

GAHC010143412019



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

Case No. : WP(C) 4434/2019

1:MONDIP RONJON KHOUND
S/O SRI PROBIN CH. KHOUND, R/O DERGAON, WARD NO. 8, PHG PATH, P.O.
KC ALI (VIA. DERGAON), P.S. DERGAON, DIST. GOLAGHAT, ASSAM, PIN-
785614

VERSUS

1:THE STATE OF ASSAM AND 2 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, DEPTT. OF
PERSONNEL (B), DISPUR, GUWAHATI-781006

2:THE ASSAM PUBLIC SERVICE COMMISSION
REP. BY ITS SECRETARY
JAWAHARNAGAR
KHANAPARA
GUWAHATI-781022

3:THE SECRETARY
THE ASSAM PUBLIC SERVICE COMMISSION
JAWAHARNAGAR
KHANAPARA
GUWAHATI-78102

Advocate for the Petitioner : MR. R PHUKAN

Advocate for the Respondent : SC, PERSONNEL DEPT.

**BEFORE
HONOURABLE MR. JUSTICE UJJAL BHUYAN**

ORDER

18.07.2019

Heard Mr. R. Phukan, learned counsel for the petitioner and Mr. A. K. Thakur, learned counsel for Personnel Department. Also heard Mr. C. Baruah, learned Standing Counsel, Assam Public Service Commission (APSC).

By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 06.06.2019 whereby his prayer for relaxation of age limit has been rejected by the Personnel (B) Department, Govt. of Assam.

It may be mentioned that APSC had issued advertisement No. 9/2018 on 17.05.2018 for *Combined Competitive (Preliminary) Examination, 2018*.

Petitioner is serving as Programme Manager under National Health Mission (NHM) on contract basis. He belongs to Unreserved Category (General). Petitioner responded to the said advertisement and submitted his application. However, his application was rejected on the ground that he was over aged by about 10 months. Aggrieved by the aforesaid, petitioner approached this Court by filing WP(C) No.7834/2018.

This Court while issuing notice on 20.12.2018 passed an interim order allowing the petitioner to take part in the preliminary examination provisionally with further direction that result of the petitioner should be kept in sealed cover.

Pursuant to such permission granted by this Court, petitioner appeared in the preliminary examination. However, his result was kept withheld.

WP(C) No. 7834/2018 was finally disposed of by this Court on 02.04.2019 by directing the Personnel Department, Govt. of Assam to consider the case of the petitioner for relaxation of upper age limit with due intimation to the petitioner. Relevant portion of the order dated 02.04.2019 is extracted hereunder:-

“2. The present petition has been filed seeking for a direction to the respondent authorities to relax the upper age limit. The petitioner belongs to unreserved category (General) and he is presently working as a Programme Manager under the National Health

Mission on contractual basis and accordingly, desires of getting a regular appointment. On seeing the advertisement No.9/2018 dated 17.05.2018, the petitioner applied for the said advertised post being conducted by the Assam Public Service Commission (APSC in short). The application of the petitioner, however, has been rejected by the APSC on the ground of being overaged and being aggrieved, the petitioner has approached this Court by filing this writ petition.

3. This Court while admitting this petition passed an interim order on 20.12.2018 by which the petitioner was allowed to take part in the Preliminary Examination provisionally and further direction was given that his result will be kept under sealed cover to be opened after necessary order is passed by this Court after hearing the parties. Accordingly, the petitioner was allowed to take part in the Preliminary Examination but his result has been withheld.

4. 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.

5. In this petition, the petitioner has relied certain office memoranda issued by the State on the basis of which the petitioner is claiming for relaxation of his being overaged by 10 months. The APSC respondents has filed an affidavit-in-opposition in which it has been stated that the matter relating to relaxation of age has been already mentioned in the advertisement dated 17.05.2018 in which relaxation has been provided for SC/ST and also for OBC/MOBC and persons with disabilities and also for Ex-Servicemen in terms of the various memoranda issued in that regard.

6. However, since the petitioner belongs to General category, the petitioner is not entitled to any relaxation of the upper age in terms of the aforesaid OMs mentioned in the advertisement dated 17.05.2018. However, as regards the reliance by the petitioner on the OM dated 03.03.2016, it has been submitted that the aforesaid OM was valid for only two years i.e., upto 02.03.2018 and since the advertisement was published on 17.05.2018, after expiry of the said two years, the petitioner is not entitled to the benefit granted under the aforesaid OM. As regards the other OMs dated 25.04.1980, 10.03.2008 and 28.10.2015 referred to in the advertisement, it has been submitted that the aforesaid memoranda do not provide for relaxation of age for the general category candidates.

7. As regards the issue of relaxation of age is concerned, it is a matter which is within the discretion of the appointing authority and since there are admittedly various OMs which provide for relaxation of age in respect of other categories of employees as mentioned above, the authorities can examine the plea of the petitioner who belongs to general category for relaxation of the same.

8. Though, it appears that there are no office memoranda to relax the age of any candidate belonging to general category as contended by the State, it may not be mentioned that the petitioner is already serving under the Government of Assam though on a contractual basis for the last 11 years. In other words, the petitioner is not a fresh applicant seeking appointment but is a person who is already in-service having served for about 11 years under the State Government. Therefore, this Court is of the view that the authority can consider relaxing the age limit in respect of in-service candidates.

9. This Court has also noted that the aforesaid OMs do not deal with relaxation in respect of the candidature of in-service candidate, whether general or belonging to any reserved category.

10. In that view of the matter, this Court is of the opinion that if the authorities grant relaxation

in respect of in-service candidates, as in the case of other reserved categories, it cannot be said to be arbitrary or discriminatory in nature, since the authorities have to power to relax the age limitation for other categories of applicants and have done so far other categories of candidates. 11. This Court is of the view that the authorities can certainly consider the relaxation of age of the petitioner who is already in Government service though, on contractual basis.

12. Accordingly, for the reason discussed above, the present petition is disposed of with a direction to the respondent authorities, more particularly respondent No.1 to exercise its power to consider the request made by the petitioner for relaxation of the upper age limit in its wisdom. It may be also noted the power to relax the age is inherent with the appointing authority. Only that, it must be exercised in a non arbitrary manner.

The aforesaid 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.”

Thereafter, Secretary to the Govt. of Assam, Personnel (B) Department issued the impugned order dated 06.06.2019 rejecting the prayer of the petitioner for age relaxation. Aggrieved, present writ petition has been filed.

Yesterday, when the matter was taken up, the following order was passed:-

“Petitioner was allowed to appear in the Combined Competitive (Preliminary) Examination, 2018 by interim order dated 20.12.2018, passed in WP(C) No.7834/2018 though his candidature was rejected on the ground of being over aged. By the said interim order, it was, however, provided that result of the petitioner should be kept under sealed cover. By the final order dated 02.04.2019, the writ petition was disposed of by remitting the matter back to the APSC to reconsider the case of the petitioner for relaxation of upper age limit. However, by the impugned order dated 06.06.2019 prayer of the petitioner for age relaxation has been turned down.

Hence this writ petition.

Before proceeding further, Court is of the view that APSC should open the sealed cover containing the results of the petitioner’s preliminary examination and thereafter apprise the Court about the performance of the petitioner.

List tomorrow i.e., on 18.07.2019.”

Today, when the matter is called upon, Mr. C. Baruah, learned Standing Counsel, APSC submits on the basis of written instructions that petitioner obtained a total of 293 marks against the cut-off marks of 263 for General Male Category in the *Combined Competitive (Preliminary) Examination, 2018*.

When this Court had permitted the petitioner to appear in the preliminary examination

which the petitioner has passed it would be wholly illogical to deny the petitioner from taking part in the mains examination.

At this stage, it may be mentioned that as per APSC advertisement the upper age limit of general category candidates is 38 years which is relaxable by 5 years in case of SC/ST candidates; 3 years for OBC/MOBC candidates; 2 years for ex-servicemen; and 10 years for persons with disabilities (PWD). This Court in the final order dated 02.04.2019 while disposing of WP(C) No. 7834/2018 had observed that issue of relaxation of age is a matter which is within the discretion of appointing authority. This Court had noted that petitioner is already in service of NHM for the last 11 years and therefore he is not a fresh candidate. In such circumstances, the authority could consider relaxation of the age limit. Rather this Court was of the specific view that the authority could certainly consider relaxation of age of the petitioner who is already in service though on contractual basis.

That being the position, impugned order dated 06.06.2019 is set aside. Since petitioner has qualified for the *Combined Competitive (Mains) Examination, 2018* he should now be allowed to appear in the said examination.

On a query by the Court, Mr. C. Baruah, learned Standing Counsel, APSC submits that initially the examinations were scheduled from 22.07.2019 but because of floods, the examinations have now been re-scheduled from 02.08.2019.

That being the position, respondent Nos. 2 and 3 are directed to allow the petitioner to appear in the mains examination.

Writ petition is disposed of.

JUDGE

Comparing Assistant