



GAHC010155542021

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5164/2021

BABITA DEKA
W/O- SRI MAKUNDA DEKA, R/O- VILL- NO. 1 GERIMARI, P.O.
MANGALDOI, P.S. MANGALDOI, DIST.- DARRANG, ASSAM, PIN- 784125

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, SECONDARY
EDUCATION DEPTT., DISPUR, GHY-6

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (B) DEPTT.
DISPUR
GHY-6

3:THE DIRECTOR
SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-

Advocate for the Petitioner : MR. A DEKA

Advocate for the Respondent : SC, SEC. EDU.



**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

Date : 01-10-2021

JUDGMENT & ORDER (ORAL)

Heard Mr. A Deka, learned counsel for the petitioner, Mr. SMT Chisti, learned counsel for the respondents No. 1 and 3 being the authorities under the Secondary Education Department of the Government of Assam and Ms. DD Barman, learned counsel for the respondent No. 2 being the Personnel (B) Department, Government of Assam.

2. The petitioner, who otherwise claims to be qualified in all other aspect for being appointed to the post of Post Graduate Teacher in Economics in any Higher Secondary School and who is also belongs to the Economically Weaker Section (EWS) Category has raised a grievance that the upper age limit in respect of the advertisement dated 08.09.2021 of the Director of Secondary Education, Assam prescribes for an upper age limit of 38 years in respect of the General Category candidates. The petitioner by virtue of belonging to the EWS category would also have to be construed in law to be a candidate belonging to the General category and therefore, the upper age limit of 38 years would be applicable for the petitioner.

3. The petitioner refers to an Office Memorandum No. ABP.6/2016/51 dated 02.09.2020 of the Principal Secretary to the Government of Assam in the Personnel (B) Department, which provides that the upper age limit for entering into State Government Service for the Grade-III and Grade-IV posts had been raised up to 40 years. The post of Subject Teacher in Economics for which the petitioner is pursuing is admittedly not a Grade-III and Grade-IV posts, but it is



categorized to be a Grade-II post. The petitioner raises a plea that there is a discrimination against the aspirants for the Grade-II posts by not suitably increasing the upper age limit to 40 years as had been done in case of Grade-III and Grade-IV posts.

4. In order to appreciate the said contention, we put a query to the petitioner as to whether there is any reasonable classification with an intelligible differentia with the object at hand between the service requirement of a Grade-II post and that of a Grade-III and Grade-IV posts. No specific reply is forthcoming that there is no intelligible differentia between Grade-II posts and the Grade-III and Grade-IV posts so as to claim parity under Article 14 of the Constitution of India, so that the upper age limit fixed by the authorities in respect of Grade-III and Grade-IV posts should also be applicable to a Grade-II post.

5. In the absence of any material to show that there is no intelligible differentia between the service requirement of a Grade-II post and that of a Grade-III and Grade-IV post, we are unable to accept the contention of the petitioner that there is no reasonable classification between the Grade-II post and that of a Grade-III and Grade-IV post. In the absence of any reasonable classification, it cannot be accepted that there is any discrimination by providing for an upper age limit of 40 years in respect of Grade-III and Grade-IV posts and in not doing so for the Grade-II posts. Fixing the upper age limit is the prerogative of the State authorities, who are the employer and the State authorities are in the best position to judge the requirements for their employees so as to determine what should be the upper age limit.

6. In the instant case, the petitioner makes a prayer that in order to decide the aforesaid issue, there may be an interim order staying the aforesaid process



of the advertisement itself or in the alternative to allow the petitioner to participate in the process although he may be otherwise be over aged and to make the result of such participation subject to the outcome of the writ petition.

7. Mr. A Deka, learned counsel for the petitioner urges upon the second nature of the interim order he has prayed for. Although the prayer would be innocuous and for the time being it may not have any adverse effect on the balance of convenience, but the difficulty would be that once the process of selection is completed by the authorities, where the Court allowed the petitioner to participate, a stage would come subsequently where the process cannot be carried forward any further until the present writ petition is decided. This is where we are of the view that the balance of convenience would be against the petitioner, inasmuch as, by an order of such nature the other participants would be inconvenienced as the process under the advertisement would not be carried forward any further and also the students of the school for whose benefit the recruitment of teachers are made would also suffer and we are more concerned with the rights of the children to have a teacher and any such interim order would adversely affect their right.

8. Considering the matter in its entirety, we are of the view that the interest of justice would be met and the legal right of the petitioner can be examined on a representation being submitted by the petitioner before the Head of the Department under the notification dated 03.05.1951, which provides for condoning the upper age limit in a given individual case depending on the hardship that the concerned applicant may project.

9. Mr. A Deka, learned counsel for the petitioner in the circumstance agrees that instead of issuing notice in the writ petition without an interim order, the interest of the petitioner would be better served upon, if she is allowed to



submit a representation for condoning the upper age limit under the notification dated 03.05.1951 before the Head of the Department, which would govern the advertisement issued. The petitioner may take any ground in her representation substantiating the hardship that she had faced justifying the relaxation of the upper age limit and upon such representation being submitted, the Head of the Department which had issued the advertisement i.e. the Director of Secondary Education, Assam shall pass a reasoned order thereon.

10. We have taken note of that the last date of submission of application pursuant to the advertisement dated 08.09.2021 is stated to be 20.10.2021. Accordingly, the petitioner to submit her representation within a period of three days i.e. on or before 04.10.2021 and upon such representation being submitted, the Director of Secondary Education, Assam shall pass a reasoned order thereon on or before 18.10.2021, so that in the event the order to be passed is in favour of the petitioner, she may still have sufficient time to submit her application pursuant to the advertisement.

11. In the alternative, it is further provided that if so advised, the petitioner may also submit an application for enhancing the upper age limit in respect of persons belonging to the EWS category and in the event it is submitted, the authorities may take a decision on the same. Such claim can be made only before the Personnel (B) Department of the Government of Assam and not the Department who had issued the advertisement and such representation shall be independent of the advertisement involved in this writ petition and it would be in the nature of a general claim for enhancing the upper age limit.

12. If any representation is made, the authorities may hear the petitioner and pass a reasoned order thereon. But we make it clear that it is not a suggestion from this Court that there is a requirement of enhancing the upper age limit and



it would be the absolute discretion of the authorities to pass their own order. But we make it further clear that the representation before the Personnel (B) Department shall in no way affect the process pursuant to the advertisement dated 08.09.2021.

13. Writ petition stands disposed of in the above terms.

JUDGE

Comparing Assistant