

GAHC010051112022



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

**WRIT APPEAL No. 100 of 2022**

Mandira Debnath,  
Aged about 31 years,  
Daughter of late Swapan Kumar Debnath,  
Resident of Jyotikuchi, Dhupalia, P.O.-Saukuchi,  
Guwahati-781040, District-Kamrup Metro, Assam.

**.....Appellant/Writ petitioner**

**-Versus-**

1. The State of Assam,  
Represented by the Secretary, Health and Family  
Welfare Department, Govt. of Assam, Dispur,  
Guwahati-781006, Assam.
2. Karbi Anglong Autonomous Council  
Represented by it's Principal Secretary, Diphu, P.O:  
Diphu, Assam.
3. Joint Secretary, Department of Personal (B),  
Karbi Anglong Autonomous Council, Diphu,  
Assam.
4. Executive Member, Health and Family Welfare

Department, Karbi Anglong Autonomous Council,  
P.O.-Diphu, Assam.

5. Sri Amor Singnar, Son of Late Saret Singnar,  
Office of the Joint Director of Health Services,  
Karbi Anglong Autonomous Council, Diphu,  
Assam.

.....**Respondents**

- B E F O R E -

**HON'BLE THE CHIEF JUSTICE (ACTING) MR. N. KOTISWAR SINGH**  
**HON'BLE MR. JUSTICE SOUMITRA SAIKIA**

Advocate for the appellant : Ms. T. Das, Advocate

Advocate for the respondents : Mr. J. Chutia, Standing counsel, KAAC.

**:: ORDER ::**

Dated: 19.01.2023

**(Soumitra Saikia, J)**

Heard Ms. T. Das, learned counsel for the appellant and Mr.  
J. Chutia, learned Standing counsel, Karbi Anglong Autonomous  
Council.

**2.** This appeal is directed against the order dated 10.12.2021  
passed in WP(C) 3235/2017 passed by the learned Single Judge  
allowing the writ petition in part to the extent indicated in the said

Order under Appeal.

**3.** The facts essential for the purpose of this appeal are that the father of the appellant, late Swapan Kumar Debnath, who was working as a Surveillance Inspector in the Office of the District Malaria Officer, Diphu died-in-harness on 17.03.2012 leaving behind his widow, two (2) daughters including the appellant, and 1 (one) son. Pursuant to the death of their father, the appellant submitted an application to the Health and Family Welfare Department, Karbi Anglong praying for appointment on compassionate ground. It is the contention of the appellant that she was called for selection test, which was held on 9<sup>th</sup> and 12<sup>th</sup> of August, 2014 where she had participated along with the other eligible candidates. It is contended that the appellant had fared fairly well in the said interview and was anticipating her appointment. According to the appellant the District Level Committee (DLC) recommended her name along with other eligible candidates for being appointed on compassionate ground in the Health and Family Welfare Department. However, later she was

informed that she could not be appointed as there were other local candidates and that she was asked to appear for the selection for the next year.

**4.** Being aggrieved, petitioner filed a writ petition seeking a direction from this Court to appoint the appellant on compassionate ground against the post of Surveillance worker/Field worker as she was already selected and recommended by the District Level Committee (DLC). The respondent authorities contested the claims of the petitioner by filing their counter affidavits.

**5.** The learned Single Judge upon consideration of the matter vide Order dated 10.12.2021 although had observed that the relief prayed for by the petitioner i.e. the appellant herein cannot be entertained under Article 226 of the Constitution but nevertheless held that since the appellant was recommended for compassionate appointment by the District Level Committee (DLC) in its meeting dated 03.07.2014, a legal right had accrued in favour of the appellant and that the said recommendation be placed before the

SLC for its consideration. Writ petition was accordingly partly allowed and disposed of by directing the Principal Secretary, Karbi Anglong Autonomous Council, Diphu to place the recommendation of the District Level Committee (DLC) of Karbi Anglong Autonomous Council (KAAC) dated 03.07.2014 made in favour of the appellant, before the next available SLC and upon the same being placed, the SLC shall take a reasoned decision thereon. The learned Single judge held that on the other hand, if the records reveal that the matter had been placed before the SLC then the appellant will be communicated the order that may have been passed by the SLC thereon. The writ petition was accordingly allowed to the extent directed.

**6.** Before this Court the learned counsel for the appellant strongly urged that since it was held by the learned Single Judge that a legal right had accrued in favour of the petitioner/appellant, the prayer of the petitioner/appellant seeking a direction to the respondent authorities to appoint the petitioner ought to have been allowed by the learned Single Judge. The same not being directed, the order of the learned Single Judge needs interference

to that extent and a specific direction is required to be issued by this Court.

**7.** Per contra learned counsel appearing for the Karbi Anglong Autonomous Council (KAAC) has urged that the KAAC is constituted under the 6<sup>th</sup> schedule to the Constitution of India and accordingly the direction of the learned Single Judge to place it before the SLC cannot be implemented in as much as the district of Karbi Anglong being a part of the KAAC under the 6<sup>th</sup> schedule of Constitution of India, and in terms of the provisions of the 6<sup>th</sup> schedule to the Constitution of India, several subjects including that of the Health and Family Welfare, having been reserved for the KAAC, there is no SLC before whom the recommendation of the DLC is required to be placed. That apart, it was strenuously urged that the recommendation of the DLC was duly considered by the Council and thereupon persons found to be suitable and eligible pursuant to interviews conducted by the department and short-listed were duly approved by the KAAC. Those selected persons have in the meantime been already appointed. It was

therefore, submitted that there is no merit in the appeal and the same should accordingly be dismissed.

**8.** It was further submitted that for the relevant year there was only one vacancy available in the department as the compassionate appointments are to be made only to 5% of the total vacancies arising in the cadre. Since a person appointed was found to be eligible and better suited than the petitioner/appellant, the said candidate was appointed and consequently the petitioner/appellant could not be appointed due to the absence of available vacancies for the said year.

**9.** Learned counsels for the parties have been heard at length. Pleadings on record have been duly perused.

**10.** It is also seen that there is no dispute to the contentions raised by the appellant that the DLC by its meeting held on 03.07.2014 had recommended her name for being appointed on compassionate ground under the Health and Family Welfare Department. It is also seen that an affidavit-in-opposition has

been filed by respondent No.2 as well as by the respondent No.3. In the affidavit filed by the respondent No.2, it was contended that the recommendation of the DLC is not in seriatim. Whereas in the affidavit filed by the respondent No.3 at paragraph 8, it is averred that the Council had approved a merit list of 28 candidates for different posts under the Joint Director of Health Services, Karbi Anglong on the basis of their performance in the selection process and 3 (three) persons including the private respondent was recommended for compassionate appointment.

**11.** The Office Memorandum No. ABP/50/2006/PT/182 dated Dispur, the 1<sup>st</sup> June of 2015 issued by the Government of Assam, Department of Personnel, lays down the procedure and the manner in which compassionate appointments are to be considered. This Court vide Judgment and Order dated 03.08.2006 in a bunch of writ petitions in which the lead case was WP(C) 3875/2005 (Achyut Ranjan Das and Ors Vs State of Assam and Ors) had elaborately dealt with the issue of compassionate appointment and in the paragraph 7 of the said Judgment had laid

down the principles on the basis of which claims relating to compassionate appointment will have to be considered. The Office Memorandum dated 01.06.2015 also refers to the said principle laid down by this Court in **WP(C) NO. 3875/2005**. Clause 8 of the said Office Memorandum prescribes the procedure for compassionate appointment required to be followed by Autonomous Councils. Under the said clause it is prescribed that the Autonomous Councils will constitute its own District Level Committees excluding the Deputy Commissioner and Superintendent of Police but with the competent officers of equivalent rank under control of the Councils. The District Level Committee will thereafter examine each of the proposals in the light of the conditions laid down in the Office Memorandum dated 01.06.2015 as well as the parameters laid down by this Court in WP(C) No. 3875/2005. The District Level Committee's after thorough examination shall forward the same with their recommendations to the concerned department of the District/Territorial Council for their due consideration. After such consideration the council will send the proposal to the SLC for

approval.

**12.** In the facts of the present case, it is seen that the DLC in their meeting held on 03.07.2014 had recommended the name of the appellant along with other candidates for compassionate appointment under the department of Health and Family Welfare. The State respondent including the Karbi Anglong Autonomous Council (KAAC) in their affidavits does not dispute the said recommendations made by the DLC. However from the said affidavit it is not clear as to whether the procedure prescribed under the Office Memorandum dated 01.06.2015 read with the Judgment and Order dated 03.08.2006 passed in the WP(C) No. 3875/2005 by this Court has been adhered to at the time of consideration of the prayer of the appellant for compassionate appointment. The learned Single Judge had categorically held that upon the DLC recommending the appellant for compassionate appointment, a legal right had accrued in favour of the appellant in respect of the said recommendation. The learned counsels representing the respondents has fairly submitted that no appeal or review in respect of such categorical finding arrived at by the

learned Single Judge has been preferred by the State or Karbi Anglong Autonomous Council.

**13.** Considering the matter in its entirety and the submissions made before this Court as well as the pleadings and other materials placed before this Court we are of the considered view that ends of justice will be met if this appeal is disposed of with a direction to the respondents to consider the prayers of the appellants in terms of the Office Memorandum dated 01.06.2015 along with the directions contained in the Judgment and Order dated 10.12.2021 passed in WP(C) 3235/2017 and thereafter pass a reasoned order taking all factors into consideration including the procedure prescribed under the Office Memorandum dated 01.06.2015 as well as the Principles laid down in the Judgment and Order dated-03.08.2006 passed in WP(C) No. 3875/2005. We direct the respondent No.2 namely, Karbi Anglong Autonomous Council, represented by it's Principal Secretary, Diphu to consider the claims and the prayers made by the appellant within a period of 4 (four) weeks from the date of receipt of the certified copy of this Order and thereafter pass a reasoned order as directed herein

above within a further period of 2 (two) weeks therefrom and ensure that a copy of the said order is served upon the appellant.

**14.** Writ appeal is accordingly disposed of.

**15.** No order as to cost.

**JUDGE**

**CHIEF JUSTICE(ACTING)**

**Comparing Assistant**