

GAHC010052352022



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

**Case No. : WP(C)/2456/2022**

RAKTIM RABI BORUAH  
S/O LATE LAMBIT BORUAH, R/O VILL-BORAJAN CHAPORI, P.O. AND P.S.-  
GHILAMORA, DIST-LAKHIMPUR, ASSAM, PIN-787053

VERSUS

THE STATE OF ASSAM AND 4 ORS  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.  
OF ASSAM, PUBLIC WORKS DEPARTMENT (ROADS), DISPUR, GUWAHATI-  
781006

2:THE CHIEF ENGINEER  
PUBLIC WORKS DEPARTMENT (ROADS)  
ASSAM  
CHANDMARI  
GUWAHATI-781003

3:THE ADDITIONAL CHIEF ENGINEER (PLANNING)  
P.W.D. (ROADS)  
ASSAM  
GUWAHATI-781003

4:THE EXECUTIVE ENGINEER PWD (ROADS)  
ASSAM  
LAKHIMPUR STATE ROAD DIVISION  
GHILAMORA  
LAKHIMPUR  
ASSAM  
PIN-787053

5:THE DEPUTY COMMISSIONER  
AND CHAIRPERSON OF DISTRICT LEVEL COMMITTEE

LAKHIMPUR DISTRICT  
NORTH LAKHIMPUR  
ASSAM  
PIN-78700

**Advocate for the Petitioner** : MR. U SAIKIA

**Advocate for the Respondent** : SC, PWD ROAD

**BEFORE**  
**HONOURABLE MR. JUSTICE SUMAN SHYAM**

**ORDER**

**Date : 02-03-2023**

Heard Mr. U. Saikia, learned counsel for the petitioner. Also heard Mr. R. Dhar, learned standing counsel, PWD, Assam appearing on behalf of respondent Nos. 1 to 4 and Mr. D. Bora, learned Govt. Advocate, Assam appearing for the respondent No. 5.

It appears from the materials on record that the father of the petitioner, *viz.* late Lambit Boruah had died-in-harness on 09-10-2009 while serving as a Sub-Engineer in the office of the Executive Engineer, PWD, Lakhimpur. After the death of his father, the petitioner had submitted an application on 31-01-2011 seeking appointment on compassionate ground. At the time of filing of the said application, the age of the petitioner was around 17 years. The application submitted by the petitioner, however, came up for consideration in the meeting of the DLC, Lakhimpur held on 28-12-2021 and the same was rejected by holding that the petitioner was under-aged.

Mr. Saikia submits that although there was a vacancy available for appointment of candidates on compassionate ground, yet, the case of the petitioner was erroneously

rejected by the authorities. On a query made by the Court, the learned departmental counsel have submitted that although on 28-12-2021 the age of the petitioner was around 28 years, yet, since he was a minor on the date of submission of the application, *i.e.* on 31-01-2011. It was on such count, the application submitted by the petitioner was rejected.

There is no provision in the rules/ guidelines/ office memorandums, which requires the DLC to take into account the age of the applicant on the date of filing the same. What, therefore, would naturally follow is that the age of the candidate would be relevant on the date on which the application is taken up for consideration, as otherwise it would negate the very purpose for which the scheme of die-in-harness had been introduced by the Government.

Initially, when the application submitted by the petitioner was not considered by the DLC, he had approached this Court by filing W.P.(C) No. 4598/2014, which was disposed of by the order dated 11-09-2014, whereby the learned Single Judge had directed that the petitioner's case be considered for appointment on compassionate ground by strictly following the guidelines formulated in terms of the judgment of this Court rendered in the case of ***Achyut Ranjan Das. Vs. State of Assam & Ors.*** reported in ***(2006) 4 GLT 674*** and ***Foziron Nessa Vs. State of Assam & Ors.*** reported in ***(2010) 4 GLT 340***. Accordingly the case of the petitioner was considered by the DLC, Lakhimpur on 28-12-2021 and the same was rejected by holding that the petitioner was under-aged.

In the present case, since the petitioner was admittedly eligible in terms of age, for

being appointed in a Govt. job on 28-12-2021, the DLC, in the opinion of this Court, had committed a glaring error in rejecting his application merely on the ground that he was under-aged. It is apparent on the face of the record that after filing of the application on 31-01-2011, there was a delay of nearly 10 years before which the same was considered by the DLC. Under the circumstances, the DLC could not have denied the benefit of compassionate appointment to the petitioner only on the ground of being under-aged. Situated thus, this Court is of the opinion that the impugned resolution dated 28-12-2021 is illegal and the same is accordingly set aside.

The matter is remanded back to the DLC, Lakhimpur to consider his application afresh. It is made clear that the DLC would consider the claim of the petitioner with reference to the circumstances existing as on 28-12-2021 and if it is found that he was otherwise qualified for being appointed against Gr-III or Gr-IV post, on the date of consideration of his application, i.e. on 28-12-2021, necessary recommendation will be made in favour of the petitioner. Such recommendation be also considered by the SLC in the light of the observation made hereinabove.

The matter be placed before the next meeting of the DLC, Lakhimpur.

Writ petition stands disposed of.

**JUDGE**

GS

**Comparing Assistant**