

GAHC010222302021



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

Case No. : WP(C)/7222/2021

BALEN CH. DAS
S/O. LT. NAREN CH. DAS, REVENUE VILL. BIRUGAON, P.O.
DHANGARGAON, MOUZA- BORDUWAR, P.S. BALASHBARI, DIST.
KAMRUP, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, REVENUE
DEPTT., DISPUR, GUWAHATI-781006.

2:THE DEPUTY COMMISSIONER

KAMRUP (R)
AMINGAON
NAMATI JALAH
PIN-781039
ASSAM.

3:THE ADDL. DEPUTY COMMISSIONER

KAMRUP (R)
AMINGAON
NAMATI JALAH
PIN-781039
ASSAM.

4:THE CIRCLE OFFICER

PALASHBARI REVENUE CIRCLE
PALASHBARI
PIN-781128

DIST. KAMRUP
ASSAM

Advocate for the Petitioner : MRS. S P HUSSAIN

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

19.02.2024

1. Heard Ms. S. Khan, learned counsel for the petitioner. Also heard Mr. J. Handique, learned Standing Counsel for the Revenue Department representing the respondent No.1 and Mr. R Dhar, learned Government Advocate representing the respondent Nos. 2, 3 and 4.
2. This writ petition has been filed putting into challenge the advertisement dated 01.12.2021 whereby the Office of the Deputy Commissioner, Kamrup had invited applications for filling up post of Gaon Pradhan in respect of the villages mentioned in the list. The petitioner is the Gaon Pradhan of Village: Barduar under Birogaon Mouza of Palashbari Revenue Circle in the District of Kamrup.
3. The grievance of the petitioner is that because of wrong reflection of the age of the petitioner in the PAN Card which was submitted earlier, there is a presumption that he has crossed the age of 65 years. Subsequently, it was corrected and the corrected PAN Card in addition to the AADHAR Card wherein the date of birth of the petitioner is reflected as 03.01.1963 as well as in the High School Leaving Certificate was submitted before the Competent Authorities. However, no corrigendum was issued excluding the village from the

Advertisement in which the writ petitioner is the Gaon Pradhan.

4. Under such circumstances, the petitioner has approached this Court challenging the advertisement so far as it relates to the Village Barduar under Birogaon Mouza of Palashbari Revenue Circle.

5. The State of Assam issued a notification on 01.12.2021, whereby the executive instructions controlling the appointment and service condition of Gaon Burah under Assam Land and Revenue Regulation, 1886 was amended. Amongst other, age of superannuation of Gaon-Burah/Gaon Pradhan was determined to be 65 years.

6. It was further provided that those Gaon-Burah/Gaon Pradhan who had already attained the age of 65 years be removed by the concerned District Commissioner of the district and the Principal Secretary, in case of autonomous council areas.

7. It is apposite to mention here that the earlier executive instructions issued under the Assam Land and Revenue Regulation, 1886 did not prescribe any upper age limit for superannuation of Gaon-Burah/Gaon Pradhan.

8. In the aforesaid backdrop, the petitioner preferred a representation before the Additional Deputy Commissioner, Kamrup claiming that he has not attained the age of 65 years to be superannuated.

9. While preferring the aforesaid representation, as available on record, the petitioner relied on his Aadhar card issued by the competent authority, which goes to show that the date of birth of the petitioner is 03.01.1963. It is also contended that the earlier PAN card, which has been relied on by the respondent authorities was incorrect where date of birth was incorrectly recorded. Accordingly, such PAN card was corrected by the competent authorities wherein the date of birth of the petitioner was correctly recorded as

03.01.1963..

10. The grievance of the petitioner is that though appointment of a post of Gaon-Burah/Gaon Pradhan is by now recognized to be a civil post, however, the state authorities has not created any service book in respect of Gaon-Burah/Gaon Pradhan so as to record their date of birth inasmuch as at the point of time when the petitioner entered into the service of Gaon-Burah/Gaon Pradhan, there was no scope of obtaining any birth certificate and it was also not mandatory at that point of time.

11. Accordingly the learned counsel for the petitioner contends that the District Commissioner should re-look into the matter in view of the aforesaid materials that has been placed by the petitioner. However, his representation still remain unattended.

12. At this stage Mr. R Dhar, learned counsel for the respondent submits that the matter relates to a disputed question of fact and therefore, this court may not like, in exercise of its power under Article 226 of the Constitution of India, to make a determination regarding the correct date of the birth of the petitioner.

13. It is the District Commissioner who has been authorized by the executive instruction to remove those Gaon-Burah/Gaon Pradhan who have attained more than 65 years in terms of the executive instruction and therefore it is the Deputy Commissioner who is to apply its mind to given facts of an individual case to come to a conclusion, whether the Gaon-Burah/Gaon Pradhan has attained the age of superannuation or not.

14. This court is also of the opinion that in the given facts of the present case a dispute has arisen regarding the actual date of birth of the petitioner, inasmuch as there are two sets of documents which suggest two different

dates.

15. That being the position the matter is remanded back to the District Commissioner to relook into the representation of the petitioner and decide the matter afresh regarding the age of the petitioner.

16. The District Commissioner shall be at liberty to consider any other relevant material including school record and certificates etc.

17. Such exercise shall be carried out within a period of 4 weeks from the date of receipt of a certified copy of this order to be furnished by the petitioner before the District Commissioner, Kamrup.

18. It is needless to say that in the event determination is made in favour of the petitioner, he shall be allowed to continue in the post of Gaon-Burah/Gaon Pradhan in question.

19. With the aforesaid observations, the writ petition stands disposed off.

JUDGE

Comparing Assistant