

GAHC010137692021



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

Case No. : WP(C)/4431/2021

BIPLAB MEDHI
S/O LATE RAJEN MEDHI, RESIDENT OF VILLAGE SANKAR NAGAR,
BELTOLA, PO BALADMARI, DIST GOALPARA, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, PWD(ROADS) DISPUR, GUWAHATI 06

2:THE STATE LEVEL COMMITTEE (SLC)
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
CUM CHAIRMAN SLC ASSAM DISPUR
GUWAHATI 06

3:THE CHIEF ENGINEER

PWD(ROADS) ASSAM
CHANDMARI GUWAHATI 03

4:THE DEPUTY COMMISSIONER CUM CHAIRMAN
DISTRICT LEVEL COMMITTEE
GOALPARA ASSAM

5:THE EXECUTIVE ENGINEER

PWD(RURAL ROADS) DIVISION
GOALPARA ASSA

Advocate for the Petitioner : MR. A AHMED

Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

29.11.2023

Heard Md. S. Hoque, learned counsel for the petitioner. Also heard Mr. R. Dhar, learned counsel for the State respondents.

2. The petitioner, who has a B.A. degree, is aggrieved due to the State Level Committee (SLC) having rejected the petitioner's application for compassionate appointment in its meeting minutes dated 23.12.2019, on the ground that the petitioner did not possess the qualification of Higher Secondary (Science) for the post of Section Assistant.

3. The petitioner's counsel submits that the DLC had recommended various graduates (B.A.) for the post of Section Assistant and as such, the rejection of the petitioner's application by the SLC, on the ground that he did not have the requisite educational qualification for the post of Section Assistant, was arbitrary. The petitioner, accordingly, prays that the SLC meeting minutes dated 23.12.2019 should be set aside and the SLC should be directed to reconsider the petitioner's application for compassionate appointment.

4. Mr. R. Dhar, learned counsel for the State respondents, on the other hand, submits that the petitioner had applied for compassionate appointment to the post of Junior Assistant. The petitioner's case was considered for the post of Junior Assistant. However, as there was no vacancy in the post of Junior Assistant, the petitioner could not be considered for the 5% quota of posts reserved for compassionate appointment. Thereafter, the petitioner's case was considered for the post of Section Assistant by the SLC. However, the petitioner did not have the requisite minimum educational qualification of Higher

Secondary (Science), which is the requirement for the post of Section Assistant. He submits that persons having degree in B.A. can be considered for the post of Section Assistant, if they also have the educational qualification of Higher Secondary (Science). However, in the present case, the petitioner does not have the educational qualification of Higher Secondary (Science).

5. I have heard learned counsels for the parties and perused the documents. The petitioner has approached this Court for the third time. The petitioner had applied for compassionate appointment to the post of Junior Assistant due to the death of his father, who died-in-harness on 13.01.2015. The petitioner had applied for the post of Junior Assistant and he had been recommended for the compassionate appointment by the District Level Committee (DLC). However, his application was not considered by the SLC and accordingly, the petitioner filed WP(C) 6099/2018. During the proceeding of WP(C) 6099/2018, the State respondents' counsel produced a copy of the written instruction dated 13.09.2018, which showed that the petitioner's case had been considered by the SLC on 19.06.2018 and had been rejected. This Court, thereafter, disposed of WP(C) 6099/2018, vide order dated 14.09.2018, by granting leave to the petitioner to file an appropriate petition, assailing the proceedings of the SLC. The petitioner, thereafter, filed WP(C) 2519/2019, praying for setting aside the rejection of the petitioner's application by the SLC on 19.06.2018, on the ground that the State respondents ought not to have rejected the application for compassionate appointment without undertaking the exercise as contemplated under paragraph 15 of the Office Memorandum dated 01.06.2015, which provides for examining the availability of vacancies in other departments. This Court disposed of WP(C) 2519/2019, vide order dated 11.04.2019, by directing the SLC to reconsider the case of the petitioner in terms of the paragraph 15 of

the Office Memorandum dated 01.06.2015, with regard to the availability of vacancies in other departments, other than the department referred to by the DLC.

6. Subsequent to the above facts, the SLC again considered the case of the petitioner, vide SLC meeting minutes dated 23.12.2019, wherein it had been shown that the petitioner's application had been rejected. The reason for rejection is on two grounds, which are as follows;

“1. Applicant cannot be accommodated within 5% of cadre strength in any Division in Assam.

2. Applicant do not possess required educational qualification for the post S.A. i.e. H.S.(Sci).”

7. The SLC meeting minutes dated 23.12.2019 read with the affidavit-in-opposition filed by the respondent No.2, shows that the petitioner had been considered for the post of Junior Assistant on compassionate ground in other divisions. As there were no vacancies in the post of Junior Assistant within the 5% quota reserved for compassionate appointment, the petitioner was considered against the post of Section Assistant. However, the petitioner could not be recommended for the post of Section Assistant, as he did not have the required eligibility criteria of Higher Secondary (Science).

8. Rule 8 of the All Assam Section Assistant and Subordinate Engineers, P.W.D. (Roads Wing), Services Rules, 2018, states that “the academic qualification of a candidate for direct recruitment for the post of Section Assistant shall be H.S.S.L.C. passed from any recognized Board in Science stream”. As such, the relevant rules required the petitioner to have the Higher Secondary (Science) qualification to be eligible for appointment to the post of

Section Assistant. Though the counsel for the petitioner has taken a stand that other persons, who were having B.A. degree, had also been recommended for appointment on compassionate ground to the post of Section Assistant earlier, the said argument is ambiguous, inasmuch as, there is nothing to show that those persons having B.A. degree, did not have the educational qualification of Higher Secondary (Science). In any event, if the State respondents had earlier recommended persons, who did not have the educational qualification of Higher Secondary (Science), for compassionate appointment to the post of Section Assistant, this Court is of the view that an illegality committed by the State respondents earlier, if any, in violation of the relevant recruitment rules, cannot be allowed to be perpetuated by this Court.

9. In view of the above reasons, this Court does not find any ground to interfere with the impugned SLC meeting minutes dated 23.12.2019.

The writ petition, is, accordingly, dismissed.

JUDGE

Comparing Assistant