

GAHC010054942023



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

Case No. : WP(C)/1431/2023

MUSAFIR RAHMAN CHOUDHURY
S/O LATE TAIBUR RAHMAN CHOUDHURY,
RESIDENT OF BHAIKABNAGAR,
PO- KRISHNAPUR,
SILCHAR, DIST.- CACHAR, ASSAM,
PIN- 788025.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
HOME AND POLITICAL DEPARTMENTS,
DISPUR, GUWAHATI-6.

2:THE INSPECTOR GENERAL OF POLICE
ASSAM
GUWAHATI-7.

3:THE DISTRICT LEVEL COMMITTEE
REPRESENTED BY ITS CHAIRMAN

DEPUTY COMMISSIONER
CACHAR

SILCHAR
DIST.- CACHAR.

4:THE COMMANDANT
6TH A.P. BATTALIAN
KATHAL
SILCHAR

DIST.- CACHAR
ASSAM

Advocate for the Petitioner : MR. I ALAM

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 19-04-2023

Heard Mr. I. Alam, learned counsel for the writ petitioner. Also heard Mr. T.C. Chutia, learned Addl. Sr. Govt. Advocate, Assam appearing for the respondents.

The father of the petitioner late Taibur Rahman Choudhury died in harness on 13-10-2004 while serving as a Havildar under the Commandant, 6th APBN, Kathal, Cachar, Assam. At the time of the death of the petitioner's fathers, he was a minor, aged about 09 years. Both his sisters were also minors at that time. After passing the H.S. examination, the petitioner had submitted an application dated 29-08-2019 seeking appointment on compassionate ground. The application of the petitioner was forwarded to the DLC on 16-09-2019 but the DLC had rejected the same on the ground that it has spent its force as per the OM dated 01-06-2015.

Mr. Alam submits that his client was a minor at the time of death of his father and the application seeking compassionate appointment was submitted soon after he had attained majority. Under the circumstances, the respondents ought not to have rejected his claim merely on the ground that it has spent its force. Mr. Alam further submits that

similar applications submitted by similarly situated candidates seeking compassionate appointment have been considered by this Court and positive directions have been issued to look into their grievance in terms of the guidelines laid down therein. Therefore, similar order be passed in the present case as well. In support of his above arguments Mr. Alam has placed reliance on the order dated 04-01-2023 passed by the learned Single Judge in W.P.(C) No. 01/2023. I have perused the same.

The learned Govt. Advocate appearing in this case submits that he would have no objection, if a similar order as in W.P.(C) No. 01/2023 is passed in this case also.

The order dated 04-01-2023 was passed by this Court in a writ petition filed by one **Sahil Ahmed Choudhury** in **W.P.(C) No. 01-2023**, seeking compassionate appointment wherein, the writ petitioner was also aged about 06 years when his father died. However, soon after attaining majority, the writ petitioner had submitted an application seeking compassionate appointment, which was rejected by the DLC on the ground that due to late submission, the application had spent its force. Aggrieved thereby, W.P.(C) No. 01/2023 was filed. By relying upon a decision of the Hon'ble Supreme Court of India rendered in the case of **Syed Khadim Hussain Vs. State of Bihar**, reported in **(2006) 9 SCC 195**, the learned Single Judge had disposed of the writ petition by the order dated 04-01-2023 with following observations:

“5. The provision of avoiding late submission of application is on the principle that if the family could survive for a particular period of time, there is also a corresponding presumption that the family does not need any further compassionate appointment. The said principle is correct if it is looked from a particular point of view. But again, a further question would remain as to in what manner the family survived for the intervening period in a circumstance where no competent person was available for seeking compassionate appointment for the

intervening period.

6. From such point of view, we remand the matter back to the DLC of Cachar district and require the DLC to make a through enquiry as to in what manner and under what circumstance the family of the petitioner had survived for the intervening period and whether such survival can still be considered to be a state of adverse financial situation or the facts of the present case shows that the family of the petitioner survived in an acceptable financial condition.

7. The DLC to make further consideration after embarking into the aforesaid enquiry as indicated above. The enquiry be made through any competent officer within the Cachar district administration and its report may be acted upon by the DLC while considering the case of the petitioner afresh."

Since the petitioner is also similarly situated and considering the stand of the learned Govt. Advocate, Assam, this writ petition is being disposed of by providing that the case of the petitioner be also considered afresh in the light of the observations made hereinabove and a decision be taken therein, within 03 months from the date of receipt of a certified copy of this order.

Writ petition stands disposed of accordingly.

JUDGE

GS

Comparing Assistant