

GAHC010095702023



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

Case No. : Review.Pet./64/2023

SANGJUKTA KAHYAP BORAH
D/O- KESHAB CH. BORAH, R/O- VILLAGE SUTER SOLI BHATI, P.O-
BARANGATALI, P.S- KHATOWAL DIST- NAGAON, ASSAM, PIN-782141.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
PERSONEL (B) DEPTT., DISPUR, GUWAHATI- 06.

2:THE PRINCIPAL SECRETARY
TO THE GOVT. OF ASSAM
ASSAM ACCORD IMPLEMENTATION DEPARTMENT
DISPUR
GUWAHATI-781006

3:THE JOINT SECRETARY
TO THE GOVT. OF ASSAM
ASSAM ACCORD IMPLEMENTATION DEPARTMENT
DISPUR
GUWAHATI-781006

4:THE PRINCIPAL SECRETARY
TO THE GOVERNMENT OF ASSAM
REVENUE DEPARTMENT
DISPUR
GUWAHATI-06

5:THE DIRECTOR
REVENUE DEPARTMENT
GUWAHATI
PIN-781022

6:THE DEPUTY COMMISSIONER
NAGAON
DIST- NAGAON
PIN-78200

Advocate for the Petitioner : MD B ISLAM

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

Date : 25-07-2023

Heard Mr. B Islam, learned counsel for the review petitioner. Also heard Mr. D Nath, learned counsel for the respondent Nos. 1, 2, 3 & 6 as well as Mr. J Handique, learned counsel for the respondent Nos. 4 & 5.

2. The counsel for the review petitioner submits that the Order dated 13.06.2022 passed in WP(C) No. 3099/2022, dismissing the writ petition should be reviewed.

3. The facts of the case is that the petitioner filed WP(C) No. 3099/2022, praying for a direction to be issued to the respondent/Government, to give the petitioner preferential appointment in terms of Rule 4 of the Assam Public Services (Preferential Appointment) Rules, 1999, hereinafter referred to as the "1999 Rules". The petitioner had made the prayer on the basis of a certificate dated 16.02.2017 issued by the Deputy Commissioner, Nagaon, which states that the petitioner's father had been injured in connection with his participation in the Assam Movement on the problem of foreigners.

4. The provisions of the 1999 Rules defines an Affected Candidate to mean a candidate, who is a member of the family of a martyr or a member of a family

of a person, who has been rendered physically disabled and possesses a certificate to that effect issued by the Deputy Commissioner of the respective District, in such form as specified in the Schedule of the 1999 Rules.

5. Section 2(f) of the 1999 Rules defines "Physically Disabled" to mean a person disabled in any major part of his body leading to total disablement, in connection with Assam Movement on the problem of foreigners.

6. The petitioner claims to be the daughter of Keshab Chandra Borah, who was physically disabled due to an injury sustained during the Assam Movement. The certificate issued by the office of the Deputy Commissioner, Nagaon states as follows :

"Certificate as per notification No.ABP 20/89/Pt-II/50, dated 27.05.99 and No.AA.33/97/Pt-II/31, dated 19/06/99 Assam Public Services (Preferential Appointment) Rules, 1999

SCHEDULE

In pursuance of Rule 2(a) of the Assam Public Services (Preferential Appointment) Rules, 1999, this is to certify that Shri Keshab Chandra Bora of Village Sutar Salia, P.O. Barangitali, PS Samaguri of District Nagaon was injured in connection with this participation in the Assam Movement on the problem of Foreigners and that Sri Sanjukta Kashyap Bora is a son/daughter/wife/husband/brother/sister of the said deceased/physically disabled."

This Certificate is issued on the basis of the report submitted by the Circle Office, Samaguri Revenue Circle, vide letter No.SC2/2017/3421, Dated 01/02/2017

Dated, Nagaon the 29th Nov/2016"

7. This Court dismissed the writ petition on the ground that the certificate

issued by the Deputy Commissioner's office in respect of the petitioner had not been made in terms of the Schedule appended to the 1999 Rules. Further, there was no medical certificate in the writ petition, to enable this Court to come to a finding as to the injuries suffered by the petitioner's father and as to whether the petitioner's father suffered total physical disablement.

8. Being aggrieved, the review petitioner filed an appeal, i.e., WA No. 33/2023 before the Division Bench, stating that the review petitioner had now been able to lay her hands on a medical certificate, proving that the petitioner's father's both knees had received gun shot injuries.

9. WA No. 33/2023 was disposed of as withdrawn with liberty being given to the petitioner to file a review petition before this Court, by annexing the medical certificate of the petitioner's father.

10. Mr. B Islam, learned counsel for the review petitioner submits that as the medical certificate clearly shows that the petitioner's father had received gun shot injuries to both his knees on 24.02.1983 and that he was under medical treatment from 29.02.1983 to 05.03.1983, the same clearly proved that the petitioner's father had suffered permanent disablement. Accordingly, the petitioner was eligible to be considered for preferential appointment in terms of the 1999 Rules.

11. Mr. D Nath, learned counsel for the respondent Nos. 1, 2, 3 & 6 and Mr. J Handique, learned counsel for the respondent Nos. 4 & 5 submit that the medical certificate (Annexure-1) and the certificate dated 30.08.2000 issued by the All Assam Students Union (Annexure-3) are at variance with each other, besides being fabricated documents. As such, the review petition should be dismissed.

12. I have heard the learned counsels for the parties.

13. The medical certificate issued by one Dr. B Saikia, Senior Medical & Health Officer, i/c Samaguri PHC, Nagaon, Assam is to the effect that Sri Keshab Ch. Bora sustained gun shot injuries to both knees on 24.02.1983 and was under his treatment from 29.02.1983 to 05.03.1983. The medical certificate is reproduced below:-

“MEDICAL CERTIFICATE

This is to certify that Sri Keshab Ch. Bora, S/O Sri Gakul Ch. Bora, Vill-Sutar Saliabhetie, P.O. Barangatali, P.S. Samaguri, Dist-Nowgaon, sustained gun shot injuries to both knees on 24.-02-83 at RaudhaniChuk was under my treatment from 29-2-83 (eighty three) to 5-3-83.

Sd/illegible

(Dr. B Saikia)

Sr.Medical & Health Officer

i/c Samaguri PHC

Nagaon (Assam)”

14. A perusal of the same shows that the treatment was given from 29.02.1983. Besides the word 83 being written in number, it has also been typed in words. The above being said, 1983 was not a leap year and as such, the month of February would have had only 28 days and not 29 days. The certificate was issued by a Doctor, who was the Senior Medical & Health Officer, i/c Samaguri PHC, Nagaon. Interestingly, the certificate issued by the All Assam Students Union (Annexure-3) states that Sri Keshab Chandra Borah (petitioner's father) was admitted in GMCH from 29.02.1983 to 05.03.1983 due to bullet

injuries. It is a known fact that GMCH stands for Gauhati Medical College & Hospital, which is located in Guwahati city, while Nagaon is the capital of Nagaon district. The same mistake with regard to the date of treatment, i.e, 29.02.1983 in the medical certificate has also been made in the certificate allegedly issued by the All Assam Students Union. Besides the above, the injured could not have been treated in two different cities, i.e., Nagaon and Guwahati on the same dates, i.e, between 29.02.1983 to 05.03.1983. Thus, we are of the view that both the above documents are fabricated documents. As such, this Court does not find any ground to interfere with the impugned Order dated 13.06.2022, passed in WP(C) No. 3099/2022.

15. The review petition is accordingly dismissed.

JUDGE

Comparing Assistant