
(2018) 04 GAU CK 0131
In the Gauhati High Court
Case No : WP(C) 1379 of 2011

AMARJYOTI SARMA

APPELLANT

Vs

THE STATE OF ASSAM AND ORS

RESPONDENT

Date of Decision : 24-04-2018

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2018) 04 GAU CK 0131

Hon'ble Judges : HRISHIKESH ROY

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Heard Mr. P.D. Nair, the learned counsel appearing for the petitioner. The respondent Nos. 1, 4 and 6 are represented by Mr. N.J. Khataniar, the

learned Standing counsel, Higher Education Deptt. The Assam Public Service Commission (APSC) (respondent No. 5) is represented by the learned

lawyer, Mr. R.K. Talukdar. The contesting litigant Asutosh Kundu (respondent No. 7) is represented by Mr. D.P. Chaliha, the learned Senior Counsel.

2. The matter pertains to appointment to the post of whole time Lecturer in the Bishnu Ram Medhi Govt. Law College, Guwahati (hereinafter referred

to as "the Law College"), in pursuant to the advertisement dated 20.5.2009, issued by the APSC. The selection and appointment of Asutosh

Kundu, who was over aged and did not satisfy the age criteria of 21-38 years, as on 1.1.2009, is the focus of challenge in this case. In the select list

notified on 19.11.2009 (Annexure-2), the respondent No. 7 was placed first in order of merit and the petitioner, who was placed in the 2nd position in

the same select list, contends that the over aged candidate could not have been selected without relaxation of the upper age limit, as he was aged 44

years 11 months, as on 1.1.2009.

3.1. When the advertisement was issued on 20.5.2009, the respondent No.7 was serving as a clerk in the office of the Accountant General, Assam.

As relaxation of upper age limit under the Govt. O.M. dated 27.3.1980 (Annexure-7), is applicable only for those in the service of the State

Government, the petitioner contends that the age relaxation for the clerk in the Accountant General's office is not permissible, under the O.M.

dated 27.3.1980 (Annexure-7).

3.2. The petitioner contends that relaxation of the age requirement can be considered only for deserving cases and the respondent No.7, without any teaching background, could not have merited age relaxation for the post of Lecturer in the Law College.

3.3. According to the petitioner neither the Government nor the APSC had ever granted age relaxation for the respondent No.7, in terms of the O.M.

dated 27.3.1980, read with the follow up O.M. dated 4.1.1992 (Annexure-8) and accordingly, it is strenuously argued that the selection of the over aged candidate was wholly unmerited.

4. On the other hand, the respondents have specifically relied on the letter dated 4.7.2009, written to the APSC by the Department of Higher

Education, to project that age relaxation for the respondent No.7 was granted through this communication. The copy of the same letter is enclosed

with the respective counter affidavits of the APSC and the respondent No.7. Since the implication of this letter of 4.7.2009 will require consideration,

the same is extracted here-in-below for ready reference:-

GOVT. OF ASSAM

EDUCATION (HIGHER) DEPARTMENT,

DISPUR.

NO.AHE.616/2005/39 Dated, Dispur, the 4th July, 2009.

From:- Shri R.P. Mazumdar,

Dy. Secy. To the Govt. of Assam,

Education (Higher) Deptt.

To: The Dy. Secy.,

Assam Public Service Commission,

Khanapara, Guwahati-22.

Sub: Condonation of age in respect of Shri Ashutosh Kundu.

Sir,

In enclosing herewith a Photostat copy of application dtd 11/6/09 alongwith its enclosures, which is self explanatory, I am directed to say that the

Govt. in Education Higher Deptt. is pleased to refer of the condonation of over age upto 45 years in respect of Ashutosh Kundu, for applying for the post as in terms of Govt. existing rules.

Encl:- As stated.

Yours faithfully

(Sd/- illegible.)

Dy. Secy. to the Govt. of Assam,

Education (Higher) Department, Dispur.â??

5. The guideline for relaxation of the upper age limit is indicated in the Department of Personnelâ??s O.M. dated 27.3.1980 (Annexure-7) and Sub-

Para 4 of Clause 2 provides that when anyone applies for relaxation of the eligibility norms, the appointing authority must satisfy itself that the case

deserves consideration and then the APSC needs to be consulted. Thereafter, the APSC is required to give its opinion on the suitability or otherwise of

the candidate. It is further provided under Sub-Para 3 that only in case of those who are in service of the State Government, the relaxation of age can

be considered. The recourse to power of relaxation of age would be justified only for deserving cases and public interest must be borne in mind, to

invoke the power of age relaxation. For the record, it may be noted that age relaxation upto 40 years was permitted by the first O.M. dated 27.3.1980

(Annexure-7), but the permissible upper age limit was enhanced to 45 years, by the next O.M. dated 4.1.1992 (Annexure-8).

6. The General Rule for relaxation of age, was notified on 3.5.1951 through the Govt. Circular bearing No.A.A.P.34/50/27 (available at Page-184 of

the Handbook of General Circulars, published by the Assam Government), under Article 309 of the Constitution. The Rule stipulates that relaxation of

age limit for recruitment should be considered in the interest of fair dealing or in public interest and this power is entrusted to be exercised by the

appointing authority or the head of the Department. Therefore, it is important to

bear in mind that relaxation of upper age limit would be permissible

only to further the cause of public interest and to ensure fair treatment in the recruitment process.

7. Proceeding on the above basis, if one looks at the profile of the respondent No.7, it become clear that he had no background in academic as he was

serving as a clerk in the office of the Accountant General, Assam. Therefore, there would certainly be a question mark as to whether the age

relaxation is deserved for the respondent No.7, for the post of whole time Lecturer in the Law College or whether his claim, can be categorized to be

in public interest.

8. On the above aspect, the Supreme Court in Dr. Ami Lal Bhat vs. State of Rajasthan, reported in (1997) 6 SCC 614, declared that the power of

relaxation can be invoked only in special circumstances and that too in public interest. For instance it would be justified in a situation where, the only

suitable candidate has crossed the upper age limit. The requirement of consulting the Public Service Commission is also highlighted and the Court has

deprecated the practice of relaxation for all and sundry aspirants.

9. In the subsequent judgment in Food Corporation of India vs. Bhanu Lodh, reported in (2005) 3 SCC 618, the Supreme Court enunciated the

applicable principles as follows:-

“While the maximum age prescribed under the Recruitment Rules is 35/40 years for the concerned posts, departmental

candidates in the age of 52-53 years were proposed to be appointed. Even assuming that there is a power of relaxation under the Regulations, we

think that the power of relaxation cannot be exercised in such a manner that it completely distorts the Regulations. The power of relaxation is intended

to be used in marginal cases where exceptionally qualified candidates are available. We do not think that they are intended as an 'open Sesame' for all

and sundry.”

10. If we proceed on the above ratio of the Supreme Court and take note of the background of Asutosh Kundu (respondent No.7) relating it to the

appointment of the Lecturer in the Law College, it become apparent that without any background in the academic field, the respondent No.7 can

hardly be categorized as an exceptional or deserving candidate. It is also not a situation where other suitable candidates were not available, as the

petitioner himself and the respondent No.8 had also participated and got selected in the same process. The clerk's job in the office of the

Accountant General, may not also qualify the respondent No.7 to earn the permissible relaxation intended for the State Government employees, as per the specification of the O.M. dated 27.3.1980 (Annexure-7).

11. The ratio of Dr. Ami Lal Bhat (Supra) and Bhanu Lodh (Supra) if applied, to the career profile of the respondent No.7, the inevitable conclusion is

that he cannot be considered to be of exceptional category for appointment to the post of Lecturer in the Law College. Therefore, the element of fair dealing or public interest will not be attracted in his case.

12. However, even if we keep aside the profile of the respondent No.7, the question to be answered is whether any relaxation of upper age limit was

actually granted for the candidature of respondent No.7. The only document projected by the respondent No.7 as also by the APSC, suggesting

finalization of age relaxation, is the communication dated 4.7.2009. I have carefully read this letter and my inference is that this document does not

grant age relaxation to the candidature of Asutosh Kundu. This letter simply forwards the application of respondent No.7, to the APSC and as per its

wording, it can at best be, the first step towards the process of age relaxation, under Sub-Para 4 of Clause 2 of the O.M. dated 27.3.1980 (Annexure-

7). The letter does not indicate whether the appointing authority had satisfied itself that the application deserves consideration. Moreover, the

consequential response of the APSC is not brought on record. Therefore I have no hesitation to declare that final decision was never taken for age

relaxation of the respondent No.7, who was over aged by about 6 years 11 months, as on 1.1.2009. Thus, the consideration of the candidature of the

ineligible candidate by the APSC could not have been made, for the post of Lecturer in the Law College, in terms of the eligibility requirement,

specified in the advertisement dated 20.5.2009.

13. Before parting with the records, I must deal with the respondent's argument of belated challenge to the selection and appointment of the

respondent No.7. In this context, the petitioner avers that he was unaware about the age of the respondent No.7 and he secured the relevant details of

respondent No.7, with his application under the Right to Information Act. After that this case was filed on 1.3.2011, to challenge the appointment

made on 2.3.2010. In such backdrop, I see no justification to consider this to be a belated challenge. Thus the argument made to the contrary by the respondents's counsel, is rejected.

14. In view of the above discussion and conclusion, the selection of Asutosh Kundu (respondent No.7) for the post of whole time Lecturer in the Law College, is declared to be unmerited and accordingly, the same is quashed. It is ordered accordingly.

15. With the above order, this case stands allowed but the parties to bear their own cost.