

GAHC010177082023



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

Case No. : WA/332/2023

ABDUR RAHIM CHOUDHURY,
S/O- LATE ABDUL SATTAR CHOUDHURY, (BROTHER OF LATE MUZIBUR
RAHMAN CHOUDHURY, DIED IN HARNESS ON 09.11.2015 AS
CONSTABLE AT 6TH A.P. BATTALION, KATHAL, CACHAR), R/O- VILL-
BHAIRABNAGAR, P.O. KRISHNAPUR, P.S. SILCHAR, DIST.- CACHAR,
ASSAM.

VERSUS

1. THE STATE OF ASSAM,
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
HOME AND POLITICAL DEPTT., DISPUR, GUWAHATI- 788006.

2:THE STATE LEVEL COMMITTEE (FOR COMPASSIONATE APPOINTMENT)
TO BE REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR, GUWAHATI- 788006.

3:THE DIRECTOR GENERAL OF POLICE, ASSAM,
ASSAM POLICE HEADQUARTERS, ULUBARI
GUWAHATI- 781007.

4:THE DEPUTY COMMISSIONER CUM CHAIRMAN
OF DISTRICT LEVEL COMMITTEE (DLC), CACHAR
P.O. SILCHAR, DIST.- CACHAR,
ASSAM, PIN- 788001.

5:THE SUPERINTENDENT OF POLICE, CACHAR
P.O. SILCHAR, DIST.- CACHAR,
ASSAM, PIN- 788001.

6:THE COMMANDANT,
6TH A.P. BATTALION, KATHAL,
DIST.- CACHAR, ASSAM
PIN- 788005

For the Appellant : Mr. B. Purkayastha, Advocate.
For the Respondent(s) : Ms. M.D. Borah, Government Advocate, Assam.

- B E F O R E -

HON'BLE THE CHIEF JUSTICE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

11.09.2023

The appellant herein has approached this Court through this intra-Court writ appeal, being aggrieved by the order dated 02.08.2023, passed by the learned Single Bench rejecting the writ petition, being WP(C) No.583/2023, preferred by the writ petitioner (appellant herein).

2. The appellant's brother, Muzibar Rahman was serving as a Constable in the 6th A.P.Bn. He died in harness on 09.11.2015, leaving behind the appellant and his mother as the only legal representatives.

3. The appellant filed an application seeking appointment on a Grade IV post in the 6th A.P.Bn. on compassionate basis in place of his brother. The appellant claims that owing to inadvertence, while filing the application, he submitted his Class VII pass certificate though he was in possession of Class VIII certificate having cleared the said examination long back.

4. The District Level Committee (DLC) forwarded the case of the appellant to the 14th State Level Committee (SLC) which, turned down the application of the appellant vide minutes recorded in the meeting dated 10.02.2022, on the ground that the appellant was under-qualified, not having the minimum educational qualifications required for Grade IV post, i.e. Class VIII pass.

5. Being aggrieved by the rejection of his candidature, the appellant herein preferred the aforesaid writ petition claiming that he could not file the Class VIII pass certificate along with his application because of *bonafide* mistake, claiming to be possessed of the requisite educational qualification, which came to be rejected by the learned Single Judge vide order dated 02.08.2023 observing that grant of relief of rectification in the application would tantamount to creating a judicial precedent and thereby a person who had given wrong information in the application form would be allowed to rectify the incorrect statement, which was not permissible in view of the learned Single Judge.

6. The order dated 02.08.2023 rejecting the writ petition filed by the petitioner in the above terms, is assailed in this intra-Court writ appeal.

7. Having heard and considered the submissions advanced by the learned counsel for the parties and after going through the impugned order and the material placed on record, we are of the view that the writ petition of the petitioner/appellant was rejected purely on a hyper-technical ground. There are numerous examples, wherein the opportunity of rectification of errors in the application forms, be it for admission to educational institutions or for selection to Government jobs, is permitted by providing an opportunity to the applicant/applicants, who have committed the mistake *bonafide*.

8. We are of the view that the mistake committed by the appellant in filing the application form by annexing the Class VII pass certificate, cannot be termed to be an incurable defect or a *malafide* action so as to totally deprive him of the opportunity to seek compassionate appointment. The appellant having lost his brother at a young age, *bonafide* filed his application seeking compassionate appointment and thus, he should not be deprived of the opportunity to be considered for such appointment merely on the ground that

he committed the *bonafide* human error of not filing the Class VIII pass certificate along with the application form.

9. As a consequence, the appellant is given one opportunity to correct the error by submitting the Class VIII pass certificate to supplement his application for compassionate appointment. Upon filing of such certificate, the claim of the appellant for seeking compassionate appointment shall be considered afresh by the SLC.

However, such consideration would be preceded by a thorough verification of the educational certificate of the appellant and furthermore, the consideration shall only be made if there exists vacancy/vacancies in the corresponding year in which, the appellant applied for compassionate appointment.

Upon receiving the rectified application/Class VIII pass certificate of the appellant, the SLC shall, in its next meeting, consider the prayer of the appellant for compassionate appointment objectively and expeditiously.

10. In view of the above discussion, the rejection of the appellant's candidature by the SLC in its 14th meeting, dated 10.02.2022 and also the impugned order dated 02.08.2023 passed by the learned Single Judge, are reversed and set aside.

The writ appeal is allowed in the above terms.

JUDGE

CHIEF JUSTICE

Comparing Assistant