

GAHC010074612021



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

Case No. : WP(C)/4326/2021

RUPALI SARMA
W/O LATE SARAT SARMA
RESIDENT OF VILLAGE KETEKIBARI, PS KETEKIBARI, PO SONITPUR,
ASSAM,

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM,
DISPUR GUWAHATI , 781006

2:THE STATE OF ASSAM.
REPRESENTED THE SECRETARY TO THE GOVT. OF ASSAM
ENVIRONMENT AND FOREST DEPARTMENT
DISPUR GUWAHATI 781006

3:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS AND HEAD OF
FOREST FORCE
REHABARI
GUWAHATI 781008

4:THE DISTRICT LEVEL COMMITTEE

REPRESENTED BY THE DEPUTY COMMISSIONER
SONITPUR
CHAIRPERSON DISTRICT LEVEL COMMITTEE
SONITPUR
ASSAM

5:THE DIVISIONAL FORESTS OFFICER

SONITPUR WEST DIVISION

SONITPUR
ASSAM 78400

Advocate for the Petitioner : MR. A SARMAH

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

18-07-2023

Heard Mr. A. Sarma, learned counsel for the petitioner. Also heard Mr. R.R. Gogoi, learned counsel for the respondent nos. 2, 3 & 5 and Mr. J.K. Goswami, learned State Counsel for the respondent nos. 1 & 4.

2. The matter pertains to appointment of the petitioner under the die-in-harness scheme. The petitioner is aggrieved by the proceedings of the District Level Committee (DLC), Sonitpur, meeting held on 28.06.2017, whereby, the DLC, Sonitpur rejected the claim of the petitioner for appointment under the scheme on compassionate ground due to overage of the petitioner without considering the relevant provisions specified in the OM.No.ABP.50/2006/Pt/182 dated 01.06.2015 which was prevalent at that time.

3. The husband of the petitioner was working as Forester-I under the office of the DFO, Sonitpur. The husband of the petitioner died in harness on 09.01.2015 while he was in service. It is submitted by the learned counsel for the petitioner that at the time of submitting the application for consideration of the petitioner's case for compassionate appointment, the age of the petitioner was about 43 years. It is submitted that the petitioner was left with no source of income after the death of her husband and was also required to look after one

minor child. The husband of the petitioner died in harness after rendering more than 25 years of service.

4. Learned counsel for the petitioner submits that the petitioner had obtained a diploma in type writing from a recognized institute and after completing all necessary formalities submitted her application to the Divisional Forest Officer, Sonitpur, West Division Sonitpur, Assam for due consideration of her application. The application of the petitioner was submitted before the authorities within a period of 1 (one) year from the death of her husband.

5. After the application was duly forwarded by the competent authority, the matter was placed before the DLC. The DLC by its meeting held on 28.06.2017 rejected the case of the petitioner on the ground that she was overaged. Learned counsel for the petitioner submits that the ground on which the case of the petitioner was rejected is contrary to the provisions of the OM.No.ABP.50/2006/Pt/182 dated 01.06.2015. It is submitted that in terms of the provisions of the OM.No.ABP.50/2006/Pt/182 dated 01.06.2015 the Department was empowered to relax the upper age limit of any candidate wherever found necessary. This provision of the OM dated 01.06.2015, as submitted by the learned counsel for the petitioner, was never considered by the DLC while rejecting her application.

6. Learned counsel for the respondents, on the other hand, submits that as per the Government notification the upper age limit was increased by 5 (five) years making it 43 years in terms of the OM dated 03.03.2016. Learned counsel for the respondents submits that there is no infirmity in the decision taken by the DLC, Sonitpur as per the minutes dated 01.06.2015. Therefore, the writ petition does not have any merit and accordingly, the same may be dismissed.

7. Having heard the learned counsels for the parties and upon perusal of the

pleadings on records as well as the OM.No.ABP.50/2006/Pt/182 dated 01.06.2015, this Court is of the view that the OM.No.ABP.50/2006/Pt/182 dated 01.06.2015 contains the provisions whereby the competent authorities were empowered to relax the upper age limit of any candidate. Para-16 of the OM.No.ABP.50/2006/Pt/182 dated 01.06.2015 is extracted below:

“16. The upper age limit could be relaxed wherever found to be necessary as per the existing Government policy. The lower age limit shall, however, in no case be relaxed below 18 years. Age eligibility shall be determined with reference to the date of application and not the date of appointment; The State Level Committee shall be competent to grant relaxation of upper age limit for making such appointment as per existing Government policy.”

8. In terms of the said provision the competent authority is empowered to relax the upper age limit wherever found necessary. However, it is clearly mentioned in the OM dated 01.06.2015 that the lower age limit, however, is not to be relaxed below the age of 18 years. The age eligibility is to be determined in reference to the date of application and not the date of appointment. The State Level Committee (SLC) shall be competent to grant relaxation of upper age limit for making such appointment as per the existing Government policy.

9. Having heard the learned counsels for the parties and upon due consideration of the OM.No.ABP.50/2006/Pt/182 dated 01.06.2015 as well as upon careful perusal of the minutes of the DLC meeting dated 28.06.2017, it is evident from the minutes of meeting dated 28.06.2017 that the DLC did not discuss elaborately the basis on which the claim of the petitioner was rejected on the ground of overage. The perusal of the writ petition reveals that the application for compassionate appointment was filed immediately after the death of husband of the petitioner. The date of birth of the petitioner is shown to be 03.03.1972 in the application format (Annexure-B of the writ petition). If

the application as stated to have been made by the petitioner immediately after the death of her husband then the age of the petitioner would have been 43 years on the date of filing of the application. If that be so, then as per the OM date 01.06.2015 issued by the Department of Personnel (B), Government of Assam, the upper age limit as fixed by the Government for appointments in various posts available by the Government would be 43 years. The DLC had considered the application in the year 2017 and had rejected the case of the petitioner on the ground of being overaged. However, there is no finding by the DLC as to whether the petitioner was found to be overaged when she filed her application before the competent authority. The minutes of the DLC, Sonitpur, meeting dated 28.06.2017 is bereft of such specific details.

10. Accordingly, on due consideration of the matter in its entirety, this Court is of the view that the writ petition can be disposed of with a direction to remand the matter to the DLC, Sonitpur to reconsider the case of the petitioner and pass a detail order as to whether on the date of making her application whether she was overaged. If on the date of making her application she is found not to be overaged, the DLC will recommend her case to the State Level Committee (SLC) immediately by passing an appropriate order as required under the OM.No.ABP.50/2006/Pt/182 dated 01.06.2015 and grant such age relaxation as required in terms of the Clause-16 of the OM.No.ABP.50/2006/Pt/182 dated 01.06.2015.

11. Accordingly, the minutes of the meeting of the DLC dated 28.06.2017, in so far as the petitioner is concerned, is interfered with and set aside. The matter as directed above is remanded back to the DLC and the DLC shall expeditiously consider the case of the petitioner and pass appropriate order. This entire exercise shall be completed within a period of 3 (three) months, from the date

of the receipt of a certified copy of this order, and thereafter, the authority will intimate the decision to the petitioner by issuing a speaking order in this regard.

12. With the above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant