

GAHC010140622022



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

Case No. : WP(C)/4689/2022

ABUL FAZAL JAHANGIR HUDA CHOUDHURY
S/O LATE JOYNUL HUDA CHOUDHURY,
R/O VILL.- RANGAUTI PART-I, P.O.- RANGAUTI, P.S. AND DIST.-
HAILAKANDI, ASSAM, PIN- 788155.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE ADDL. CHIEF SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF PERSONNEL (B), DISPUR, GUWAHATI- 6.

2:THE COMMISSIONER AND SPECIAL SECRETARY TO THE GOVERNMENT
OF ASSAM
PUBLIC WORKS DEPARTMENT (PWD)
DISPUR
GUWAHATI-6.

3:THE STATE LEVEL COMMITTEE FOR COMPASSIONATE APPOINTMENT
(SLC)
ASSAM
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-6.

4:THE CHIEF ENGINEER
PWD (ROADS)
ESSTT. CELL-II
CHANDMARI
GUWAHATI-3.

5:THE EXECUTIVE ENGINEER
PWD RURAL ROAD DIVISION

HAILAKANDI
P.O.
P.S. AND DIST.- HAILAKANDI.

6:THE DISTRICT LEVEL COMMITTEE FOR COMPASSIONATE
APPOINTMENT (DLC)
HAILAKANDI
REP. BY ITS CHAIRMAN CUM DEPUTY COMMISSIONER
HAILAKANDI.
P.O.
P.S. AND DIST.- HAILAKANDI
ASSAM- 788155

Advocate for the Petitioner : MR. M H LASKAR

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 17-02-2023

Heard Mr. M.H. Laskar, learned counsel for the petitioner. Also heard Mr. T.C. Chutia, learned Addl. Sr. Govt. Advocate, Assam appearing for the respondent Nos. 1, 3 and 6 and Mr. P. Nayak, learned standing counsel, Finance Department, Assam appearing for the respondent Nos. 2, 4 and 5.

The petitioner is aggrieved by rejection of his prayer for appointment on compassionate ground against a Gr-III vacancy merely on the ground that less than 03 years service was remaining at the time of death of the father of the petitioner.

The facts of the case, in a nutshell, are that the father of the petitioner, late Joynul Huda Choudhury, was serving as a Sub-Engineer Gr-I in the office of the Executive Engineer, PWD Rural Road Division, Hailakandi. The petitioner's father died in harness on 03-04-2016.

Since the father of the petitioner was the sole bread earner of the family, in order to tide over the financial crisis, the writ petitioner, being his son, had made an application for appointment on compassionate ground. The application submitted by the petitioner on 09-05-2016 was considered by the DLC, Hailakandi and his name was also recommended for appointment to the post of Section Assistant. However, the SLC, in its meeting held on 31-12-2018 had rejected the case of the petitioner on the ground that his father had less than 03 years of service left at the time of his death. The aforesaid conclusion was apparently drawn by the SLC by relying upon Clause- I the office memorandum dated 01-06-2015 which lays down such a criteria.

However, today when the matter is called up Mr. Laskar has placed a copy of the judgement and order dated 30-01-2023 passed by the learned Single Judge in W.P.(C) No. 1646/2021 to submit that Clause- 1 of the OM dated 01-06-2015, which contains a provision permitting rejection of applications for appointment on compassionate ground, if the deceased was left with less than 03 years of service at the time of his death has since been set aside and several pending cases have been remanded back to the SLC for fresh consideration. As such, a similar order be also passed in this case as well.

After perusal of the judgement and order dated 30-01-2023, I find that Clause 1 of the OM dated 01-06-2015 has been struck down by the Court by holding the same as unconstitutional. If that be so, there can be no doubt about the fact that the petitioner's case would call for reconsideration. However, this Court also finds force in the submission of Mr. Chutia that since the petitioner has applied for a Gr-III post, hence, his candidature would be subject to fulfilment of necessary qualification and other criteria for appointment to such post.

In view of the above, this writ petition stands disposed of by providing that the SLC may consider the case of the petitioner afresh in the light of the observation made hereinabove and pass appropriate order.

Writ petition stands disposed of accordingly.

JUDGE

GS

Comparing Assistant