

GAHC010171642023



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

Case No. : WP(C)/4507/2023

BIJOY DEKA
S/O- LT. CHANDI RAM DEKA, RESIDENT OF VILLAGE- NO. 1 BAINARA,
P.O. ANDHERIGHAT, P.S. KHOIRABARI, DIST.- UDALGURI, BTC, PIN, 724522

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY, TO THE
GOVERNMENT OF ASSAM, AGRICULTURE DEPARTMENT, DISPUR,
GUWAHATI-6

2:THE PRINCIPAL SECRETARY
BODOLAND TERRITORIAL AUTONOMOUS COUNCIL
DISTRICT
KOKRAJHAR
ASSAM

3:THE DEPUTY SECRETARY
BODOLAND TERRITORIAL AUTONOMOUS COUNCIL
DIST.- KOKRAJHAR
ASSAM

4:THE CHIEF EXECUTIVE MEMBER
BODOLAND TERRITORIAL COUNCIL DISTRICT
KOKRAJHAR
ASSAM

5:THE BTC LEVEL COMMITTEE
HEADED BY CHAIRMAN
BTC LEVEL COMMITTEE
CHIRANG
ASSAM

6:THE ADDITIONAL DEPUTY COMMISSIONER
CHIRANG
KAJALGAON

7:THE DIRECTOR OF AGRICULTURE
BTC
KOKRAJHAR

8:THE DISTRICT AGRICULTURE OFFICER
CHIRANG
KAJALGAON

9:THE SUB-DIVISIONAL AGRICULTURE OFFICER
BIJNI
CHIRAN

Advocate for the Petitioner : MR. J I BORBHUIYA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

09-08-2023

Heard Mr. L. Mohan, learned counsel for the petitioner. Also heard Mr. B. Choudhury, learned Standing Counsel, BTC appearing for the respondent nos. 1 to 5, 7, 8 & 9 and Mr. C.S. Hararika, learned Government Advocate for the respondent no.6.

2. This writ petition has been filed by the petitioner being aggrieved by the fact that his application for seeking compassionate appointment has not been given due consideration. The father of the petitioner was serving as a peon in the office of the Sub-Divisional Agriculture Officer at Bijni. The father of the petitioner expired on 15.12.2001 while in service. The petitioner submitted his application for compassionate appointment on 18.01.2002. Since no action was

taken against the said application, the petitioner approached this Court by filing writ petition being WP(C) No.6592/2002. This Court by order dated 08.10.2002 disposed of the said writ petition by directing the respondents to consider the case of the petitioner for appointment on compassionate ground within a period of 3 (three) months from the date of receipt of a certified copy of this order. The case of the petitioner was directed to be considered in terms of his claimed eligibility and in the light of the policy in force. This consideration was directed to be made along with other similarly situated persons subject to availability of the post against the quota earmarked for compassionate appointment. In terms of the said direction, the matter was processed and considered at different levels by different offices for the last several years and ultimately, by a communication dated 17.11.2021 it was informed to the petitioner that his case was not forwarded on the ground of lack of vacancies. This communication dated 17.01.2021 was addressed by the Director of Agriculture, BTC Kokrajhar to the Chief Executive Member, Bodoland Territorial Council, Kokrajhar. Due to non-consideration of the case of the petitioner in spite of the directions issued by this Court by order dated 08.10.2002 in WP(C) No.6592/2002, the petitioner has approached this Court for the second time.

3. Learned counsel for the petitioner submits that his application was duly forwarded by the Additional Deputy Commissioner, Chirang to the Principal Secretary, BTC for due consideration. However, in spite of that the Director of Agriculture, BTC, Kokrajhar has neglected to consider the case of the petitioner.

4. Mr. B. Choudury, learned Standing Counsel, BTC submits that there is a delay of the part of the petitioner in approaching this Court and therefore, the petition may not be entertained.

5. Learned counsels for the parties have been heard and pleadings are

carefully perused.

6. It is seen that the pursuant to the direction of the Court dated 08.10.2002 passed in WP(C) No.6592/2002, the matter was processed at various level and ultimately, the Additional Deputy Commissioner, Chirang had forwarded the communication to the Principal Secretary, BTC on 2nd of March, 2015 for due consideration. A copy thereof has been attached to the petitioner with endorsement made by him and which is relied upon by the learned counsel for the petitioner who submits that the case of the petitioner was duly considered and recommended by the Additional Deputy Commissioner, Chirang for due consideration. The O.M. dated 01.06.2015 clearly lays down the procedure and the manner in which the application for compassionate appointment are to be considered. As per the O.M. dated 01.06.2015 the applications are required to be considered by the DLC which is headed by the Deputy Commissioner of the concerned District and if recommended, the same needs to be considered by the SLC where the Chief Secretary of the State is the Chairperson. In the said O.M. No.ABP.50/2006/Pt./182 dated 01.06.2015 under Para No.15, it has been clearly provided that if the appointment under the die-in-harness scheme cannot be made because of lack of vacancy in a Department, then the authorities will find out from other department whether the vacancies are available and then passed necessary order. Para-15 of the aforesaid OM reads as follows:

“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 Department/Offices of the Government to provide at an early appointment on compassionate ground to those in the waiting list.”

7. The communication dated 17.11.2021 issued by the Director of Agriculture, BTC whereby it was communicated that the case of the petitioner cannot be considered due to non-availability of vacancy cannot be accepted to be a recommendation of the DLC, although the Director of Agriculture as submitted by the learned Standing Counsel, BTC, is a member of the DLC.

8. In that view of the matter, considering that there is already a direction of this Court rendered in WP(C) No.6592/2002 on 08.10.2002, the respondents are required to comply with this matter in a manner prescribed under the relevant the Rules/notification. Failure to comply with the order of this Court, expose the respondents to contempt of this Court. However, considering the fact that the petitioner has also approached this Court after some amount of delay, this Court does not wish to invoke it's contempt jurisdiction in this matter.

9. Accordingly, this Court is of the view that the interest of justice will be served, if the present petition is closed with a direction to the respondent authorities, more particularly, to the DLC to consider the case of the petitioner in terms of the O.M. No.ABP.50/2006/Pt./182 dated 01.06.2015 and pass appropriate orders thereon. This exercise shall be carried out without fail within a period of 45 (Forty Five days) from the date of receipt of a certified copy of this order and thereafter, the authority will intimate the decision to the

petitioner by issuing a speaking order in this regard.

10. In terms of the above, this writ petition stands closed.

JUDGE

Comparing Assistant