

GAHC010179382020



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

Case No. : WP(C)/5457/2020

AKASH BORDOLOI
S/O LATE PRADIP KR. BORDOLOI, R/O VILL. LACHIT NAGAR (GOTANGA)
UNDER P.O. DEKARGAON, P.S. TEZPUR IN THE DIST. OF SONITPUR,
ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM IN THE PERSONNEL (B) DEPTT., DISPUR, GUWAHATI 781006

2:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
IN THE PUBLIC WORKS (ROADS) DEPTT.
DISPUR
GUWAHATI 781006

3:THE STATE LEVEL COMMITTEE

FOR THE APPOINTMENT ON COMPASSIONATE GROUNDS
C/O THE CHIEF SECY. TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI 781006

4:THE CHIEF ENGINEER
PUBLIC WORKS (ROADS) DEPTT.
CHANDMARI
GUWAHATI 781003
ASSAM.

5:THE DEPUTY COMMISSIONER AND CHAIRMAN
DIST. LEVEL COMMITTEE FOR COMPASSIONATE APPOINTMENT
SONITPUR AT TEZPUR

6:THE EXECUTIVE ENGINEER
PUBLIC WORKS DEPTT.
STATE ROADS DIVISION
TEZPUR IN THE DIST. OF SONITPUR
ASSAM

Advocate for the Petitioner : MR G CHOUDHURY

Advocate for the Respondent : SC, PERSONNEL DEPT.

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 30/08/2023

Heard Mr. G. Choudhury, learned counsel for the petitioner. Also heard Mr. C.K.S. Baruah, learned Government Advocate appears for the respondents.

2. This writ petition is filed by the petitioner who has applied for compassionate appointment before the Office of the Executive Engineer, State Road Division, Tezpur. Petitioner's father was employed as sub Engineer (Grade II) under the Office of Executive Engineer, State Board Division, Tezpur. The late father of the petitioner expired on 06.12.2016 while in service. The petitioner, thereafter, being faced with the hardships pursuant to the demise of his father applied for the appointment under compassionate scheme. The said application was duly forwarded by the competent authorities and then the matter was placed before the DLC. The DLC vide its meeting held on 29.08.2018 recommended the petitioner for appointment in the post of Grade III (Section Assistant) under the Office of the Executive Engineer, PWD Sonitpur State Road Division, Tezpur. The case of the petitioner was considered at serial No. 5 in the said minutes. Pursuant thereto, the matter was placed before the SLC. The SLC

by its meeting held on 23.12.2019, however, rejected the case of the petitioner on the ground that petitioner was not qualified to hold the post of Section Assistant as recommended by the DLC. The SLC considered that the petitioner did not possess the required educational qualification as his qualifications are H.S.S.L.C (Arts). Therefore, his case was rejected. Being aggrieved, this writ petition has been filed.

3. Mr. G. Choudhury, learned counsel for the petitioner submits that the petitioner did not apply for any specific post because of the hard times which he fell on him pursuant to the demise of his father. Petitioner approached the authorities seeking appointment on compassionate ground. It was left to the authorities to consider the petitioner for being appointed and granted employment under compassionate scheme in a post befitting his qualification. The learned counsel to the petitioner submits that the SLC was required to consider the case of the petitioner against other available vacancies, which existed at the relevant point in time instead of rejecting the petitioner only in respect of the vacancy of Section Assistant.

4. Mr. C. K. S. Baruah, learned Government Advocate submits that the petitioner did not possesses qualifications and therefore his case was rejected. He submits that the required qualification for Section Assistant is H.S.S.L.C (Science) which the petitioner did not possess and therefore his case was rightly rejected by the department.

5. Having heard the learned counsels for the parties, this court is of the view that the cases of compassionate appointments are required to be considered by the Department in terms of the Office Memorandum issued by the government from time to time. At the relevant point in time when the case of the petitioner

was considered by the SLC, the relevant Office Memorandum was the Office Memorandum dated 01.06.2015.

6. A perusal of the said Office Memorandum reveals that under clause 15 the said Office Memorandum it is prescribed that in the event of vacancies not being available in the department, the administrative department will ascertain the vacancy position from the other administrative heads and thereupon pass necessary orders in the matter. Considering the claim of the petitioner that there were other vacancies available and the petitioner's case ought to have been considered in respect of other such vacancies available commensurating his qualifications, this court finds that no such finding is reflected in the minutes dated 23.12.2019 passed by the SLC.

7. In that view of the matter, the court is of the considered opinion that the writ petition can be closed with a direction to the respondents to re-consider the case of the petitioner in terms of the Office Memorandum dated 01.06.2015. The case of the petitioner will be considered in respect of other such vacancies as may have been available at the time when the matter was earlier considered by the SLC vide its meeting held on 23.12.2019 and if any such vacancies are found to be available which can be suitably considered to accommodate the petitioner, the SLC will pass necessary orders thereto. In that view of the matter, the matter is remanded back to the SLC to re-consider the case of the petitioner in terms of the directions above in the next meeting of the SLC scheduled to be held. The minutes of the meeting dated 23.12.2019 held by the SLC earlier in so far as the petitioner is concerned and where his name appears at serial number 58 and the findings thereto will not act as a bar for reconsideration of the case of the petitioner by the SLC.

8. The writ petition is accordingly closed. A certified copy of this Order will be placed before the Commissioner and Secretary, Department of Public Works, respondent No.2 and the same shall be forwarded to the SLC within a period of 30 (thirty) days from the date of receipt of certified copy of the Order and the SLC thereafter will pass necessary orders as directed above.
9. Petitioner is also given a liberty to furnish certified copy of the Order before the SLC.
10. Writ petition is accordingly disposed of in terms of the above.

JUDGE

Comparing Assistant