-06.

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM KAHILIPARA GUWAHATI

Advocate for the Petitioner : MR. S HAZARIKA

Advocate for the Respondent : SC, EDU

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date : 21.06.2024

ORDER

Heard Mr. S. Hazarika, learned counsel for the petitioners. Also heard Mr. Nayanjyoti Khataniar, learned standing counsel, Secondary Education Department, appearing on behalf of all the respondents.

2. The petitioners, who were aspirants for the posts of Graduate Teacher in the Secondary Education Department, had instituted the present writ petition assailing an order, dated 28.02.2023, by which their applications for condonation of their over-age was rejected by the Secretary to the Government of Assam, Department of School Education.

3. The petitioners, who, as projected in the writ petition, possessed the requisite qualifications for having their cases considered against the posts of Graduate Teachers existing in the Secondary Education Department, had earlier approached this Court by way of instituting writ petitions being WP(c)3723/2020, WP(c)3840/2020, WP(c)3896/2020, and WP(c)4121/2020, praying for a direction towards permitting them to apply for the posts of Graduate teachers by condoning their respective over-age. The said writ petition was disposed of by this Court, vide order, dated 30.05.2022, providing as

follows:-

“16. The Secretary may pass its reasoned order on the individual applications on being filed. It is requested that the individual applications be submitted forthwith and the Secretary to pass respective reasoned orders within a period of two months from the date of receipt of the individual representations/applications.

17. We have been told that there is an interim order allowing the petitioners to submit their applications pursuant to the advertisement dated 12.09.2020. Upon the reasoned order being passed by the Secretary, the individual application of the petitioners that may have been submitted pursuant to the advertisement dated 12.09.2020 be brought to its logical end as per law.

18. We are not taking note of any factual variations that may exist in the individual cases and if it so exists, it will be for the Secretary to take note of the same while passing the reasoned order. The factual variations may also include that some petitioners may not have been earlier employed under the ‘Scheme to strength and improve the quality of secondary education in the State of Assam’ and if it is so, the aspect of ‘in the interest of fair dealing’ and ‘in the public interest’ be looked into by the Secretary in terms of the individual facts of such applicants and the observations in respect of the candidates who are governed by the ‘Scheme to strength and improve the quality of secondary education in the State of Assam’ would be not applicable. In respect of any other issues that may arise, it would be for the Secretary to individually deal with such issues in the manner as may be provided under the law.”

4. In terms of the directives as passed by this Court, the petitioners contend that applications came to be preferred by them praying for condonation of their over-age.

5. The Secretary to the Government of Assam, Department of School Education, vide order, dated 28.02.2023, proceed to reject the applications so filed by the petitioners, herein, holding as follows:

“In view of the above, the Department of School Education is not in a position or empowered to relax or condone the upper age of the petitioners to apply for the Graduate Teacher as stipulated in the advertisement issued by the Director of Secondary Education, Assam vide NO. GB-EST/Advertisement/1/2020/11, dated 11/09/2020, published in the local dailies on 12/09/2020.

Accordingly, the petitions submitted by the petitioner are hereby disposed of and the Hon’ble Court’s judgment & order, dtd. 30/05/2022 passed in WP(C) No. 2238/2020 (Dalimi Kalita and another –vs- the State of Assam & ors) linked with 44 other analogous court cases is complied herewith.”

6. Before considering the issues arising in the present proceeding, a reference is to be made to the power available with the authorities for condonation of the over-age. The said issue was considered by this Court in the case of ***Kunjalata Gogoi & Ors. v. State of Assam & Ors.***, reported in ***2022 0 Supreme (Gau) 154***, wherein this Court upon consideration of the matter, concluded as follows:-

“13. The notification dated 03.05.1951 being relevant for determination of the present case is quoted hereinbelow:

‘AAP.34/50/27, General rules for relaxation of age limits 3.5.1951

In pursuance of the provisions of Article 309 of the Constitution of India, the Governor of Assam is pleased to make the following general rules regarding relaxation of the age limit for recruitment to civil services of civil posts in connection with the affairs of the State of Assam.

‘(1) Notwithstanding anything to the contrary in rules regulating the maximum or minimum age of recruitment to a service or post in connection with the affairs of the State of Assam, the age limit may be relaxed in favour of any candidate or class of candidates only if (i) in cases in which the appointing authority is the Governor, or (ii) in other cases, the Head of the Department, considers this necessary in the interest of fair dealing or in the public interest.

(2) In this rule ‘Head of Department’ means the authority who is declared to be the Head of the Department for the purpose of the Fundamental Rules and of the Subsidiary and Supplementary Rules made by the State Government, and includes a District and Sessions Judge.

(3) In case in which recruitment is made through the Public Service Commission, the Commission shall be consulted before the rule is relaxed.”

*14. While the said Rule was holding the field, the Government of Assam issued the office memorandum dated 27.03.1980 to lay down revised principles for guidance in dealing with cases of relaxation of age limit under the notification dated 03.05.1951. Such notification was challenged before this court and this court in *Pranab Kumar Deka & Ors. Vs. State of Assam & Ors. (supra)* held the notification dated 27.03.1980 to be violative of Article 14 of the Constitution of India and accordingly struck down the same. This court in *Pranab Kumar Deka (supra)* held that the OM dated 27.03.1980 has made classification between two groups i.e. one group, who are in the Government Services of Assam and the other group who are not in services in the Government of Assam and both were treated differently. Accordingly, this court in*

Pranab Kumar Deka (supra) at paragraph 36 and 39 held as follows:

‘36. In so far the present case is concerned the object sought to be achieved by the impugned OM by providing for age relaxation is to ensure a fair dealing to a deserving individual candidate or in the public interest. The classification made is Government servants serving under the Govt. of Assam as one group on the one hand and those who are not serving under the Govt. of Assam as the other group on the other hand. Is this classification reasonable? Is this classification rational? What is the intelligible differentia applied while classifying the two groups? In the affidavit filed by the Personnel Department, the justification given for the classification is that those who were in the service of the State Government of Assam have already gained valuable experience while working under the Government. Therefore, to utilise their services, they should be given the benefit of age relaxation to the exclusion of others.

39. Following the above discussion, this Court is of the unhesitant view that such a classification as made out in the impugned OM dated 27.03.1980 cannot stand the test of Article 14 of the Constitution and is liable to be struck down as such. Therefore, OM dated 27.03.1980 is held to be invalid on both the grounds as discussed above.”

15. The Rule confers power on the Government to relax the maximum and minimum age of requirement to the extent when it is considered necessary in the interest of fair dealing or in the public interest. Therefore, such power needs to be exercised while dealing with a case in a just and equitable manner. The object and purpose of conferring this power on the Government is to fairly deal with a particular case or in the public interest. If any fixation of upper or lower age limit given any recruitment rule treats any candidate or class of candidates unfairly, the government is empowered to relax such rule of upper or lower age limit, already provided. The Rule does not restrict the exercise of power to individual cases. The Government may in the circumstances provided in Rule 1 be able to age limit to remove unfair dealing to a candidate or class of candidates or in public interest.

16. The scope of Rule is wide enough and confer power on the State Government to relax the upper or lower age limit in recruitment, notwithstanding anything to contrary in rules regulating the maximum or minimum age, in respect of an individual or class of individuals to the extent it may consider necessary for dealing with the case in a fair manner or in public interest. In the case in hand it is submitted that there is no service rule fixing any upper or lower age limit. And accordingly, the recruiting authority has fixed the upper age limit. This court is of the opinion that even in absence of rules; the competent authority can still deal with the present case in exercise of power under the General Rule of Relaxation. The reading of the Rule clarifies that the General Power of Relaxation of Age limits has been enacted is enacted with a view to mitigate a particular situation generally contained in the Rules. Many a times strict application of fixation of age limits may create a situation where a particular individual or a set of individuals may suffer unfair dealing and further there may be a situation where requisite qualified persons may not be available for appointment to the service or in the public interest. In such a situation the Government has power to relax requirement of Rules fixing upper or lower age limit.”

7. The legal position having been noticed, the impugned order, dated 28.02.2023, is taken up for consideration. On a perusal of the said order, dated 28.02.2023, it is seen that the State Authorities have stated therein that the Department of School Education is not in a position or empowered to relax or condone the upper age limit of the petitioners facilitating them to apply against the posts advertised vide the advertisement, dated 28.12.2022.

8. The said conclusion, on the face of it, erroneous and cannot be given any sustenance. The Departmental Authorities having been specifically vested with power under the earlier Notification, dated 03.05.1951, they could not have washed away their hands and refused to exercise the jurisdiction vested in law. Accordingly, in view of the said conclusions and the Notification, dated 03.05.1951, still holding the field as on date and as submitted by the parties to this proceeding at the bar that the Notification, dated 03.05.1951, has not been modified and/or repealed by any other Rule and/or Notification, it is held that the prescriptions made in the said Notification, dated 03.05.1951, that shall be applicable for condonation of over-age of any candidate.

9. Consequently, this Court is of the considered opinion that the respondent authorities have failed to exercise the power vested on them while dealing with the applications of the petitioners for relaxation of their over-age. The impugned order clearly reflects non-application of mind to relevant factors and the said order stands vitiated and requires interference by this Court.

10. The position as emerging in the matter, the following directions are

required to be issued to the respondents:-

(i). The impugned order, dated 28.02.2023, issued by the Secretary to the Government of Assam, Department of School Education, stands interfered with. The Secretary, Government of Assam, Department of School Education, shall consider the applications submitted by the petitioners for condonation of their over-age strictly in accordance with the general rule of relaxation as contained in the Notification, dated 03.05.1951, taking the observations and findings recorded hereinabove in this order.

(ii). In the event the over-age of the petitioners are condoned and there exist unfilled posts amongst the posts advertised vide the advertisement, dated 12.09.2020, the cases of the petitioners be considered thereunder.

(iii). The direction for condonation of over-age shall be processed and concluded within a period of 30(thirty) days from the date of receipt of a certified copy of this order.

11. With the above directions and observations, this writ petition stands disposed of.

JUDGE

Comparing Assistant