

(2022) 05 GAU CK 0057

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 8746 Of 2019, 2238, 3723, 3736, 3749, 3751, 3771, 3734, 3781, 3837, 3840, 3850, 3857, 3885, 3862, 3893, 3896, 3910, 3919, 3790, 4042, 4083, 4017, 4110, 4112, 4104, 4105, 4107, 4018, 4141, 4129, 4136, 4108, 4113, 4121, 4098, 4123,

Dalima Kalita And Anr.

APPELLANT

Vs

State Of Assam And 2 Ors.

RESPONDENT

Date of Decision : 30-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 309

Assam Secondary Education (Provincialised Schools) Service Rules, 2018 — Rule 10(3)

Citation : (2022) 05 GAU CK 0057

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : I Chowdhury, J Ahmed

Final Decision : Disposed Of

Judgement

1. Heard Mr. I Chowdhury, learned senior counsel for the petitioners in WP(C) No. 3734/2020, WP(C) No. 3736/2020, WP(C) No. 3751/2020, WP(C) No. 3781/2020, WP(C) No. 3790/2020, WP(C) No. 4104/2020, WP(C) No. 4110/2020 and WP(C) No. 4113/2020, Mr. A Deka, learned counsel for the petitioners in WP(C) No. 3862/2020 and WP(C) No. 3910/2020, Mr. U K Nair, learned senior counsel for the petitioners in WP(C) No. 3723/2020 and WP(C) No. 4042/2020, Mr. P J Saikia, learned counsel for the petitioners in WP(C) No. 4136/2020 and Mr. P A Ahmed, learned counsel for the petitioners in WP(C) No. 4140/2020, WP(C) No. 4177/2020 and WP(C) No. 4196/2020, Mr. R A Ahmed, learned counsel for the petitioners in WP(C) No. 4108/2020 and WP(C) No. 4112/2020, Mr. S Hoque, learned counsel for the petitioners in WP(C) No. 3893/2020, WP(C) No. 3919/2020, WP(C) No. 4083/2020 and WP(C) No. 4138/2020, Mr. I H Laskar, learned counsel for the petitioners in WP(C) No. 3837/2020 and WP(C) No. 4018/2020, Mr. M Ahmed, learned counsel for the petitioners in WP(C) No. 4105/2020 and WP(C) No. 4107/2020, Mr. H Das, learned counsel assisted by Mr.

B C Deka, learned counsel for the petitioners in WP(C) No.2238/2020 and WP(C) No. 4141/2020, Mr. R Boro, learned counsel for the petitioner in WP(C) No. 4017/2020, Mr. S S Goswami, learned counsel for the petitioners in WP(C) No. 4190/2020 and WP(C) No. 4213/2020, Mr. M Choudhury, learned counsel for the petitioners in WP(C) No. 3850/2020, Mr. ABT Haque assisted by Mr. ZI Choudhury, learned counsel for the petitioners in WP(C) No. 3840/2020, WP(C) No. 3896/2020, WP(C) No. 4121/2020 and WP(C) No. 4123/2020 and Mr. K K Mahanta, learned counsel for the petitioners in WP(C)/3885/2020. Also heard Mr. R Mazumdar, learned Standing Counsel for the respondents in the Secondary Education Department, Government of Assam and Mr. Girin Pegu, learned Additional Senior Government Advocate appearing for the respondents.

2. Without going into the details of the issues involved in these writ petitions, Mr. I Chowdhury, learned senior counsel leading the arguments on behalf of the petitioners has stated that two issues were involved in these writ petitions. All the petitioners were appointed as contractual teachers pursuant to a scheme called 'Scheme to strength and improve the quality of secondary education in the State of Assam'. One the objectives of the scheme is to ensure that all the secondary and higher secondary schools have adequate teaching staff for the core subjects i.e. English, Science and Mathematics and Social Science; to ensure that there is no gap of classes during teaching hours due to absences of teaching staff of the above subjects; to ensure that all students pursuing secondary education receive education of good quality; to ensure that no students are deprived of education of satisfactory quality due to absence of teaching staff of the above subject; to improve quality of secondary education resulting in enhancement of intellectual and advanced learning.

3. The scheme provides for a procedure for selection and it provides that the School Management Committee of Secondary School or Higher Secondary School, as the case may be, would select and engage teachers on contractual basis as per the requirement, which also provides for a selection committee for the purpose. In other words, the petitioners have to undergo the process for selection in the manner provided in the aforesaid scheme and were appointed as contractual teachers in the respective schools by following, what is called, the constitutional scheme.

4. Taking note of the objectives of the scheme under which the petitioners were appointed, we also have to understand that the petitioners were engaged so that all the students receive education of good quality and that they are not deprived of any satisfactory quality education imparted upon them as well as to have an enhancement of their intellectual and advanced learning. Going by the objectives of the scheme and the petitioners having been appointed under the scheme and having worked for a considerable period of time, it has to be understood that the petitioners are of such quality who have ensured that the students have received the good quality education and have resulted in an enhancement of their intellectual and advanced learning capability. In the aforesaid objectives, the

initial appointment of the petitioners was for a period of one year but by the subsequent orders, their services were extended from time to time and the resultant situation is that even as of now, the petitioners are working.

5. The other relevant consideration would be that since their initial appointments in the year 2010, there had been no further process for regular recruitment of teachers of the nature of which the petitioners were working. The next recruitment process which enabled the petitioners to participate in a regular selection process is the advertisement dated 12.09.2020. In the meantime the statutory rules governing the recruitment of teachers of secondary school and higher secondary schools had also been amended and Rule 10(3) of the Assam Secondary Education (Provincialised Schools) Service Rules, 2018 had been brought in which is extracted as below:

"10(3) The teachers engaged on contractual basis in a provincialised Higher Secondary/High School under the scheme "strengthening of secondary education" shall be given preference for recruitment to the post of Graduate teachers by awarding total 50 bonus marks for their services as contractual teachers, i.e. 25 marks for one year and another 25 marks for completion of two years of service as contractual teacher, subject to consideration for a maximum period of two years."

6. The said amendment is being brought in by the notification dated 10.10.2019 and published in the Assam Gazette Extraordinary No. 430 dated 10.10.2019.

7. A reading of the amended provision of the Rule 10(3) goes to show that there is a statutory provision in respect of the teachers who were appointed on a contractual basis and in order to encourage such teachers to participate in a regular selection process for appointment as teachers, a total of 50 (fifty) bonus marks have also been provided for, i.e. 25 marks for one year and another 25 marks for completion of two years service as contractual teachers. In fact, the factual matrix would go to show that the petitioner not only completed two years of contractual service but in the meantime had completed approximately 12 (twelve) years of contractual service but under Rule 10(3), the bonus marks would be limited to 50 for two years even if the total services rendered may be approximately twelve years.

8. In the aforesaid circumstance, the petitioners are aggrieved to the extent that firstly the advertisement dated 12.09.2020 required the qualification of a TET passed and secondly, had prescribed an upper age limit of 40 years for the unreserved category, 43 years for the OBC/MOBC category, 45 years for the SC/ST(P)/ST(H) category and 50 years for physically handicapped persons.

9. The impediment of the requirement of having TET passed is stated to have been taken care of by the judgment dated 09.11.2021 in WP(C)/345/2021 and other related writ petitions. Accordingly, the said issue regarding the requirement of a TET passed in respect of the present petitioners would also be covered by the judgment dated 09.11.2021 in WP(C)/345/2021.

10. As regards the other issue of there being an upper age limit as per the advertisement dated 12.09.2020, we have to take note of several circumstances that were involved in the petitioners being overaged. Firstly, the petitioners joined services pursuant to a scheme being adopted by the authorities in the Secondary Education Department after following a procedure of selection, although the constitution of the selection committee may not be same as that of the prevailing recruitment rules as it prevailed at the relevant point of time. But be that as it may, the appointments cannot be said to be de hors the concept of a constitutional scheme. The other aspect to be taken note of is that although by the initial appointment orders the petitioners were appointed for a period of one year, it stood extended by the subsequent extensions and they are still continuing in service as contractual teachers. The third aspect to be taken note of is that it was the intention of the State authorities to have a recruitment process even in respect of the teachers who were appointed as contractual teachers under the Scheme. But as that did not happen until the advertisement dated 12.09.2020 was issued, the petitioners were required by the authorities in the Secondary Education Department, Government of Assam to continue as contractual teachers till date, and, therefore, it was beyond their control to have participated in a regular selection process earlier.

11. The aspect of condoning the upper age limit for any recruitment is presently governed by the notification dated 03.05.1951.

12. Clause 4 of the Notification dated 03.05.1951 which governs the law relating to relaxation of upper age limit is extracted as below:

"AAP.34/50/27, General rules for relaxation of age limits

4. 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 or 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 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."

13. Clause 4 of the notification dated 03.05.1951 provides that for condoning the

upper age limit, the authorities are required to consider whether it is necessary in the interest of fair dealing or in the public interest and that the upper age limit can be condoned either by the Governor or in other case, by the Head of the Department. 14. The Head of the Department of the Secondary Education Department would be the appropriate authority to condone the upper age limit of the present petitioners for the purpose of the advertisement dated 12.09.2020. In the circumstance, we are of the view that the ends of justice would be met on the writ petitioners filing their individual applications before the Secretary to the Government of Assam in the Secondary Education Department making their respective claims as to why the upper age limit in the context of the advertisement dated 12.09.2020 should be condoned. Upon the individual applications being submitted, the Secretary to the Government of Assam in the Secondary Education Department shall take note of the provisions of the Clause 4 of the notification dated 03.05.1951 and deal with the applications in the interest of fair dealing as well as for in the public interest.

15. When we note the expression 'in the interest of fair dealing', we also have to understand that the Secretary will have to take note of all the attending circumstances under which the petitioners were appointed pursuant to the 'Scheme to strength and improve the quality of secondary education in the State of Assam', and that although the initial appointments were a for a period of one year, but it stood extended repeatedly, resulting in a situation where the petitioners are still working as contractual teachers as on today; the circumstance that although an opportunity to the petitioners for a fair participation in a regular selection process could have been given earlier, had any advertisement been issued, but it was not so provided till the advertisement dated 12.09.2020 meaning thereby that the opportunity to participate in a regular selection process was made available almost after ten years have gone by which was for no fault of the petitioners in determining the interest of fair dealing in respect of the petitioners. The other aspect of fair dealing would also be that under the scheme the petitioners were recruited to enable the students to receive education of good quality and to enhance their intellectual and advanced learning meaning thereby that the petitioners by dint of their contractual services for approximately 12 years have satisfied the said requirement. The said aspect also appears to be a consideration to arrive at a fair dealing as well as the in the public interest for condoning the upper age limit.

16. The Secretary may pass its reasoned order on the individual applications on being filed. It is requested that the individual applications be submitted forthwith and the Secretary to pass respective reasoned orders within a period of two months from the date of receipt of the individual representations/applications.

17. We have been told that there is an interim order allowing the petitioners to submit their applications pursuant to the advertisement dated 12.09.2020. Upon the reasoned order being passed by the Secretary, the individual application of the petitioners that may have been submitted pursuant to the advertisement

dated 12.09.2020 be brought to its logical end as per law.

18. We are not taking note of any factual variations that may exist in the individual cases and if it so exists, it will be for the Secretary to take note of the same while passing the reasoned order. The factual variations may also include that some petitioners may not have been earlier employed under the 'Scheme to strength and improve the quality of secondary education in the State of Assam' and if it is so, the aspect of 'in the interest of fair dealing' and 'in the public interest' be looked into by the Secretary in terms of the individual facts of such applicants and the observations in respect of the candidates who are governed by the 'Scheme to strength and improve the quality of secondary education in the State of Assam' would be not applicable. In respect of any other issues that may arise, it would be for the Secretary to individually deal with such issues in the manner as may be provided under the law.

19. Writ petitions stand disposed of in the manner indicated above.