

GAHC010253462018



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

WP(C) 7655/2018

1:MRITUNJAY SAIKIA
S/O- SRI GOLAP CHANDRA SAIKIA
ASSAM HOUSING BOARD COLONY (BRAHMAPUTRA HOUSING SOCIETY)
BLOCK L-6
P.O. BELTOLA
BHETAPARA CHARIALI
GHY-28
DIST- KAMRUP (M)
ASSAM

VERSUS

1:THE STATE OF ASSAM AND 2 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL
(B) DEPTT.
ASSAM SECRETARIAT
DISPUR
GHY-6

2:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL
(A) DEPTT.
ASSAM SECRETARIAT
DISPUR
GHY-6

3:THE SECY.
ASSAM PUBLIC SERVICE COMMISSION
JAWAHAR NAGAR
KHANAPARA
GHY-22

Advocate for the Petitioner : MR A M MAZUMDAR
Advocate for the Respondent : GA
ASSAM

_BEFORE
HON'BLE MR.JUSTICE N. KOTISWAR SINGH
ORDER

02-04-2019

Heard Mr. A.M. Mazumdar, learned Senior Counsel assisted by Md. R. Islam, learned counsel for the petitioner. Also heard Mr. D. Nath, learned State Counsel, for the State respondents and Mr. A.C. Baruah, learned Standing Counsel, APSC.

2. The crux of the issue involved in this petition relates to the plea of the petitioner for relaxation of the upper age limit to participate in recruitment to the various posts within the purview of the Combined Competitive Examination, 2018 for which the petitioner had applied.

3. The petitioner belongs to the ST (Plain) community of Assam and is in search of employment under the State dispensation. He had earlier served under the Assam Police Department. However, he discontinued the same to enable him to undergo further studies and when this opportunity came for competing for appointment in terms of the advertisement No.9/2018 dated 17.05.2018, he applied for the same. But it was found that he was over aged by 1 (one) year. Accordingly, his application was rejected by the Assam Public Service Commission (APSC in short), the authority, conducting the recruitment process.

4. The petitioner approached this Court by filing this petition and this Court by an interim order dated 20.12.2018 allowed the petitioner to appear in the Preliminary Examination conducted by the APSC provisionally, however, with the direction that his examination result will be kept under sealed cover which is to be opened after necessary order is passed by this Court after hearing the parties.

5. Learned counsel for the parties submit that there is an element of urgency in the matter as the APSC is not able to proceed with the main examination because of the interim

order of this Court and accordingly, the matter has been taken up for hearing today. It may be also mentioned that the petitioner before filing this writ petition had approached this Court earlier by filing a writ petition i.e. WP(C) No.4559 of 2018 seeking for relaxation of his age and this Court disposed of the said petition vide order dated 24.07.2018 with the direction to the respondent authorities to consider the representation submitted by the writ petitioner by issuing a speaking order as regards the claim of relaxation of his age.

6. Pursuant to the said direction of this Court, the authorities issued a speaking order on 01.09.2018 rejecting his plea for relaxation, which is the subject matter of challenge in this writ petition.

7. A perusal of the aforesaid speaking order dated 01.09.2018 would reveal that the authority rejected the plea of the petitioner on the ground that the Office Memorandum (O.M. in short) dated 18.04.2018 and 03.03.2016 by revising the upper age limits of the candidates relates to relaxation of upper age limit for entry into Grade-III and Grade-IV jobs in the State Government and as such, said OMs are not applicable. Similarly, it was held that the other OM dated 25.04.2018 deals with the relaxation of upper age limit in respect of the candidates belonging to OBC/MOBC. Accordingly, it was held that none of these OM can be applied to the petitioner to fulfill his prayer and accordingly, the prayer of the petitioner was rejected.

8. From the above, it is evidently cleared that the State authority declined the request of the petitioner on the ground that the aforesaid OM are not applicable to the petitioner.

9. There is nothing on record to show the existence of any OM which may be applicable to the applicants belonging to the ST(P). The stand of the authority is that in absence of any appropriate OM or Rules in this regard, it would not be possible to relax the upper age limit of any candidate belonging to ST(P) category. This Court, however, is not convinced with the aforesaid submission made on behalf of the State. The power to make appointment also includes the power to relax the age of the applicants which had been done in respect of other categories. If the Rule is silent about the relaxation of age in respect of certain candidates, it does not mean that the authority is devoid of any power to relax the upper age limit. The power to relax the service conditions is inherent with the appointing authority. Some of this power is expressed by way of publication of Rules or OM as the case may be. However, it

does not mean that in absence of any publication of Rules, the authorities do not have the power and cannot relax the service conditions or service rules. The only requirement is that it must be done in a fair and non-discriminatory manner and by notifying it. In the present case, the issue involved is about relaxation of the upper age limit of the candidate belonging to ST(P). There are many OMs which have already been issued by the State Government from time to time dealing with the relaxation of upper age limit in respect of other categories for appointments. However, since there is no OM dealing with the relaxation of upper age limit in respect of candidates belonging to ST(P), the authorities certainly can invoke the inherent power irrespective of existence of any OM in that regard for relaxation of upper age limit for candidate belong to ST(P), if such power has been exercised in respect of other categories of employees.

10. In that view of the matter, this Court is of the opinion that mere non-existence of any specific OM to deal with the relaxation of upper age limit in respect of candidates belonging to the category of the ST(P), would not prevent the authorities from exercising its inherent power in considering any such claim which, however, has to be done by taking into consideration other relevant factors in this regard, as has been done in case of other candidates belonging to other categories.

11. Accordingly, the present petition is allowed by setting aside the impugned order dated 01.09.2018 with the direction to the respondent authorities, more particularly, the respondent no.1 to exercise its power to consider the request made by the petitioner for relaxation of the upper age limit by following proper norms as it may deem appropriate as has been done in case of other categories of applicants.

12. This exercise shall be undertaken by the respondent no.1 within a period of 10 (ten) days from the date of receipt of a certified copy of this order. Accordingly, the result of the petitioner will be declared depending on the decision taken by the State authorities on the claim for relaxation of upper age limit made by the petitioner. Thereafter, the respondent no.1 shall intimate the result thereof to the respondent no.3, so that the respondent no.3 can proceed with the recruitment process and if the authorities decide to relax the age of the petitioner and if he is found to have passed in the preliminary examination, he may be allowed to take part in the main examination.

13. A copy of this order may be furnished to the learned counsel for the respondents for doing the needful.

JUDGE

Comparing Assistant