

GAHC010187092021



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

Case No. : WP(C)/6428/2021

SUKHADEEP RAY
S/O SRI RAMESWAR RAY.
VILLAGE PURANI BONGAIGAON (JOGIPARA) PO , PS AND DIST
BONGAIGAON, ASSAM, 783380

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
PERSONNEL B) DEPARTMENT, ASSAM SECRETARIATE, DISPUR
GUWAHATI 781006

2:THE STATE OF ASSAM

REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM
IRRIGATION DEPARTMENT
ESTABLISHMENT BRANCH
ASSAM
SECRETARIAT
DISPUR GUWAHATI 06

3:THE CHIEF ENGINEER.
IRRIGATION ASSAM
CHANDMARI
GUWAHATI 781003

4:EXECUTIVE ENGINEER

BONGAIGAON DIVISION (IRRIGATION) BONGAIGAON
ASSAM 783380

5:THE DEPUTY COMMISSIONER

BONGAIGAON

PO AND DIST BONGAIGAON
ASSAM 783380

6:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
DEPARTMENT OF FINANCE
DISPUR
GUWAHATI
ASSAM 78100

Advocate for the Petitioner :

Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. S. Sutradhar. Advocate.

For the Respondents : Mr. T. C. Chutia, Addl.Sr.G.A.

Date of Hearing : 07.12.2023

Date of Judgement : 07.12.2023

JUDGMENT & ORDER (ORAL)

1. Heard Mr. S. Sutradhar, learned counsel for the petitioner. Also heard Mr. T. C. Chutia, learned Additional Senior Government Advocate for the State of Assam.
2. The present writ petition is filed claiming the benefit under Assam Public Services (Appointment of family members of persons killed by extremist/terrorist) Rule, 1992 (for short Rule, 1992). It is the case of the petitioner that on 25.06.2002 at about 06:45 P.M., a grenade was exploded at Mayapuri Tini Ali, Bongaigaon Town by extremists and in the said blast

petitioner's elder brother namely Digamber Ray was gravely injured and subsequently, he succumbed to such injuries and died on 26.06.2002 at Gauhati Medical College Hospital, Guwahati. Accordingly, the petitioner is entitled for benefit under Rules, 1992.

3. Rule 1992, is made applicable in recruitment to all services and posts under the Government of Assam. Subject to the provision of the Rule, whenever any recruitment to service or post is made, one affected candidate from one family, who applies and is eligible under the normal recruitment rules, shall be given appointment to a Government job, or job under State Government Undertakings/Boards. The aforesaid Rule was subsequently repealed by Notification dated 22nd June, 2004.

4. Subsequently, another notification was issued by the Government of Assam in Personnel (B) Department wherein certain principles similar to the Rules, 1992 were laid down in the notification dated 22.07.2004, which are quoted herein below:-

“1. Preference to Member of the affected families certified as such by competent district authority in recruitments to Govt. and Semi Govt. jobs.

2. Preference to such certified persons in selection of beneficiaries under self-employment generation schemes of different departments and related schemes of social welfare etc. Departments.

3. Enhancement of the ex-gratia amount paid to the next of kin of a person killed in extremist violence to Rs. 3,00,000/- (Three lakhs).

4. Alternative means of livelihood to families of earning victims of extremist violence to be determined the economic conditions of each family separately.

5. Free Education to Children of the poor affected families till they become eligible to earn”.

5. Thereafter, yet another Memorandum in this regard was issued on 29th July, 2013. In terms of Clause 5 of said Memorandum, if any person was killed in extremist violence prior to 2004, but whose relatives did not apply for any appointment prior to 22nd June 2004 but had applied after 22nd June, 2004 and may or may not have received ex gratia grant under 2004 notification i.e. Rs. 3.00 lakhs, they shall be given appropriate ex gratia payment as per circular dated 22.06.2004, adjusting the amount already received if any. They shall be further entitled for consideration under the scheme envisaged in the Government Circular dated 22.06.2004.
6. In terms of the Circular dated 22.06.2004, which are quoted hereinabove read with office memorandum dated 29.06.2013, the petitioner, in the considered opinion of this Court shall be entitled for Rs. 3.00 lakh of ex-gratia payment subject to adjustment of any payment made earlier inasmuch as application was made by the petitioner subsequent to 22.06.2004.
7. So far coming to the preference to member of affected families certified by the competent district authority in recruitment in Government/Semi Government jobs, in the considered opinion of this Court, same shall be required to be given only when a due selection process is initiated and the affected person participates in such selection and is having required qualification. Therefore, only on apprehension that his case may not be considered or require to be considered, this Court is not inclined to issue a writ of mandamus inasmuch as no right of the petitioner has been violated

till date. A writ of mandamus cannot be issued on apprehended or anticipated action of the State instrumentalities that it will not adhere to their own policy decision in terms of Clause-I of the Notification dated 22.06.2004 as quoted hereinabove.

8. The petitioner may submit the certified copy of this order before the competent authority i.e. Deputy Commissioner, Bongaigaon for release of ex-gratia payment in terms of the office Memorandum dated 29.07.2013 and in terms of the present order as well as the Notification dated 22.06.2004, if the same is not already granted to the petitioner.
9. Such exercise shall be carried out within a period of 6 months from the date of receipt of the certified copy of this order and after proper verification that the petitioner is entitled for the benefit under the aforesaid policy decision.
10. In view of the aforesaid terms, the present writ petition stands disposed of. Parties to bear their own cost.

JUDGE

Comparing Assistant