

GAHC010011522023



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

Case No. : WP(C)/353/2023

PINKEY BORAH

D/O- LT. KHARGESWAR BORAH, R/O- VILL- JONAI COURT COLONY, JONAI
TOWN, P.O. JONAI, DIST.- DHEMAJI, ASSAM, PIN- 787060

VERSUS

THE STATE OF ASSAM AND 10 ORS.

REP. BY THE CHIEF SECRETARY, GOVT. OF ASSAM, DISPUR, GHY-06

2:THE STATE LEVEL COMMITTEE (SLC)

ASSAM

DISPUR

GHY-06

3:THE CHIEF SECRETARY

CHAIRMAN OF THE STATE LEVEL COMMITTEE (SLC)

ASSAM

GHY-06

4:COMMISSIONER AND SPECIAL SECRETARY

TO THE GOVT. OF ASSAM

PUBLIC WORKS

(BUILDING) DEPTT.

DISPUR

GHY-06

ASSAM

5:COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM

PERSONAL DEPTT.

DISPUR

GHY-06

ASSAM

6:COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GHY-06
ASSAM

7:CHIEF ENGINEER
PWD (BUILDING)
ASSAM
CHANDMARI
GHY-03
ASSAM

8:THE UNDER SECRETARY TO THE GOVT. OF ASSAM
PWD
BUILDING AND NH DEPTT.
DISPUR
DISPUR
GHY-06

9:THE DISTRICT LEVEL COMMITTEE (DLC)

NORTH LAKHIMPUR
NORTH LAKHIMPUR- 787001
ASSAM

10:THE DY. COMMISSIONER
CHAIRMAN OF DISTRICT LEVEL COMMITTEE (DLC)
NORTH LAKHIMPUR- 787001
ASSAM

11:EXECUTIVE ENGINEER
P.W.D
NORTH LAKHIMPUR BUILDING DIVISION
NORTH LAKHIMPUR
LAKHIMPUR
PIN- 787001
ASSAM

Advocate for the Petitioner : MR S KHOUND

Advocate for the Respondent : SC, FINANCE

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

17.07.2023

Heard Mr. S. P. Khound, learned counsel for the petitioner. Also heard Mr. H. Sarma, learned Addl. Senior Govt. Advocate, Assam appearing on behalf of respondent Nos.1, 2, 3, 5, 9 and 10. Mr. P. Nayak, learned Standing Counsel, Finance/PWD is present on behalf of respondent Nos.4, 6, 7, 8 and 11.

By filing this writ petition, the petitioner has assailed the resolution of the State Level Committee (SLC) dated 28.02.2019 by means of which, the petitioner's application for appointment on compassionate ground was rejected. The facts of the case, in a nutshell, is that the father of the petitioner, viz., Late Khargeswar Borah died in harness on 26.10.2015 while serving as a Chowkidar (Grade-IV post) under the respondent No.11. Since the father of the petitioner was the sole bread earner of the family, after his death, the petitioner had submitted an application seeking appointment on compassionate ground. By the impugned order dated 28.02.2019 her application was rejected on the ground that the ceiling of 5% quota of the vacancies earmarked for compassionate appointment had already been exhausted.

By referring to a decision of this Court rendered in the case of **Kabir Ahmed Choudhury vs. State of Assam and others** reported in **(2022) 4 GLT 1173** Mr. Khound submits that in view of paragraph 15 of the Office Memorandum dated 01.0-6.2015, the authorities ought to have considered whether the petitioner can be accommodated in any other department against any other vacant post, which exercise has not been done in this case. By contending that

failure to consider the case of the petitioner in the light of Clause-15 of the O.M. dated 01.06.2015 has resulted in violation of the legal rights of the petitioner which deserves to be remedied. Hence, this writ petition.

Mr. Sarma, learned Addl. Senior Govt. Advocate, Assam submits that at the relevant point of time, no vacancy was available within the 5% earmarked quota. The learned Government Advocate, however, fairly submits that no consideration was made in respect of the petitioner's application in the light of paragraph 15 of the O.M. dated 01.06.2015.

Similar is the stand of the other departmental counsel.

After considering the submissions made by the learned counsel for the parties and on going through the materials available on record including the decision of this Court in the case of **Kabir Ahmed Choudhury** (supra), this Court is of the opinion that even if vacancies available within 5% earmarked quota was exhausted, even then, the application for compassionate appointment cannot be turned down without first considering as to whether, the applicant can be appointed in any other department, in a Grade-III and/or Grade-IV vacancy, subject to meeting the qualification norms. The aforesaid exercise evidently has not been done in the present case. I, therefore, find sufficient force in the submission of Mr. Khound that the application filed by the petitioner seeking appointment on compassionate ground has not been considered by the SLC in the proper perspective.

As such, the order dated 28.02.2019 qua the writ petitioner is hereby set aside. The SLC is directed to consider the case of the petitioner afresh, in the light of Clause-15 of the O.M. dated 01.06.2015. The matter be placed in the next meeting of the SLC. Whatever be the outcome of the process, the same

be intimated to the petitioner through a written communication.

With the above observation, the writ petition stands closed.

JUDGE

Comparing Assistant