

GAHC010127912022



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

Case No. : WA/84/2023

ISHANEE BORKOTOKY

D/O. SRI PULIN CHANDRA BORKOTOKY, VILL. MOHMAIKI, P.O. AND P.S.
BOKAKHAT, DIST. GOLAGHAT, ASSAM, PIN-785612.

VERSUS

THE STATE OF ASSAM AND 3 ORS.

REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM, ASSAM
ACCORD IMPLEMENTATION DEPTT., DISPUR, GUWAHATI-781006.

2:THE PRINCIPAL SECRETARY

TO THE GOVT. OF ASSAM

LABOUR WELFARE DEPTT.

ASSAM

DISPUR

GUWAHATI-06.

3:THE LABOUR COMMISSIONER

ASSAM

GOPINATH NAGAR

GUWAHATI-16.

4:THE DEPUTY COMMISSIONER

GOLAGHAT

P.O. AND DIST. GOLAGHAT

ASSAM

For the appellant : Mr. B. Islam,
Mr. A. Alam, Advocates

For the respondents : Mr. P. Sarmah,
Additional Senior Government
Advocate, Assam

– B E F O R E –

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE KARDAK ETE

15-03-2023

S. Mehta, C.J.

This intra-Court writ appeal is directed against the order dated 25.05.2022 whereby, the writ petition, being, WP(C) 3395/2022 preferred by the writ petitioner with a prayer seeking preferential appointment under Assam Public Services (Preferential Appointment) Rules, 1999 (for short, 'the 1999 Rules) was turned down.

We have heard and considered the submissions advanced by the appellant's counsel, as well as the learned Government Advocate and have gone through the impugned order and the materials placed on record.

The appellant herein applied for preferential appointment under the aforesaid 1999 Rules as next of kin of Sri Pulin Chandra Borkotoky claiming that her father was a victim of the Assam Movement. However, such contention of the writ petitioner did not find favour with the Writ Court which dismissed the writ petition by the order dated 25.05.2022 which is assailed in the present appeal.

Upon consideration of the submissions advanced at the Bar; and after careful perusal of the impugned order and the documents placed on record, we find that the learned Single Judge was perfectly justified in holding that the appellant was not qualified to be offered preferential appointment under the 1999 Rules. As per Rule 2(d) of the 1999 Rules, victim's "Family Member" has been defined as son, daughter, spouse or a brother or sister of the ***martyr*** or

the ***physically disabled person*** meaning thereby that preferential appointment would only be admissible to the next of kin of the victim who was either martyred during participation in the Assam Movement or was physically disabled in the course thereof. The material document on which the appellant relied upon in support of her claim for preferential appointment was the certificate dated 06.03.2018 issued by the Deputy Commissioner, Golaghat, Assam, a perusal whereof would clearly indicate that same does not in any manner narrate that Sri Pulin Chandra Borkotoky was martyred or got disabled during participation in the Assam Movement. Rather this Court is at a loss to comprehend as to whatever the reasons which prevailed with the Deputy Commissioner so as to issue the vaguely worded certificated dated 06.03.2018 and that too decades after the alleged event. Even in the application for preferential appointment (Annexure-10) filed by the appellant to the State Government, it is not stated that her father was a victim during the Assam Movement in terms of Rule 2(d) (supra).

As a consequence, we are of the firm opinion that the appellant herein was not entitled to stake a claim for preferential appointment under the 1999 Rules. The order of the learned Single Judge dated 25.05.2022 does not suffer from any infirmity warranting interference of this Court in this writ appeal which fails and is hereby dismissed as being devoid of merit.

No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant