

(2022) 07 GAU CK 0004

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 5665 Of 2019

Ranjit Urang And 15 Ors.

APPELLANT

Vs

State Of Assam And 27 Ors

RESPONDENT

Date of Decision : 18-07-2022

Acts Referred:

Citation : (2022) 07 GAU CK 0004

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : P J Saikia

Final Decision : Disposed Of

Judgement

1. Heard Mr. P.J. Saikia, learned senior counsel for the petitioners and Mr. B.J. Talukdar, learned senior counsel for the respondents in the Revenue and Disaster Management Department of the Government of Assam. Also heard Ms. R.B. Bora, learned counsel for the respondent No. 4 being the Director, Land Records and Surveys, BTC, Kokrajhar.

2. It is stated that an advertisement No. TPR-74/2016-67-69 dated 02.02.2016 was issued inviting applications, amongst others, for 68 numbers of vacant posts of Gaonburah in the Baksa district of BTC. The writ petitioners herein had participated in the selection process pursuant to the advertisement dated 02.02.2016. According to the petitioners, without bringing the advertisement of 02.02.2016 to its logical end, a subsequent advertisement dated 10.12.2018 had been issued by the Director, Land Records and Surveys, BTC, Kokrajhar. The advertisement of 10.12.2018 follows the age limit prescribed by the notification dated 10.04.2018, wherein the minimum age is prescribed to be 35 years. The grievances of the petitioners are, firstly, the advertisement of 10.12.2018 had been issued without bringing a logical end to the earlier advertisement dated 02.02.2016 and secondly, the minimum age provided by the notification dated 10.04.2018 could not have been adopted, inasmuch it is a continuous selection

process as per the earlier advertisement dated 02.02.2016. According to the writ petitioners, as the selection process had already been initiated by the advertisement dated 02.02.2016 providing for a minimum age of 21 years, therefore, following the procedure of law in the decision of the Hon'ble Supreme Court in the case of Y.V. Rangaiah & Ors. Vs. J. Sreenivasa Rao & Ors. reported in (1983) 3 SCC 284, the rules prevailing as regards the minimum age as on 02.02.2016 would govern the selection process and not the minimum age prescribed by the notification dated 10.04.2018. With the aforesaid grievance, the writ petition i.e. WP(C) No. 5665/2019 had been instituted, wherein the reliefs sought for is for setting aside the selection process as per the advertisement dated 10.12.2018 with a further direction to issue a fresh advertisement in terms of a subsequent notification dated 19.07.2019, wherein the minimum prescribed age limit had again been brought down to 25 years.

3. Taking note of the prima facie case said to be made out by the petitioners, an interim order dated 07.08.2019 had been passed, whereby there was an interim direction not to declare the results of the selection process of Gaonburah for the district of Baksa, pursuant to the advertisement dated 10.12.2018. The Director, Land Records and Surveys, BTC being aggrieved by the interim order dated 07.08.2019 had instituted I.A.(Civil) No. 1120/2022 for vacating the interim order dated 7.08.2019.

4. Both Mr. B.J. Talukdar, learned senior counsel for the Revenue and Disaster Management Department, Government of Assam and Ms. R.B. Bora, learned counsel for the Director, Land Records and Surveys, BTC, have raised a contention that the selection process pursuant to the earlier advertisement dated 02.02.2016 had been cancelled by the authorities and the said fact finds reference in the advertisement dated 10.12.2018. By raising such contention, it is the submission of Mr. B.J. Talukdar, learned senior counsel and Ms. R.B. Bora that the first ground of assailing the advertisement dated 10.12.2018 falls through, inasmuch as the selection process pursuant to the earlier advertisement dated 02.02.2016 had already been cancelled and it is not a case where the selection process is a continuation pursuant to the earlier advertisement dated 02.02.2016. As a corollary thereof, it is the further contention that as the earlier selection process pursuant to the advertisement dated 02.02.2016 had already been cancelled, therefore, the subsequent selection process pursuant to the advertisement dated 10.12.2018 would be a new selection process and it is not a continuation of the earlier process. It being so according to the learned counsel, the eligibility condition governing the field at the time when the advertisement dated 10.12.2018 was issued would govern the field and as at the relevant point of time the notification dated 10.04.2018 was in force prescribing the minimum age limit to be 35 years, therefore a selection process pursuant to the advertisement dated 10.12.2018 would also be with the minimum qualifying age of 35 years. By raising the aforesaid contentions, it is the submission of the learned senior counsel as well as the learned counsel that no prima facie case has been made out by the petitioner for an interference with the selection

process and for continuing with the interim order dated 07.08.2019.

5. Mr. P.J. Saikia, learned senior counsel for the writ petitioners on the other hand raises a counter-contention that the eligibility condition governing the selection process as it was initially initiated as per the advertisement dated 02.02.2016, would govern the field and therefore, the provision of a minimum age limit of 35 years governed by the notification dated 10.04.2018 would not govern the field. Another contention of Mr. P.J. Saikia, learned senior counsel is that although at the time of issuing the advertisement dated 10.12.2018, the minimum age limit prescribed by the notification dated 10.04.2018 of 35 years was in force, but by the time the selection process was carried further, subsequent notification dated 19.07.2019 was issued in which the minimum age limit had been brought down to 25 years. By referring to the notification dated 19.07.2019, it is the submission of Mr. P.J. Saikia, learned senior counsel for the writ petitioners that a conscious decision had been taken by the respondent authorities for bringing the minimum age down to 25 years and therefore, such conscious decision would govern the selection procedure.

6. The law relating to a conscious decision being taken finds place in the decision of the Hon'ble Supreme Court in the case of Dr. K. Ramulu & Anr. Vs. Dr. S. Suryaprakash Rao & Ors. reported in (1997) 3 SCC 59, wherein it had been provided that if a selection process is not initiated and kept in abeyance for the reason that a conscious decision is in contemplation for changing the eligibility conditions of the rules, in such event, although the vacancies may have arisen prior to the conscious decision, the selection process would be governed by the conscious decision that have been taken and not by the rules as it existed when vacancies had arisen. But in the instant case, we have noticed that the initiation of the selection process was not kept in abeyance although the vacancies may have arisen earlier but on the other hand, the selection process itself had been initiated and carried forward. From such point of view, we are unable to accept the contention that any law relating to conscious decision being specifically taken as provided in the pronouncement of the Hon'ble Supreme Court in Dr. K. Ramulu (Supra) would be applicable in the present case. If we accept the contention of the writ petitioners that as because the minimum age had been brought down to 25 years as per the notification dated 19.07.2019, therefore, the same should be the basis to bring the selection process to its logical end, a conflicting situation would arise to the extent that if it is so allowed, a large number of candidates who would otherwise have participated had the minimum age been 25 years would be excluded. From such point of view also, we are unable to accept the contention of the writ petitioners that the minimum age limit of 25 years prescribed by the notification dated 19.07.2019 have to be made applicable in the selection process pursuant to the advertisement dated 10.12.2018. Accordingly, we do not find any merit in the writ petition assailing the selection process pursuant to the advertisement dated 10.12.2018 as well as seeking for direction for issuing a fresh advertisement. But, however, we also take note of that the relaxation of an upper age limit or the minimum age limit

as may be prescribed is governed by the notification No. AAP.34/50/27 dated 03.05.1951. Paragraph 4 of the said notification, inter alia, provides that if the Head of the Department is of the view that grave inconvenience would be caused to any applicant because of any upper age limit or lower age limit prescribed in a selection process, the authority concerned may look into the matter on a case to case basis as to whether such age limit can be condoned.

7. From such point of view, although the claims made in the writ petition i.e. WP(C) No. 5665/2019 for interfering with the selection process pursuant to the advertisement stands dismissed, but liberty remains with the petitioners to approach the Head of the Department who had initiated the advertisement dated 10.12.2018 by filing individual applications for condoning the minimum age limit in the facts and circumstances as indicated above. If the Head of the Department is of the view that grave inconvenience has been caused for reasons beyond the control of the writ petitioners and the matter requires a condonation of the minimum age limit, the Head of the Department may pass any reasonable order as may be admissible under the law. As we have given liberty to the writ petitioners to file applications for condoning the minimum age limit, we further direct the respondent authorities that the interim order dated 07.08.2019 would remain in force for a period of 30 days from today so that in the meantime, the writ petitioners may file their individual applications before the Head of the Department. If any application is filed, the Head of the Department is directed to pass any reasoned order/orders thereon within the aforesaid period of 30 days. The result of the selection process may thereafter be brought to its logical end and in the event the minimum age limit is condoned by an appropriate reasoned and legally acceptable order, the selection process may also take note of such condonation and provide the benefits thereof to the writ petitioners.

Writ petition stands disposed of as indicated above.