

GAHC010141602021



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

Case No. : WP(C)/4990/2021

MITHU DEBI @ MITHU DEVI
W/O LATE SADHAN PANDIT
VILLAGE RANGAFALI, PO NAHERBARI, PS GHOGRAPAR, DIST NALBARI,
ASSAM, 781349

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM,
DISPUR, GUWAHATI 06

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
DEPARTMENT OF PERSONNEL (B) ASSAM
DISPUR
GUWAHATI 06

3:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
ELEMENTARY EDUCATION DEPARTMENT
DISPUR GUWAHATI 06

4:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
ASSAM DISPUR GUWAHATI 06

5:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPAR
GUWAHATI 19

6:THE DEPUTY COMMISSIONER

NALBARI
ASSA

Advocate for the Petitioner : MR. U K DAS

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

Date : 27.02.2023

Heard Mr.U.K.Das, learned counsel for the petitioner. Also heard Ms. D.D.Barman, learned Govt. Advocate appears for the respondent Nos. 1, 2 and 6; Mr. G.Pegu, learned Govt. Advocate for the respondent Nos. 3 and 5 and Mr.B.Gogoi, learned standing counsel, Finance Department appears for the respondent No.4.

2. It is the case of the petitioner that her husband was killed by the extremist on 27.04.1998, and accordingly she made her application for appointment to a Grade-IV post on 07.11.2000, under the Assam Public Services (Appointment of Family Members of Persons killed by Extremists/Terrorists) Rules, 1992 (hereinafter Rules of 1992 in short).

3. The Rules of 1992 was enacted by the Govt. of Assam under the proviso to Article 309 of the Constitution of India, regulating appointment in public services under the Govt. of Assam of the next of kin of person who have been killed in violent activities in the hands of the extremists since 01.01.1985. Rule 3

provides for the application of the Rules of 1992 and it provides that the Rule shall apply to all the services and post under the Govt. of Assam recruitment to which is made through the Assam Public Service Commission or through the Commission. Rule 7 provides for relaxation, wherein, it provides that where the Govt. is satisfied that the operation of any of these Rules causes undue hardship in any particular case, it may dispense with or relax the requirement of that rule to such extent and subject to such condition as it may consider necessary for dealing with the case in a just and equitable manner; provided that the case of any person shall not be dealt in any manner less favorable to him than that provided in these Rules. Rule 8 provides for overriding provision and it provides that notwithstanding anything contained in any normal rules for recruitment to the service and posts referred to Rule 3 the provisions of these rules shall have overriding effect.

4. The Deputy Commissioner, Nalbari by a letter dated 26.08.2002, addressed to the Commissioner and Secretary to the Govt. of Assam, Personnel (B) Department, forwarded the application made by the petitioner for appointment under the Rules of 1992 for favourable action.

As no steps were taken, petitioner approached this Court by filing WP(C)/9575/2003 which was disposed of by order dated 14.12.2004 with the following observations and directions :

“In the present case, it appears from the statements made in the writ petition that the petitioner’s husband was killed by Bodo extremists on 27.4.98, has applied for a appointment against any Grade IV post under the said Rules.

It is also evident from the affidavit-in-opposition filed by the respondent nos 1 and 2 that her case is till under process.

That being the position, I dispose of this writ petition with a direction to the respondents to expedite the matter for consideration for appointment under the said Rules and pass necessary orders strictly in accordance with the said Rules.

The entire process shall be completed within a period of 4 months from the date of receipt of the certified copy of this order.”

5. In the meantime, by a Notification dated 22nd June, 2004, issued by the Department of Personnel, Personnel (B) Government of Assam the Rules of 1992 was repealed. On repeal of Rules of 1992 an issue arose as to what would be the status of the applicants who had made the application under the Rules of 1992 for appointment to a Govt. job made prior to 22.06.2004 when the rules have repealed. A Division Bench of this Court by judgment and order dated 09.06.2010, passed in WP(C)/3355/2007 reported in 2010 (3) GLT 443 held that as there existed a right to make an application under Rules of 1992, prior to the said rules being repealed the right to consider such applications also survived and such applications cannot be rejected merely because the Rules of 1992 stood repealed by the Notification dated 22.06.2004.

6. Under such circumstances, petitioner claims that as she had already made her application for appointment on 07.11.2000 prior to 22.06.2004 when the Rules of 1992 was repealed, she has a right to be considered for an appointment to a Govt. job.

7. The Principal Secretary to the Govt. of Assam, Personnel (B) Department

issued Office Memorandum dated 29.07.2013, wherein, reference is made to a list of 57 applicants who had submitted their respective applications for appointment prior to the cutoff date on 22.06.2004. In the said Office Memorandum, it was provided that upon proper verification of the genuineness of the enlisted persons, the persons enlisted in the list of 57 would be provided with appointment.

Clause IV (iii) of the OM dated 29.07.2013 also provides that in case of any further application, over and above the 57 applications are subsequently detected in a district, the concerned Deputy Commissioner will carefully examine the authenticity of such applications and on being satisfied, place the same before the District Level Committee for taking similar action for appointment as was done in respect of the other 57 applicants.

8. Mr.U.K.Das, learned counsel for the petitioner placing reliance on Clause IV (iii) of the OM dated 29.07.2013 submits that as the petitioner has made her application on 07.11.2000, prior to the cutoff date on 22.06.2004, the petitioner would belong to the category of applicants, whose application may have been detected subsequently over and above the other 57 applications and therefore the petitioners application should also be considered in terms of the OM dated 29.07.2013 and therefore, submits that as the District Level Committee, Nalbari, in its meeting held on 22.03.2017 had already recommended the case of the petitioner, a direction be issued to give appointment to the petitioner. He also assails the letter dated 28.12.2020, written by the Joint Secretary to the Govt. of Assam, Elementary Education Department to the Director of Elementary Education Assam, wherein, it was stated that sanctioned vacant post can be

filled up only with the concurrence of Finance Department, then due procedure of selection through advertisement of the posts, applications from eligible candidates may be received and then among the candidates competitive examination is to be conducted to find out the selected candidates to be appointed and therefore, the nomination for filling up of sanctioned vacant post was regretted. He submits that the said letter dated 28.12.2020, completely frustrates the aims and objectives of the Rules of 1992 for which it was enacted.

9. Mr. G.Pegu, learned standing counsel, Elementary Education submits that the impugned letter dated 28.12.2020 was issued as per the endorsement of Finance (SIU) Department, conveyed vide U/O No.568/2020 dated 16.12.2020. He therefore, submits that as the endorsement has been made by the Department of Finance, the said letter was issued by the Department.

10. Ms. D.D.Barman, learned Govt. Advocate, appearing for the Personnel (B) Department on the other hand justifies the issuance of the Memorandum dated 29.07.2013, issued by the Principal Secretary to the Govt. of Assam, Personnel (B) Department.

11. Mr. B.Gogoi, learned standing counsel, Finance Department submits on instructions that if authentic application with relevant records and the vacancy position are reported by the District Level Committee through proper channel by the concerned Deputy Commissioner and Government, permissible age limit of the petitioner exist then the Finance Department will consider the case.

12. Upon hearing the learned counsel for the parties and on consideration of the OM dated 29th July 2013, which was issued after the repeal of the Rules of 1992, this Court is of the considered opinion that the case of the petitioner falls before the cutoff dated of 22.06.2004 and therefore, her case requires consideration under the Rules of 1992.

13. The minutes of the District Level Committee, Nalbari which held its meeting on 22.03.2017, recommended the case of the petitioner for appointment under the Rules of 1992. While making the recommendation, it also observed that the petitioner is 43 years and 8 months as on 01.01.2017 but during the time of submission of application i.e., 07.11.2000, her age was 27 years.

A perusal of the same would clearly indicate that the petitioner had made her application when she was only 27 years. Therefore, direction is issued to the State respondents to condone the age of the petitioner for making appointment to a Govt. post under the Rules of 1992. A further perusal of the records indicates that the petitioner had already approached this Court in the year 2003 by filing WP(C)/9575/2003. While disposing of the said writ petition on 14.12.2004, this Court has also taken into consideration the affidavit-in-opposition filed by the respondents that her case is still under process. The process still continues till today. Such delay cannot be warranted by this Court especially when the petitioner is praying for an appointment to a Govt. post in terms of the Rules of 1992 which has been enacted by the State Government under proviso to Article 309. Accordingly, as the proposal of the petitioner has

already been sent by the Director of Elementary Education Assam in format I and II for the year 2020-2021 along with copies of post creation/retention in connection with filling up of vacant post of Grade- IV regarding the appointment of the petitioner under the Rules of 1992 by letter dated 19th October, 2022, addressed to the Commissioner & Secretary to the Govt. of Assam, Education Department, the respondents are directed to expedite the matter and give appointment to the petitioner after verifying all relevant records within a period of 3(three) months from the date of receipt of a copy of the order of this Court.

14. Accordingly, the impugned letter dated 28.12.2020, written by the Joint Secretary to the Govt. of Assam, Elementary Education Department and addressed to Director of Elementary Education Assam is set aside and quashed.

15. With the aforesaid observations, and directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant