

GAHC010166502023



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

Case No. : WP(C)/4392/2023

SALIM HASSAN KAZI
S/O- LATE OMAR FARUK ALI, R/O- VILL.- BHOGPUR, P.O. BHOGPUR, P.S.
GORESWAR, DIST. BAKSA, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, IRRIGATION DEPARTMENT, DISPUR,
GUWAHATI-781006.

2:THE DISTRICT LEVEL COMMITTEE
REPRESENTED BY THE PRINCIPAL SECRETARY
BTAD
KOKRAJHAR
P.O. AND DIST. KOKRAJHAR
ASSAM

3:THE EXECUTIVE ENGINEER
SUKLA DIVISION (IRRIGATION)
GORESWAR
P.O. GORESWAR
DIST. BAKSA
ASSAM

4:THE DEPUTY COMMISSIONER
BAKSA
P.O. AND DIST. BAKSA
ASSA

Advocate for the Petitioner : MR F A LASKAR

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

04.08.2023

Heard Mr. F.A. Laskar, learned counsel for the petitioner. Also heard Ms. D.S. Neog, learned Standing Counsel, Irrigation Department for the respondents No. 1 & 2.

2. This petition has been filed by the petitioner praying for appointment under the compassionate scheme as his father who was a Government servant who died in harness. The late father of the petitioner was a Head Assistant in the Office of the Executive Engineer, Sukla Division (Irrigation), Goreswar, Baksa, Assam. The late father of the petitioner died in harness while he was in service on 15.04.2016 leaving behind his widow, one daughter and two sons including the petitioner. The petitioner, thereafter, applied for appointment on compassionate ground on 02.05.2016 to the Executive Engineer, Sukla Division (Irrigation), Goreswar, Baksa, Assam. The District Level Committee, Kokrajhar in its meeting held on 16.03.2017 rejected the petitioner's case on the ground of lack of vacancy and also as the remaining service period of the father of the petitioner was less than 3 years as per Clause-1 of the OM dated 01.06.2015.

3. The learned counsel for the petitioner submits that the rejection of the petitioner's case for compassionate appointment by the DLC was done without taking note of the provisions of Clause 15 of the OM dated 01.06.2015. As per the said provisions, the concerned authorities are required to enquire about the availability of vacancies in other departments/all departments and thereafter proceed to pass necessary orders.

4. The learned counsel for the respondents submits that the case of the petitioner has been considered and in the absence of any vacancies, there was no other option but to reject the case of the petitioner.

5. The learned counsels for the parties have been heard. Pleadings have been carefully perused and also the OM dated 01.06.2015. Paragraph 15 of the OM dated 01.06.2015 reads as under:

“15. If sufficient vacancies are not available in any particular office to accommodate, the persons in the waiting list for compassionate appointment, it is open to the administrative Department/ Office to take up the matter with other Departments/Offices of the Government to provide at an early appointment on compassionate grounds to those in the waiting list.”

6. Upon due perusal of the OM as well as the order passed by the DLC, it is seen that the DLC by its meeting held on 16.03.2017 rejected the case of the petitioner on the ground of non-availability vacancies position under the prescribed percentage of 5% as prescribed under OM No. ABP 50/2006//Pt/182 dated 01.06.2015. While doing so, however no reference is found recorded in the said Minutes of the meeting that the case of the petitioner was considered in respect of all available vacancies in the post of Grade-IV under the 5% quota, as is required under Clause 15 of the OM dated 01.06.2015. No such finding is reflected in the minutes of the meeting. That apart the clause requiring a minimum of three (3) years residual service period remaining of the deceased employee, for consideration of the cases of compassionate appointment, has been set aside by the order dated 30.01.2023 passed in W.P.(C) No. 1646/2021 (Bhaskar Konwar Vs- The State of Assam & Ors) by a Co-ordinate Bench.

7. Under such circumstances, it appears that the prescription of clause-15 of

OM dated 01.06.2015 has not been adhered to by the DLC while considering the case of the petitioner in its meeting held on 16.03.2017. Accordingly, this Court is of the view that the writ petition can be closed with a direction to the DLC to re-consider the case of the petitioner in respect of any other available vacancy under the prescribed percentage of 5% quota as per the provisions of clause-15 of the OM dated 01.06.2015.

8. To the extent it relates to the petitioner, the minutes of the meeting held on 16.03.2017 stands interfered with and set aside. The matter is remanded back to the DLC for a fresh consideration in terms of the provisions of Clause 15 of the OM dated 01.06.2015. The DLC will re-consider within 90 days upon receipt of the certified copy of this order.

9. The writ petition stands disposed of. No order as to cost.

JUDGE

Comparing Assistant