

GAHC010197462023



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

Case No. : WP(C)/5682/2023

JAYANTA DAS
SON OF LATE UPEN CHANDRA DAS,
RESIDENT OF VILLAGE DHAMDHAMA,
P.O.- NIZ DHAMDHAMA, DISTRICT- NALBARI,
ASSAM, PIN- 781304.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
IRRIGATION DEPARTMENT, DISPUR,
GUWAHATI-6.

2:THE CHIEF ENGINEER (IRRIGATION)
ASSAM
CHANDMARI
GUWAHATI- 781003.

3:THE SUPERINTENDING ENGINEER (IRRIGATION)
NORTH KAMRUP CIRCLE
NALBARI.

4:THE EXECUTIVE ENGINEER (IRRIGATION)
NALBARI DIVISION
NALBARI.

5:THE DEPUTY COMMISSIONER-CUM-CHAIRMAN
DISTRICT LEVEL COMMITTEE
NALBARI
ASSAM.

6:THE STATE LEVEL COMMITTEE

REPRESENTED BY THE CHIEF SECRETARY

GOVERNMENT OF ASSAM

GUWAHATI-6

Advocate for the Petitioner : MRS. K DEVI

Advocate for the Respondent : SC, IRRIGATION

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

27-08-2023

Heard Ms. K. Devi, learned counsel for the petitioner. Also heard Mr. C.K.S. Baruah, learned Government Advocate, Assam and Mr. N. Upadhyay, learned Standing Counsel, Irrigation Department.

2. The matter pertains to appointment of the petitioner under the die-in-harness scheme. The petitioner's father was working as a Grade-IV staff under the Office of the Executive Engineer (Irrigation), Nalbari Division and he died-in-harness on 07.12.2003 leaving behind the petitioner and other dependents. Thereafter, the petitioner submitted his application on 19.01.2004 for his appointed to the Grade-IV post on compassionate ground. However, after rejecting the case of the petitioner on several times, the District level Committee (DLC) by its meeting held on 20.01.2022 recommended the case of the

petitioner for appointment in Grade-IV vacancy and referred the matter before the State level Committee (SLC). However, the SLC in its meeting held on 22.01.2022 rejected the case of the petitioner by making an observation that *"His educational qualification is IX passed and at the time of application he was 34 years 7 months and now his age as on 01.01.2022 is 42 years 6 months. He applied for the purpose since 2004. Also found that vacant post in Grade-IV under reserved 5% quota for compassionate appointment in the office of DRCS Nalbari is available. But it is seen that for making application for compassionate appointment provided in each case the Government servant has balance of minimum 3 years of service."*

3. The learned counsel for the petitioner submits that the rejection of the petitioner's case for compassionate appointment by the SLC was done without taking note of the provisions of Clause 15 of the OM dated 01.06.2015. As per the said provisions, the concerned authorities are required to enquire about the availability of vacancies in other departments/all departments and thereafter proceed to pass necessary orders

4. On the other hand Mr. N.N. Upadhyay, learned Standing Counsel, Irrigation Department submits that the petitioner's case came for consideration before the SLC in its meeting held on 22.01.2022 and as such, his case was rightly

considered on the basis of the OM which came into existence on 01.06.2015.

5. The learned counsels for the parties have been heard. Pleadings have been carefully perused and also the OM dated 01.06.2015.

6. Paragraph 15 of the OM dated 01.06.2015 reads as under:

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

7. Upon due perusal of the OM as well as the order passed by the DLC & SLC, it is seen that the SLC by its meeting held on 22.01.2022 rejected the case of the petitioner on the ground of non-availability vacancies position under the prescribed percentage of 5% as prescribed under OM No. ABP 50/2006//Pt/182 dated 01.06.2015. While doing so, however no reference is found recorded in the said Minutes of the meeting that the case of the petitioner was considered in respect of all available vacancies in the post of Grade-IV under the 5% quota, as is required under Clause 15 of the OM dated 01.06.2015. No such finding is reflected in the minutes of the meeting. That apart the clause requiring a minimum of three (3) years residual service period remaining of the deceased employee, for consideration of the cases of compassionate appointment, has been set aside by the order dated 30.01.2023 passed in W.P.(C) No. 1646/2021

(Bhaskar Konwar Vs The State of Assam & Ors) by a Co-ordinate Bench of this court. Although it is submitted that an appeal has been preferred by the State against the said judgment and order dated 30.01.2023 but it is submitted that as on date the Appellate Court has not suspended the order dated 30.01.2023 passed by the Coordinate Bench.

8. Further it appears that the prescription of clause-15 of OM dated 01.06.2015 has not been adhered to by the SLC while considering the case of the petitioner in its meeting held on 22.01.2022. Accordingly, this Court is of the view that the writ petition can be closed with a direction to the SLC to reconsider the case of the petitioner in respect of any other available vacancy under the prescribed percentage of 5% quota as per the provisions of clause-15 of the OM dated 01.06.2015, since the clause requiring a minimum of 3 (three) years of service of the employee, who died-in-harness, has been set aside by this Court.

9. To the extent it relates to the petitioner, the minutes of the meeting held on 22.01.2022 stands interfered with and set aside. The matter is remanded back to the SLC for a fresh consideration in terms of the provisions of Clause 15 of the OM dated 01.06.2015. The SLC will re-consider within 90 days upon receipt of the certified copy of this order.

10. The writ petition stands disposed of. No order as to cost.

JUDGE

Comparing Assistant