

GAHC010019532020



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

Case No. : WP(C)/573/2020

KUNJALATA GOGOI AND 3 ORS.
W/O DR. PRANJAL SAIKIA, C/O DR. PRANITA MEDHI, R/O DEBABRATA
ENCLAVE, PALTAN BAZAR, DIBRUGARH, P.O. PALTAN BAZAR, PS.
DIBRUGARH, DIST. DIBRUGARH, ASSAM

2: JUMI SARMAH BARUAH
W/O- SHRI UTPAL BARUAH
R/O- NAHARANI PATH
H.NO. 3
BY-LANE-1
P.O. SACHIVALAYA
P.S. HATIGAON
DIST- KAMRUP (M)
ASSAM

3: SAMSED AHMED
W/O- BIJOU UDDIN AHMED
R/O- H.NO. 10
NORTH JYOTI NAGAR
PIYOLI PHUKAN LINK ROAD
BAMUNIMADAM
GHY-21
DIST- KAMRUP (M)
ASSAM

4: SHIKHAMONI SHARMA
W/O- SRI AMAL KR. SARMA
R/O- H.NO. 30
NAMGHAR PATH
TETELIA
GHY
DIST- KAMRUP (M)
ASSA

VERSUS

THE STATE OF ASSAM AND 19 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, HEALTH AND
FAMILY WELFARE (B) DEPTT., SACHIVALAYA, DISPUR, GHY-6

2:THE SECRETARY
TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE (B) DEPTT.
SACHIVALAYA
DISPUR
GHY-6

3:THE SECRETARY
TO THE GOVT. OF ASSAM PERSONNEL (B) DEPTT. SACHIVALAYA
DISPUR
GUWAHATI-6

4:THE DEPUTY SECRETARY
TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE (B) DEPTT.
SACHIVALAYA
DISPUR
GHY-6

5:THE DIRECTOR OF MEDICAL ECUCATION
ASSAM
KHANAPARA
GUWAHATI-22

6:MEDICAL AND HEALTH RECRUITMENT BOARD
ASSAM
SAIKIA COMMERCIAL COMPLEX
CHRISTIAN BASTI
GHY-05
REP. BY ITS SECY. I/C

7:THE SECRETARY I/C
MEDICAL AND HEALTH RECRUITMENT BOARD
ASSAM
SAIKIA COMMERCIAL COMPLEX
CHRISTIAN BASTI
GHY-05

8:BHASWATI SUTRADHAR
C/O RAMENDRA SUTRADHAR
BELTOLA TINIALI
LAKHIMI PATH

NEAR VIJAYA ENCLAVE
HOUSE NO. 3
GUWAHATI-28
DIST. KAMRUP (M)
ASSAM.

9:NAMITA CHETRI
W/O GAUTAM NATH
R/O WARD NO. 8
BYELANE NO. 6
DERGAON
DIST. GOLAGHAT
ASSAM
PIN 785614

10:POMPI GOGOI
W/O SRI ASHOK KR BAISHYA
R/O HOUSE NO 23
NAMGHAR PATH
RUKMINI NAGAR
DISPUR
GUWAHATI- 781006
DIST. KAMRUP (M)
ASSAM.

11:SMRITI REKHA NEOG
W/O SRI PRANAB JYOTI GOGOI
R/O FLAT NO 2103
ASHOKANANDA APARTMENT
BAKUL PATH
BHAGADUTTAPUR
BELTOLA
GUWAHATI-28
DIST. KAMRUP (M)
ASSAM.

12:POLY BORAH
C/O SANTI RAM BORAH
R/O NARAYANPUR
DIKRONG
DIST. LAKHIMPUR
ASSAM
PIN 784164.

13:KARABI TALUKDAR
C/O PADMA TALUKDAR
R/O SARUPETA
PATACHARKUCHI

DIST. BARPPETA
ASSAM
PIN 781318.

14:MERINA DEKA
W/O ABHIJIT BORAH
R/O PEWS GROUP OF INSTITUTION
AMGAON
BONDA
GHY- 26
DIST. KAMRUP (M)
ASSAM.

15:TOHSEENA KHANAM
W/O FARID ALI
R/O VILL TOPATOLI
P.S KHETRI
DIST. KAMRUP (M)
ASSAM
PIN 782403.

16:MRIDUSMITA BORGOHAIN
D/O KHIROD BORGOHAIN
R/O VILL. BAILUNGBHETI
P.O AND P.S TINGKHONG
DIST. DIBRUGARH
ASSAM
PIN 786612.

17:SARAJU TALUKDAR
W/O SRI HEMENDRA NATH
R/O VILL BAMUNBARI
P.O SARUTAPA
DIST. BARPETA
ASSAM
PIN 781352.

18:GEETA BAISHYA
R/O LECTURER QUARTER
REGIONAL COLLEGE OF NURSING
INDRAPUR
GUWAHATI- 32
DIST. KAMRUP (M)
ASSAM.

19:NABANITA BARMAN
R/O LECTURER QUARTER
REGIONAL COLLEGE OF NURSING

INDRAPUR
GUWAHATI- 32
DIST. KAMRUP (M)
ASSAM.

20:KALPANA NATH
R/O HOUSE NO 11
MAHANAGAR PATH
NARBAM LAKHIMANDIR PATH
BHETAPARA
GUWAHATI-28
DIST
KAMRUP (M)
ASSAM

Advocate for the Petitioner : MR. S BARTHAKUR

Advocate for the Respondent : GA, ASSAM

Linked Case : WP(C)/8555/2019

KUNJALATA GOGOI AND 4 ORS.
W/O- DR. PRANJAL SAIKIA
C/O- DR. PRANITA MEDHI
R/O- DEBABRATA ENCLAVE
PALTAN BAZAR
DIBRUGARH
P.O. PALTAN BAZAR
P.S. DIBRUGARH
DIST- DIBRUGARH
ASSAM

2: DR. LUKIMA SAIKIA
W/O- RUPAM BORGOHAIN
R/O- KAMLA ENCLAVE
B4
SURVEY

BELTOLA
P.O. BELTOLA
P.S. DISPUR
GHY- 28
DIST- KAMRUP (M)

ASSAM

3: JUMI SARMAH BARUAH
W/O- SHRI UTPAL BARUAH
R/O- NAHARANI PATH
H.NO. 3
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ASSAM

4: SAMSAD AHMED
W/O- BIJOU UDDIN AHMED
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NORTH JYOTI NAGAR
PIYOLI PHUKAN LINK ROAD
BAMUNIMAIDAM
GHY-21
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ASSAM

5: SHIKHAMONI SHARMA
W/O- SRI AMAL KR. SARMA
R/O- H.NO. 30
NAMGHAR PATH
TETELIA
GHY
DIST- KAMRUP (M)
ASSAM
VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE (B) DEPTT.
SACHIVALAYA
DISPUR
GHY-6

2: THE SECY. TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE (B) DEPTT.
SACHIVALAYA
DISPUR
GHY-6
3: THE DY. SECY. TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE (B) DEPTT.
SACHIVALAYA
DISPUR

GHY-6
4:THE DIRECTOR OF MEDICAL EDUCATION
ASSAM
KHANAPARA
GHY-22
5:MEDICAL AND HEALTH RECRUITMENT BOARD
ASSAM
SAIKIA COMMERCIAL COMPLEX
CHRISTIAN BASTI
GHY-05
REP. BY ITS SECY. I/C
6:THE SECRETARY I/C
MEDICAL AND HEALTH RECRUITMENT BOARD
ASSAM
SAIKIA COMMERCIAL COMPLEX
CHRISTIAN BASTI
GHY-05

Advocate for : MR. S BORTHAKUR
Advocate for : SC
HEALTH appearing for THE STATE OF ASSAM AND 5 ORS.

BEFORE

THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioners : Mr. S Borthakur, Advocates

For the Respondents : Mr. D Nath, Sr. Government Advocate,
Mr. BD Konwar, Senior Advocate
Mr. DP Borah, Advocate
Mr. N Kalita, Advocate

Date of Hearing &

Date of Judgement :28.02.2022

JUDGEMENT & ORDER (ORAL)

Heard Mr. S Borthakur, learned counsel for the petitioners. Also heard Mr. D Nath, learned Senior Government Advocate, Mr. DP Borah, learned standing counsel

for the Health and Family Welfare Department, Mr. BD Konwar, learned Senior counsel assisted by Ms. H Baishya, learned counsel for the respondent Nos. 8,9,12 to 20 and Mr. N Kalita, learned counsel representing respondent Nos. 10 and 11. Both these two writ petitions are taken together for final disposal as the both are interlinked.

1. Pursuant to an advertisement dated 09.10.2013, the petitioner Nos. 1,2 and 3 were selected and appointed as Lecturers of different Nursing Colleges of the State under Regulation 3(f) of Assam Public Service Commission (Limitation of Function) Regulation 1951. The petitioner No. 1 was appointed as Lecturer of Psychiatric Nursing at B.Sc. Nursing College Dibrugarh, the petitioner No. 2 was appointed as Lecturer of Medical Surgical Nursing at Regional College of Nursing, Guwahati, petitioner No. 3 was appointed as Lecturer of Community Health Nursing at B.Sc. Nursing college Dibrugarh and the petitioner No. 4 was appointed as Lecturer of Community Health Nursing at B.Sc. Nursing College, Dibrugarh.
2. The APSC issued another advertisement on 05.07.2015 for filling up of 23 numbers of regular vacant posts of Lecturers in different Nursing Colleges of the State. The petitioners participated but the results were not declared as the same was cancelled.
3. Therafter, fresh interview was held. Petitioners did not get selected. The petitioners along with another approached this Hon'ble Court by filing WP(C) 1938/2017 challenging the selection list and this court passed an interim order directing the authority to accommodate the petitioners on the vacant posts which were not falling under purview of advertisement dated 05.07.2015. Pursuant to the same the petitioners services were extended from time to time and till date they are continuing in service.
4. Therefore, advertisement No. MHRB/19/Nursing/2019/270 was published inviting online application from eligible candidates for filling up of 28 numbers posts of

Lecturers. Clause 5 of the said advertisement stipulates the age of the candidates as not less than 21 years and not more than 38 years as on 01.01.2019. The upper age limit was relaxable by 5 years to S.C./S.T. candidates and 10 years for persons with disabilities. The petitioners applied for the posts although they were over aged.

5. The Director of Medical Education Assam forwarded the application of the petitioner No. 1 for condonation of over age of 2 years 10 months, the application of the petitioner No. 2 for condonation of over age of 2 years, the application of the petitioner No. 3 for condonation of over age of 1 year 10 months and also the application of the petitioner No. 4 to the Govt. of Assam, Health & Family Welfare Department.
6. The Secretary I/C, Medical & Health Recruitment Board published a list of rejected candidates in which the name of the present petitioners appeared. The ground of rejection is shown as over age. On the same date list of provisionally shortlisted candidates were also published. The petitioners preferred WP(C) 8555/ 2019 challenging the said action and this Court while issuing notice of motion directed the respondent Nos. 5 and 6 to allow the petitioners to participate in interview and accordingly the petitioners participated in the interview.
7. In the meantime, a communication dated 20.12.2019 was issued by the Deputy Secretary to the Govt. of Assam, Health and Family Welfare Department intimating the Director of Medical Education, Assam that there is no provision for relaxation of upper age limit for entry into Government Service. The petitioners preferred WP(C) 573/2020 challenging the communication dated 20.12.2019 and as an interim measure, directed four (4) posts of Lecturers to be kept vacant.
8. The stand of respondent in Health and Family Welfare Department is that they sought for an advice from the Personal (B) Department in respect of condonation of

age limit of the petitioners to the post of Lecturers, Government Nursing Colleges. On the basis of such communication the under Secretary, Personal (B) Department communicated following:

“Health & F.W. (B) Department ...U/O

Your endorsement at prepage.

Health & F.W.(B) Department is informed that presently there is no provision for relaxation of upper age limit for entry into Govt. Service other than the existing 5 (five) years given to SC/ST/ST(H); 3 (three) years to OBC/MOBC and as provided to Ex servicemen and Physically challenged Person etc.”

9. Thus, the stand of the Health and Family Welfare Department as well as Personal (B) Department is that there is no provision for relaxation of upper age limit for entry into Government Services other than the existing 5 (five) years given to SC, ST etc. and accordingly the respondent has refused to condone/ relax the age of the petitioners on the ground of want of power.
10. Mr. BD Konwar, learned Senior counsel assisted by Ms. H Baishya submits that his client will have no objection if the age of the petitioners are condoned and they are appointed without disturbing the appointment of his clients. The similar stand has been taken by Mr. Kalita learned counsel appearing for the respondent Nos.10 and 11.
11. Mr. S Borthakur, learned counsel for the petitioners submits that the impugned decision is a result of total non-application of mind. According to him, the respondent authorities are having power to consider and relax the upper age limit of the petitioners. According to Mr. Borthakur by way of an office memorandum dated 27.03.1980, the Government of Assam laid down certain revised principles for guidance in dealing with the cases for relaxation of age limit already provided under notification No. AAP-34/50/27 dated 03.05.1951. Mr. Borthakur further submits that such notification, on being challenged, was struck down by this court on the ground that the

said notification is violative of Article 14 of the Constitution of India. Therefore, according to Mr. Borthakur, the original notification dated 03.05.1951 was revived and the same is holding the field as on date and therefore, the respondent authorities ought to have exercised their power under the notification dated 03.05.1951.

12. I have heard the learned counsel for the parties. Also considered the materials available on record and the judgment passed by this court passed in ***Pranab Kumar Deka & Ors. vs State of Assam & Ors. reported in 2015 (4) GLT 103***. From the recital of the aforesaid Government notification dated 03.05.1951 reflects that the said notification has been issued under Proviso 2 Article 309 of the Constitution of India. The said OM is a General Rule regarding the relaxation of age limit for recruitment to Civil Services or Civil Posts in connection with the affairs of the State of Assam.

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 not 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.

17. Therefore, in view of the above decision, the notification dated 03.05.1951 is holding the field as on date. It is fairly submitted by the State counsels that no subsequent notification has been issued either modifying or cancelling or repealing the earlier Rule dated 03.05.1951. Therefore, this court is of the considered opinion that the respondent authority has failed to exercise its power while dealing with the application for relaxation of the age, preferred by the petitioners. The impugned order is nothing but a result of total non-application of mind. The State authority has failed to exercise its power mandates under Rules, 1951. That being the position, the same is set aside and quashed.

18. The fact remains that the petitioners were selected and appointed though under 3(F) of the Assam Public Service Commission (Limitation of Function) Regulation 1951 but the same was done following due selection process in the year 2013. Thus the petitioners are having experience and they participated in the subsequent regular selection which is the subject matter of the present case. The record produced by the respondent authorities, as reflected in the order dated 26.04.2021 of this court shows that they were got selected with high scores. Therefore, their merit and experience shall definitely help the nursing students.

19. Be that as it may, these writ petitions are disposed of with the following orders:

- I. The impugned order dated 20.12.2019 under Memo No. HLB.337/2015/132 is set aside and quashed.
- II. The petitioners shall, within a period of 15 days from getting a certificate copy of this order, submit the same before the respondent Nos. 2 and 3.

III. The said respondents in turn decide the application for relaxation of the age of the petitioners on the basis of the General Rule of relaxation dated 03.05.1951 and taking note of the observation and finding of this court.

IV. Till such determination is made, the interim order dated 24.02.2022 passed in WP(C) 573/2020 shall remain in force.

20. In the aforesaid terms, this writ petitions are disposed of, however no order as to cost. The record produced in seal cover be returned to Mr. DP Borah, learned standing counsel for the Health and Family Welfare Department.

JUDGE

Comparing Assistant