

GAHC010174032023



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

Case No. : WP(C)/4563/2023

FULESA PARBIN
D/O- LATE NUR ZAMAN SK,
VILLAGE- DARUA KAWAHAGI,
P.O- JHOWDANGA, P.S- MANKACHAR,
DIST- SOUTH SALMARA MANKACHAR, ASSAM, PIN-783131

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, IRRIGATION DEPARTMENT, DISPUR,
GUWAHATI-05, ASSAM.

2:THE STATE LEVEL COMMITTEE
REP. BY THE CHIEF SECRETARY
TO THE GOVT . OF ASSAM FOR COMPASSIONATE APPOINTMENT
DISPUR
GUWAHATI- 781006.

3:THE DEPUTY COMMISSIONER
GOALPARA

DISTRICT LEVEL COMMITTEE FOR COMPASSIONATE APPOINTMENT
DIST- GOALPARA
ASSAM.
PIN-783101

4:THE DEPUTY COMMISSIONER
CUM CHAIRMAN

DISTRICT LEVEL COMMITTEE FOR COMPASSIONATE APPOINTMENT
DIST- SOUTH SALMARA MANKACHAR

HATSINGIMARI
ASSAM.
PIN-783135

5:THE EXECUTIVE ENGINEER
MECHANICAL DIVISION
IRRIGATION
GOALPARA
ASSAM
PIN-783101

6:THE ASSISTANT EXECUTIVE ENGINEER
MECHANICAL
IRRIGATION
SUB- DIVISION

DIST- SOUTH SALMARA MANKACHAR
HATSINGIMARI
ASSAM.
PIN-78313

Advocate for the Petitioner : MR. RASHIDUL ISLAM

Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE SOUMITRA SAIKIA
ORDER

11.08.2023

Heard Mr T Sheikh, learned counsel for the petitioners. Also heard Mr C S Hazarika, learned Government Advocate, appearing on behalf of respondent Nos. 2, 3 and 4 and Mr N N Upadhyay, learned Standing Counsel, Irrigation Department, for the respondent Nos. 1, 5 and 6.

2. This writ petition has been filed by the petitioner, who father died in harness on 28.06.2016, while he was working as a Night Chowkidar at village-Darua Kawahagi, under the respondent No. 5, Assistant Executive Engineer (AEE), Hatsingimari, Mechanical Sub-Division (Irrigation), presently in the district of South Salmara,

Mankachar.

3. Learned counsel for the petitioner submits that the petitioner submitted her application for compassionate appointment on 27.02.2017 and also on 07.03.2017 before the respondent No. 5. The DLC, vide their meeting held on 21.08.2017, rejected the case of the petitioner on the ground of lack of vacancy. The proposal of the petitioner was kept pending for the next DLC. Thereafter, on 23.02.2018 also, the case of the petitioner was considered, however, the DLC could not take up the proposal of the petitioner due to non-submission of the vacancy position and the matter was decided to be kept pending for the next DLC for want of clear vacancy. Thereafter, on 04.02.2022, the DLC again considered the case of the petitioner and on 03.06.2022, the case of the petitioner was considered but could not be finalized for want of clear vacancy.

4. Learned counsel for the petitioner submits that he has preferred a representation praying for transfer of the case of the petitioner to be considered by the DLC for the district of South Salmara as South Salmara, subsequently has been carved out as a new district and there is presently a DLC for South Salmara. It is submitted that instead of keeping the applications pending, the same ought to be transferred to DLC, South Salmara, for consideration.

5. Learned counsel for the Department submits that the Office Memorandum dated 01.06.2015 makes no provision for transfer and, therefore, the prayer of the petitioner ought not to be allowed.

6. Having heard the learned counsel for the parties, it is seen that the case of the petitioner has been kept pending by the DLC for want of clear vacancy and/or vacancy position. As per Clause-10 of the Office Memorandum dated 01.06.2015, if any application of eligible candidates is kept pending and cannot be considered for want of vacancies for a period of 2 (two) years, such application(s) will require no further consideration and must be understood to have spent its force. The petitioner's father expired on 28.06.2016. Petitioner submitted her representation on 27.02.2017.

Thereafter, the DLC had considered her application on 21.08.2017, 23.02.2018, 04.02.2022, 03.06.2022. In all these meetings, the case of the petitioner was considered and for want of clear vacancy and/or vacancy position, the case of the petitioner could not be considered and has been kept pending. However, in view of Clause-10 specified under Office Memorandum dated 01.06.2015, once, when the period of 2 (two) years from the date of making such application expires and the applications could not be considered for want of vacancies, no further consideration will be required and these applications be understood to have spent its force. This Office Memorandum is in pursuance of the orders passed in WP(C) No. 3875 of 2005 (*Achyut Ranjan Das –Vs- State of Assam & Ors.*) decided on 03.08.2006, WP(C) No. 2447 of 2008 (*Ajit Pator – Vs- State of Assam*) decided on 02.09.2008 and WP(C) No. 2783 of 2003 (*Faziron Nessa –Vs- State of Assam*) decided on 02.07.2010.

7. In that view of the matter, I find no force in the arguments of the petitioner to transfer the same to different districts, the same being not specified under the Office Memorandum dated 01.06.2015. The writ petition lacks merit and the same accordingly, stands dismissed.

8. There is no order as to cost(s).

JUDGE

Comparing Assistant