
(2008) 12 GAU CK 0036
In the Gauhati High Court
Case No : Writ Petition (C) No. 2051 of 2007

Dr. Smt. Jyotima Phukan

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 19-12-2008

Acts Referred:

Citation : (2009) 1 GLD 516 : (2011) 2 GLT 136

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : A.M. Mazumdar and A.B. Phukan, for the Appellant; M.K. Mishra, Standing Counsel, Education Department, A.K. Goswami S. Banik and P. Gogoi, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—The material facts, which are not in dispute, and have given rise to the present writ petition, may, in brief, be set out as under:

(i) The Assam Tribune, a local English daily, in its issue, dated 342.2006, and The Dainik Janambhumi, a local Assamese daily, in its issue, dated 7.12.2006, carried advertisement inviting applications to fill up, for a period of two years, a post of lecturer, in the Department of Zoology, Dibru College, Dibrugarh. The post, though sanctioned, was to carry fixed pay of Rs. 5,000/- and the applicants were to submit their respective applications within fifteen days from the date of publication of the advertisement. The Petitioner, who held requisite educational qualifications, applied for selection and appointment to the said post. The Petitioner was accordingly invited, for interview, which was held on 28.3.2007. Following the interview, the Selection Committee prepared a merit list. The names, figuring in the merit list, read, in order of merit, thus:

(1) Dr. (Ms) Jyotima Phukan

(2) Dr. Manashi Dutta

(3) Shri Jogendra Nath Das

(ii) On the ground that the candidates, whose position in the merit list were first and second, had crossed the maximum upper age limit required for the post of Lecturer in college, the Governing Body of the said college, in its meeting, held on 23.4.2007, resolved to recommend the name of Jogendra Nath Das, who was placed third, in the merit list, to the Director of " Higher Education, Assam, for obtaining prior approval for appointment of the said candidate as a Lecturer. The relevant extracts of the proceedings of the Governing Body read as under:

The Principal i/c and Secretary has placed before the Governing Body meeting held on 23.4.2007 the recommendation of duly constituted Selection Committee for the selection of candidates for the post of a Lecturer in the subject Zoology in the college. The merit list prepared by the Selection Committee is as follows:

1. Dr. (Mrs.) Jyotima Phukan
2. Dr. Manashi Dutta
3. Sri Jogendra Nath Das

While discussing the list, it has been observed that the 1st and 2nd name in the merit list have already crossed the maximum age bar required for the post of Lecturer as per the circular (memo. No. AAP 115/72/PT-1/52 dated 4th January 2006) issued by personnel department, Govt. of Assam. Therefore, the Governing Body adopted the following resolution.

Resolution No. 4(iv):

The Governing Body held on 23.4.2007 resolved that as the 1st and 2nd name in the merit list in the subject Zoology have already attained the age over 37 years, the name of the 3rd nominee in the merit list Sri Jogendra Nath Das be sent to the Director of Higher Education, Assam, with documents for prior approval of appointment as a Lecturer in the department of Zoology of the college.

Sd/- P. Majhi President Governing Body Dibru College, Dibrugarh

Countersigned by Sd/2.8.2007 Principal, Dibru College, Dibrugarh.

(iii) Having learnt about the fact that though she had been placed, in the merit list in the first position, by the Selection Committee, the Governing Body had declined to recommend her name to the Director of Higher Education, Assam, for the purpose of appointment and had, instead of her name, recommended the name of the candidate, namely, Jogendra Nath Das, whose position was third in the merit list, the Petitioner has come to this Court, with this writ petition, seeking, inter alia, a direction to the Governing Body of the said College to recommend for approval to the Director, Higher Education, Assam, the name of the writ Petitioner for appointment to the said post of Lecturer of Zoology.

2. I have heard Mr. A.M. Mazumdar, learned Senior counsel, for the Petitioner, Mr. M.K. Mishra, learned Standing Counsel, Education Department, for the

Respondent Nos. 1, 2, 4 and 5. I have also heard Mr. P. Gogoi, learned Counsel, for the Respondent No. 3, Mr. A.K. Goswami, learned Senior counsel, for the Respondent Nos. 6 and 7.

3. There is no dispute that in terms of the Government's circular bearing Office Memorandum No. AAP 115/72/PTI/152A, dated 4.1.2006, the upper age limit for entry into the State Government services was increased from 36 to 37 years. Thus, the upper age limit for entry into the State Government services is 37 years. This upper age limit is, admittedly, relaxable up to the age of 45 years.

4. In order to meet the challenge that she was over-aged and could not have, therefore, been recommended for appointment, the Petitioner claims that she had applied for relaxation of her age inasmuch as she had already attained the upper age limit for securing appointment to the said post. The Petitioner also claims that the Government has made, under the relevant instructions issued by it in this regard, provisions for relaxation of age of a candidate, if required the Petitioner had accordingly applied, on 30.3.2007, for relaxation of age to the Government and the Government has, on 18.4.2007 relaxed the Petitioner's upper age limit and, hence, she has become eligible and her name may be directed to be recommended by the Governing Body of the said college to the Director of Higher Education, Assam, for the purpose of making appointment. Mr. Mazumdar has contended that it has been the practice of the State Government to relax age even after selection has taken place and, hence, in such circumstances, when the upper age limit of the Petitioner has been relaxed by the State Government on 18.4.2007, the Petitioner's name may be directed to be recommended by the College authorities to the Director of Higher Education, Assam, seeking approval for her appointment.

5. The question, therefore, which really falls for determination, is this: whether the subsequent relaxation of the Petitioner's age as has been done by the Government, on 18.4.2007, clothes the Petitioner with the right to raise a claim that her name ought to have been recommended by the Governing Body for the purpose of obtaining approval.

6. While considering the question, posed above, what needs to be noted is that a candidate has to be eligible for selection at the time, when he or she appears, in the written test, interview and/or viva voce, for selection. The mere fact that the candidate has appeared in a written test, interview or viva voce will not make the candidate eligible if he or she was, otherwise, ineligible unless such disqualification or ineligibility is removed or relaxed before he or she appears in the written test, interview and/or viva voce unless, of course, the relevant recruitment rules provide otherwise. Even if the age, in a given case, is relaxed by the Government, after the interview was complete, such relaxation cannot be treated, in the absence of any specific rules or Government policy, a valid ground for making such a candidate eligible. When the Petitioner was, admittedly, ineligible for being considered for appointment, she could not have been interviewed by the Selection Board on 28.3.2007. This apart, when it came to

the notice of the Governing Body, (as the proceedings of the Governing Body meeting, held on 23.4.2007, reflect) that the Petitioner was over-aged and her age had not been relaxed, the Governing Body was wholly within the ambit of its authority not to recommend the Petitioner's name as indicated hereinabove. The mere fact that the Petitioner had been allowed to appear in the interview or had been interviewed by the Selection Board does not vest in the Petitioner any right to either demand appointment or to contend that her name ought to have been recommended. Similarly, the fact that the Petitioner's upper age limit has been subsequently relaxed by the Government does not also cloth the Petitioner with a right, far less an indefeasible right, to demand that her name be recommended to the Director, Higher Education Assam, for the purpose of obtaining approval for appointment to the said post of lecturer in the Department of Zoology. A reference, in this regard, may be made to *T. Jayakumar v. A. Gopu and Anr.* reported in AIR 2008 SCW 6620, wherein the Supreme Court has observed and held, "10. We are not aware of any principle of law under which once a candidate is allowed participation in the selection process the selection authority is precluded from examining whether his application was complete, in order, within time or otherwise acceptable. A defect in the application form that renders the candidate ineligible might be overlooked in the initial screening and as a result he may be called for interview and may get a chance to take part in selection process but that alone does not mean that the candidate cannot be held ineligible for selection at a later stage once the defect in the application comes to light. It is surely open to the Tribunal to examine whether the reason assigned by the selection authority for holding a candidate ineligible for selection was valid or unreasonable and arbitrary. If the reason for excluding a candidate from the selection process is found to be unreasonable or arbitrary the Tribunal may certainly intervene but if the reason itself is valid the Tribunal cannot interfere simply because the candidate was allowed participation in the selection process by being called for interview. The principle of estoppel has no application in such a case,

7. From the observations made, in *T. Jayakumar*, (supra), what becomes clear is that when a candidate, who was ineligible to participate in a selection process, is allowed to participate by mistake or otherwise, he cannot be treated to have become eligible, or his/her eligibility cannot be treated to have been waived, merely because of the fact that he has participated in the selection process. Thus, the mere fact that there has been precedent, in the past, where upper age limit, for the purpose of appointment, has been relaxed after a candidate stood selected, who was, otherwise, not eligible to even participate in the selection process without relaxation of his/her age, cannot be made a valid ground for obtaining appointment. Hence, in the present case too, the fact that the Petitioner's upper age limit has been subsequently relaxed by the Government cannot cure the ineligibility with which her candidature, on the date of making of the application or on the date of interview, suffered from. In short, the relaxation of her age will not relate back to the date of the interview.

8. It has been further contended by Mr. Mazumdar that in the present case, since the Petitioner had stood first in the interview, her name ought to have been recommended by the Governing Body to the Director of Higher Education, Assam, and it was for the Director to decide as to whether the Petitioner can be appointed or not. I find absolutely no force in this submission inasmuch as the fact remains that on the date, when the Petitioner was interviewed, she was ineligible for being interviewed. Hence, the Governing Body could not have recommended, for obtaining approval for the purpose of making appointment, the name of such a person, who was not even eligible to participate in the selection process.

9. What is also of immense importance to note is that the Petitioner was interviewed, on 28.3.2007, and she applied for relaxation of her age on 30.3.2007. This clearly shows that there was not even an application for relaxation of age on the date, when the Petitioner had been interviewed. In such circumstances, merely because of the fact that the Petitioner has subsequently applied for relaxation of her age and her age has been relaxed by the Government as late as on 18.4.2007, the decision of the Governing Body in its meeting, held on 23.4.2007, cannot be said to be illegal and cannot be interfered with.

10. Because of what have been discussed and pointed out above, I find absolutely no merit in the present writ petition. This writ petition, therefore, fails and the same shall accordingly stand dismissed.

11. No order as to costs.