

GAHC010175552022



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

Case No. : WP(C)/5737/2022

JAYANTA MALAKAR AND ANR
(SC),
SON OF LATE UMA MALAKAR,
RESIDENT OF VILL. SATDOLA,
P.O.- HAJO,
P.S.- HAJO,
DISTRICT- KAMRUP, ASSAM,
PIN- 781102.

2: NANDESWAR HANSU
(STH)

SON OF SADANANDA HANSU

RESIDENT OF VILL. HAWRAGHAT

P.O. AND P.S.- HAWRAGHAT

DISTRICT- KARBI ANGLONG
ASSAM
PIN- 782481

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY COMMISSIONER AND SPL. SECRETARY TO THE GOVT.
OF ASSAM, PUBLIC WORKS (R) DEPARTMENT, DISPUR, GUWAHATI-06.

2:THE DEPUTY SECRETARY TO THE GOVT. OF ASSAM
PUBLIC WORKS ROAD DEPARTMENT
DISPUR
GUWAHATI-06.

3:THE ASSAM PUBLIC SERVICE COMMISSION

REPRESENTED BY ITS CHAIRMAN
JAWAHAR NAGAR
KHANAPARA
GUWAHATI-22.

4:THE SECRETARY
THE ASSAM PUBLIC SERVICE COMMISSION
JAWAHAR NAGAR
KHANAPARA
GUWAHATI-22.

5:THE DEPUTY SECRETARY
THE ASSAM PUBLIC SERVICE COMMISSION
JAWAHAR NAGAR
KHANAPARA
GUWAHATI-22

Advocate for the Petitioner : MR G PATHAK, MR. S K SINGHA

Advocate for the Respondent : SC, P W D, SC, APSC

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 01.08.2024

Heard Mr. G. Pathak, learned counsel for the petitioner. Also heard Mr. P. Nayak, learned Standing counsel, Public Works Department (Roads) for the respondent Nos. 1 and 2 and Mr. P. Dutta, learned Standing counsel, Assam Public Service Commission (APSC), for the respondents No.3, 4 and 5.

2. At the outset, learned counsel for the petitioners, has submitted that the present writ petition is being pressed only in respect of petitioner No.2.

3. The petitioner No. 2, by way of instituting the present proceeding, has raised a grievance pertaining to the rejection of his candidature for appointment

as Junior Engineer (Civil) under the Public Works Department (Roads) on the ground that the petitioner on the date so mandated in the advertisement in question, was over-aged.

4. The petitioner No. 2, herein, was serving as Junior Engineer (Civil) under Regulation 3(f) of the Assam Public Service Commission (Limitation of Function) Regulation, 1951, w.e.f. 04.06.2019.

5. The Assam Public Service Commission (APSC) had issued an advertisement bearing No.6/2019 dated 19.11.2019, amongst others, inviting application for filling up of 307 number of vacancies in the post of Junior Engineer (Civil) under Public Works Department (Roads). In the said advertisement, the prescription with regard to age was made as under:-

“6. Age:-

The candidates should not be less than 21 years of age and not more than 38 years of age as on 01.01.2019. The upper age limit is relaxable-

i) By 5 years for SC/ST candidates i.e. upto 43 years.

ii) By 3 years for OBC/MOBC candidates i.e. upto 41 years as per Govt. Notification No. ABP.6/2016/9 dated Dispute the 25th April 2018.

iii) For persons with Disabilities (PWD) by 10 years irrespective of SC/ST/OBC and General Category of candidates as per Govt. Notification No. ABP 144/95/121 dated Dispur the 28th October, 2015.”

6. The petitioner No. 2, having crossed the maximum prescribed age limit of 38 years and he on the last date, so prescribed for submission of application having also crossed 43 years, was rendered ineligible for applying in pursuance to the said advertisement. Accordingly, the petitioner herein, along with other similarly situated persons, submitted a representation before the Commissioner and Special Secretary, Assam Public Works Department (Roads), on 09.12.2019,

for condonation of their over age. The said application filed by the petitioner and other similarly situated persons came to be placed before the Cabinet. The Cabinet in its meeting held on 21.03.2020, considered the matter and granted approval for relaxation of upper age in respect of nine persons involved, including the petitioner No.2 herein, for applying against the post of Junior Engineer (Civil) up to 44 years as a special case.

7. The petitioner No.2, accordingly contends that their application in terms of the Cabinet decision, as noticed hereinabove, was accepted by the APSC authorities and they were permitted to appear in the screening test. However, on 05.08.2022, the petitioner No.2 came across a list published in the website of the APSC wherein, a list of candidates whose candidature came to be rejected with reasons for the same was provided. On perusal of the said list, the petitioner No.2 herein found that his name figured at serial No.402 and his candidature was rejected on the ground of being "over aged".

8. Being aggrieved, the petitioner No.2 along with others, approached the PWD authorities praying for requiring the APSC authorities to consider their respective cases by applying the relaxation as granted to them by the cabinet in its meeting held on 21.03.2020. The respondent authorities having not considered the grievance as raised by the petitioner, the present writ petition has been so instituted.

9. The facts as involved in the matter are not in dispute. The respondents

have also not disputed the Cabinet decision, as arrived in the matter with regard to grant of relaxation of upper age limit in respect of petitioner No. 2 and 8(eight) other similarly situated persons. The said cabinet decision was communicated by the PWD authorities to the Assam Public Service Commission vide communication dated 02.05.2020.

10. Perusal of the said communication dated 02.05.2020, goes to reveal that the cabinet in its meeting held on 21.03.2020 had conveyed its approval towards relaxation of the upper age limit in respect of nine candidates, including the petitioner No. 2, herein, up to 44 years as on 01.01.2019, to facilitate their participation in the recruitment process underway for the post of Junior Engineer (Civil). It is seen that by applying the upper age limit of 44 years, the petitioner No.2 herein who had already exceeded the upper age limit of 44 years as on 01.01.2019, would not be benefitted from the relaxation as made applicable in his case with regard to upper age limit in pursuance to the said cabinet decision dated 21.03.2020.

11. Learned counsel for the petitioner No.2, by referring to the provision of Clause(6) of the advertisement, dated 19.11.2019, has contended that a reserved community candidate is entitled to a further relaxation of age i.e. five years in respect of SC/ST candidates and three years in respect of OBC/MOBC, candidates in addition to upper age limit of 38 years as prescribed in the said advertisement. On application of the relaxation of upper age limit as made applicable to a reserved community candidate, it is seen that a candidate belonging to SC, ST community would be eligible to submit his application up to

the age of 43 years whereas, a candidate belonging to OBC/MOBC candidate would be so eligible up to the age of 41 years.

12. The above situation having noticed, it is now to be examined as to the actual enhancement of upper age limit occasioning as per the decision of the Cabinet and to consider as to whether the relaxation so granted to the upper age limit upto 44 years is exclusive of the further relaxation as extended vide the said advertisement to a candidate belonging to a reserved communities and/or the upper age limit relaxation up to 44 years is inclusive of the further relaxation as provided in the advertisement in question to a reserved community candidate.

13. The respondent in the Public Works Department in the above context vide communication dated 02.09.2022, informed the Assam Public Service Commission(APSC) authorities that the candidature of the persons whose name is so incorporated in the communication dated 02.05.2020, is so required to be considered as regards the prescription of age, by reckoning the decision of the Cabinet for relaxation of upper age limit and also by taking into consideration the existing norms for relaxation of qualifying age for the reserved category candidates. The clarification as issued vide communication dated 02.09.2022, would mandate that in addition to the relaxation of the upper age limit up to 44 years in respect of petitioner No.2 herein and other similarly situated persons in terms of the cabinet decision; they would be entitled to be granted further relaxation of upper age limit by also applying the relaxations as provided under, either Clause 6(i) or 6(ii) of the advertisement in question.

14. The above position was further clarified by the PWD authorities by way of filing an affidavit by contending as follows:-

“Candidate of Scheduled Caste, Scheduled Tribes and other categories who are entitled for additional relaxation in upper age limit will continue to avail the same over and above the revised age limit of 44 years.”

15. The petitioner No.2, herein, belongs to the ST community and accordingly, in terms of the clarification dated 02.09.2022 as well as the contention in the affidavit of the PWD authorities as mandated hereinabove, would be entitled to a further relaxation of five years over and above the relaxation as extended to him in terms of the Cabinet decision. Accordingly, applying the relaxation as provided by the Cabinet along with the further relaxation as mandated under the provision of Clause 6(i) of the advertisement in question, the upper age limit of the petitioner stands relaxed up to 49 years. Accordingly, the petitioner No.2 as on 01.01.2019 would be within the age limit requisite for applying in pursuance to the advertisement in question and as such, the rejection of the case of the petitioner by the APSC authorities on the ground of being “over aged” is hereby interfered with.

16. The rejection of the candidature of the petitioner No.2 herein on the ground of being “over aged” having been interfered with by this Court, the APSC authorities are hereby directed to proceed to consider the case of the petitioner No.2 on merits and declare his results. On such declaration of the results of the petitioner No.2, if he is found to have come within the merit position warranting appointment in his case against the post of Junior Engineer

(Civil) advertised vide the advertisement dated 19.11.2019, the authorities of the PWD (Roads) shall appoint the petitioner immediately upon declaration of his results by the APSC authorities.

17. It is further provided that the interim direction as passed by this Court vide order dated 02.09.2022 is hereby vacated.

18. With the above observation and direction, the writ petition stands disposed of.

JUDGE

Comparing Assistant