



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. 011777 - 011778 OF 2025
[@ SLP (C) NOS. 13145 -13146 OF 2025]

JYOTSNA DEVI

... APPELLANT(S)

VERSUS

THE STATE OF ASSAM & ORS.

... RESPONDENT(S)

J U D G M E N T

S.V.N. BHATTI, J.

1. We have heard learned counsel, Mr. Rituraj Biswas and Mr. Chinmoy Pradip Sharma, Sr. AAG. Respondent No.5, despite the service of notice of the pending proceedings, is not represented.

2. The Appellant assails the order dated 24.05.2023, in Review Petition No. 175 of 2017, and the order dated 24.02.2012 in Writ Appeal No. 262 of 2011 in the Gauhati High Court at Gauhati. The journey of the litigation dates back to the advertisement dated 28.02.2006, issued by Respondent No. 3 to fill a vacant post of Lecturer in History. The Appellant and Respondent No. 5 have participated in the selection process, and by the resolution dated 24.07.2006, the Governing Body of Respondent No. 3 - College, having noticed the relatively better merit and suitability of the Appellant, resolved to select the Appellant. On the even date, the Governing Body forwarded the resolution to Respondent No.1/Government for approval. At this juncture, we notice the undisputed facts that the Respondent No. 3 is an aided institution as on the date of selection process. Therefore, the selection process was set in motion by referring to the Assam Government Aided Junior College Management Rules, 2001 (for short "2001 Rules"). The advertisement does not stipulate an

upper or lower age limit as a qualification or disqualification, as the case may be, for applying for the post of Lecturer in History. The Respondent No. 1, on the request of Respondent No. 3, *vide* communication dated 13.10.2006, exercising its jurisdiction/discretion, communicated to Respondent No. 3, condoning the alleged overage of 2 years 7 months of the Appellant. On 22.03.2007, the Respondent No. 2 approved the appointment of the Appellant as a Lecturer. The Appellant entered service of Lecturer in Respondent No. 3-College. Respondents Nos. 1 and 2 admit that the Appellant has put in a continuous service of 18 years as Lecturer in History in Respondent No. 3 - College. Respondent No. 5 filed a Writ Petition No. 1707 of 2007 challenging the order of approval dated 13.10.2006, condoning the over-age of 2 years 7 months and the order dated 22.03.2007 approving the Appellant's appointment. The case of Respondent No. 5, briefly stated, is that the Appellant was aged 39 years at the time of advertisement or during appointment to the post of Lecturer. The advertisement is issued referring to the 2001 Rules. However, according to the Assam Secondary Education (Provincialisation) Service Rules, 2003 (for short "2003 Rules"), the prescribed age limit for a candidate being recruited is between twenty-one to thirty-six years. The order condoning the over-age is illegal and contrary to the 2003 Rules. The case of Respondent Nos. 1 to 3 was that the 2003 Rules, at the time of issuance of the advertisement, had no application to College of Respondent No.3, and that the advertisement was issued referring to the 2001 Rules. There is a difference between an appointment in an aided institution and in a Government College. In the absence of a provision stipulating which one of the enactments is applicable, *viz.*, Assam Higher Secondary Education Act, 1984 or The Assam Secondary Education (Provincialisation) Act, 1977,

the discretion exercised by the Respondent No. 1 in abundant caution does not give a cause to a candidate at serial no. 2 to challenge the appointment of Appellant who stood at serial no.1. The Learned Single Judge on 30.03.2010 dismissed the Writ Petition. A few of the findings recorded by the order dated 30.03.2010 are very apt for understanding the fact in issue, and read as follows:

“13. As could be gathered from the affidavits filed by the respondents, the respondent No.5 was appointed under the provisions of the Assam Govt. Aided Junior College Management Rules, 2001. Apparently, it is not clear whether 2001 Rules have been framed either under the 1984 Act or under 1977 Act. Be that as it may, 2001 Rules have been framed especially for governing the management and control of colleges, imparting education in plus two stage. Hence, it has to be inferred that selection of respondent no.5 is governed by these Rules.

14. It is true that Repeal and Savings provision under Rule 32 in 2003 Rules it has been clarified that all Rules, corresponding to these Rules in force immediately before commencement of these Rules shall stand repealed. However, the Rules are applicable only for Provincialisation Act, 1977 and not for 1984 Act. In my considered, opinion, both 1977 Act and 1984 Act operate in different fields. The basic object to enact the 1977 Act is for Provincialisation of secondary education, whereas, 1984 Act has been enacted to regulate, supervise and develop the higher secondary education in the State of Assam. Hence, I am of the considered opinion that conditions incorporated in 2003 Rules, with regard to appointment and service conditions of persons appointed in Higher Secondary Schools cannot be made applicable to the staff appointed by the Governing Bodies of Junior Colleges. Even otherwise, the admitted position is that the

respondent No.5 has been appointed adhering to the provisions of Govt Aided Junior College Rules, 2001 and not 2003 Rules.”

3. The Respondent No. 5 filed Writ Appeal No. 262 of 2011. The Division Bench, *vide* impugned order dated 24.02.2012, allowed the Writ Appeal. The order dated 24.02.2012 notices that the 2001 Rules do not provide for any age limit, but Rule 19(iv) of the 2003 Rules has to be applied together with the decision in ***Shankar K Mandal & Ors. v. State of Bihar & Ors.***¹. The following finding has been recorded:

“Judged by the parameters as above, It is apparent that both on the date of the advertisement as well as on the last date for submission of applications by the willing candidates, the respondent No.5 was beyond the age of 37 years prescribed for entry into Government service. In the teeth of Rule 19(iv) of the Rules, in our estimate, she was over aged at all relevant times and, thus, was not eligible to participate in the selection process. As admittedly the condonation of her overage was much subsequent to the completion of the selection process, the same could not have legalised her candidature with retrospective effect. We are in respectful agreement with the view taken in Mahesh Gogoi (supra).”

4. The Appellant challenged the order dated 24.02.2012 in S.L.P. No. 16230 of 2012 before this Court, and on 28.08.2017, while granting liberty to the Appellant to file a review, the SLP was dismissed. This resulted in the filing of Review Petition No. 175 of 2017 before the High Court. The review order was passed without appreciating which one of the enactments is applicable. Again, by relying on Rule 19 (iv) of the 2003 Rules, the review was

¹ (2003) 9 SCC 519.

dismissed. The order of this Court dated 28.08.2017, since granted liberty to assail the orders, the present Civil Appeal is maintained.

5. Mr Rituraj Biswas argues that the impugned orders are entirely silent on the applicability of the Rule to the subject selection by an aided institution. Respondent No. 3 was provincialised subsequently in point of time, and the advertisement was issued before provincialization. Applying the 2001 Rules for the subject selection would be proper and legal. The Appellant participated in the selection process with reference to the 2001 Rules. The Appellant is the meritorious candidate, and the step taken in abundant caution should not be put against the Appellant. The Respondent No. 5 is accommodated as Lecturer subsequent in point of time, and the continuation of the appellant in the post already she has been working, is neither illegal nor arbitrary. Lastly, it is argued that applying Rules made under Article 309 of the Constitution of India to an aided post in the absence of applicable Rules amounts to an illegal exercise of jurisdiction by the High Court. Mr. Chinmoy Pradip Sharma, Sr. AAG appearing for Respondent Nos. 1 and 2, does not dispute the appointment of Respondent No. 5 and continuing as on date as well as the subsequent provincialisation of Respondent No. 3–College to the advertisement issued for an aided post in the institution. The learned counsel for Respondent Nos. 1 and 2, however, would argue that the appellant has rendered service for a considerable time, and the appointment may be confirmed without laying down the principle applicable on the method and mode of recruitment in aided colleges.

6. We appreciate the circumstances which are undisputed and express our view on the issue at hand. The advertisement is clear that the selection process is set in motion as per the 2001 Rules. The Appellant stood at serial

no. 1 in the merit list. The Governing Body resolved the appellant's case for approval and appointment. The Government, referring to the extant Rules, condoned the overage for applying to an aided post in an aided institution. In the absence of the advertisement or the spelling out of applicable Rules, applying Rule 19(iv) of the 2003 Rules, to set aside the approval and appointment of the appellant, in the circumstances of this case, is illegal. Consequently, the orders dated 24.02.2012 and 24.05.2023 are set aside, and we are in agreement with the view expressed by the learned Single Judge.

7. The Respondent No. 5, since is admittedly working as a Lecturer under the administrative control of Respondent Nos. 1 and 2, it is made clear that the services of the Respondent No. 5 shall not be interfered with, notwithstanding the view taken by us in this order. The Appellant has discontinued after dismissal of the Review Petition, and therefore, we direct Respondent Nos. 1 to 4 to reinstate the Appellant within 4 weeks from today, and the respondents shall not treat the break in service between the date of termination and reinstatement pursuant to this order. The appellant shall be given continuity of services for all purposes, without any back wages. For the reasons stated above, in the peculiar facts of the case, the civil appeals are allowed.

8. Pending applications, if any, shall stand disposed of.

.....J.
[AHSANUDDIN AMANULLAH]

.....J.
[S.V.N. BHATTI]

**New Delhi;
September 25, 2025.**