

(2022) 03 GAU CK 0038

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 1975 Of 2022

Anjuma Saikia

APPELLANT

Vs

Union Of India And 4 Ors

RESPONDENT

Date of Decision : 22-03-2022

Acts Referred:

Assam College Employees (Provincialisation) Rules, 2010 — Rule 8

Citation : (2022) 03 GAU CK 0038

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : K Kalita

Final Decision : Disposed Of

Judgement

1. Heard Ms. D Ghosh, learned counsel for the petitioner. Also heard Mr. H Gupta, learned counsel for the respondents no. 1 and 2 being the authorities under the Department of Higher Education, Ministry of Human Resource to the Government of India and Mr. K Gogoi, learned counsel for the respondents no. 3, 4 and 5 being the authorities under the Higher Education Department of Government of Assam.

2. The petitioner who belongs to the OBC category is presently aged about 42 years 9 months and intends to offer her candidature pursuant to the advertisement dated 27.02.2022 of the Principal of Mariani College, amongst others, for the post of Librarian. It is stated that the interview pursuant to the said advertisement is scheduled to be held tomorrow i.e. on 23.03.2022. The grievance of the petitioner is that the college authorities are of the view that the upper age limit for such candidature is 38 years and as the petitioner is presently 42 years 9 months, she would be overage for the purpose.

3. Although contentions are sought to be raised that there is no provisions for any upper age limit for the purpose, but Mr. K Gogoi, learned counsel for the Higher Education Department refers to the provisions of Rule 8 of the Assam

College Employees (Provincialisation) Rules, 2010 which provides that the upper age limit shall be same as in government colleges in the corresponding grades.

4. It is stated that the upper age limit for the government colleges in the corresponding grades is 38 years.

5. Without going into the merits of the aforesaid contentions we take note that as per the notification dated 03.05.1951 of the Government of Assam there is a provision for relaxation of upper age limit for government services provided the conditions stated therein are satisfied by the applicant making the application for relaxation of the upper age limit.

6. We further take note that as per the O.M. dated 25.04.2018, a relaxation of 3 (three) years is available for the OBC candidates over and above the upper age limit for the general candidates. If the upper age limit for general candidates is 38 years, the upper age limit for OBC candidates would therefore be 41 years. However, it still remains an overage of about approximately one year nine months in respect of the present petitioner inasmuch as the present is 42 years 9 months.

7. Mr. K Gogoi, learned counsel has also raised an objection that a consideration for relaxing the upper age limit of the petitioner under notification dated 03/05/1951 also cannot be undertaken in the present case by referring to a judgment of this Court in Dr. Mahesh Gogoi v. State of Assam & ors. reported in (2010) 6 GLR 147 wherein it is provided that the upper age limit cannot be relaxed after the interview is held.

8. In the instant case we have taken note that the interview is yet to be held which is in fact fixed for tomorrow i.e. on 23.03.2022. Taking note of the differentiation in the facts and circumstance, we provide that the petitioner may file an application before the Principal Secretary to the Government of Assam in the Higher Education Department for consideration as to whether the upper age limit of the petitioner can be relaxed under the provisions of the notification dated 03.05.1951. On such application being submitted, the Principal Secretary may give a hearing to the petitioner and pass a reasoned order in the event the petitioner fulfils the conditions for relaxation provided in the said notification.

9. As we are providing for a requirement of the petitioner to file an application for relaxing the upper age limit, we further provide that the balance of convenience as well as the factor of irreparable loss would require the petitioner to be allowed to provisionally participate in the interview to be held on 23.03.2022 by the Mariani College for the post of Librarian. In the event such provision is not made, the petitioner may suffer irreparable loss in case the consideration for relaxing the upper age limit ultimately goes in favour of the petitioner.

10. Accordingly, the college authorities of Mariani College to allow the petitioner to participate in the interview process on 23.03.2022 but keep the result in a

closed cover and separately from the other results. The petitioner to submit the application for relaxing the age through email before the Principal Secretary to the Government of Assam in the Higher Education Department today itself which may again be substituted by a hardcopy to be submitted on or before 25.03.2022. The Principal and Secretary is directed to pass a reasoned order on such application on or before 30.03.2022.

11. In the event the decision of the Principal Secretary is in favour of the petitioner, the college authorities may further proceed with the candidature of the petitioner and on the other hand, if the decision is against the petitioner no further participation of the petitioner would be required in the interview process.

12. With the above provisions, writ petition stands disposed of.