

GAHC010207432023



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

**Case No. : WP(C)/5408/2023**

BIPUL DUTTA  
SON OF- LATE THANESWAR DUTTA, RESIDENT OF- GOBINDAPUR, P.O.  
GOBINDAPUR, DISTRICT- LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.  
OF ASSAM, IRRIGATION DEPARTMENT, DISPUR, GUWAHATI-06

2:THE DEPUTY COMMISSIONER-CUM-CHAIRMAN  
OF DISTRICT LEVEL COMMITTEE FOR COMPASSIONATE APPOINTMENT  
DHEMAI  
DISTRICT- DHEMAJI  
ASSAM

3:THE ADDITIONAL DEPUTY COMMISSIONER  
DHEMAJI  
DISTRICT- DHEMAJI  
ASSAM

4:THE EXECUTIVE ENGINEER  
DHEMAJI DIVISION  
IRRIGATION  
DISTRICT- DHEMAJI  
ASSA

**Advocate for the Petitioner : MR. B K GOGOI**

**Advocate for the Respondent : GA, ASSAM**

**BEFORE  
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

**ORDER**

**18/11/2023**

- Heard Mr. B. K. Gogoi, learned counsel for the petitioner. Also heard Ms. M. Bhattacharjee, Additional Senior Government Advocate and Mr. N. Upadhyay, learned standing counsel, Irrigation Department.

2. This writ petition is filed by the petitioner aggrieved by his non consideration for his compassionate appointment by the competent authorities. The petitioner's father, namely, late Thaneswar Dutta was working as a Pressure Pump Operator under Irrigation Department, Dhemaji Division. He died on 28.06.2013 while he was in service. Pursuant thereto the petitioner had applied for compassionate appointment by his application dated 26.08.2013. The matter was first considered by the District Level Committee (DLC) vide its meeting held on 18.09.2014 under the Office of the Executive Engineer, Irrigation, Dhemaji Division, the name of the petitioner appeared at serial No.6 was considered along with all other similarity situated candidates. In respect of these vacancies, the District Level Committee (DLC) concluded that after examination of all the applications, the DLC recommended the name of one Sri Arup Gohain against the vacant post of Grade-III considering economic conditions. The name of the person recommended appears at serial number 3 above the petitioner. It is to be noted that in the District Level Committee (DLC) minutes the vacancy position for the year 2013 was shown to be 16 numbers in Grade-III and Nil vacancies in Grade-IV.

3. Under such circumstances, 5% being the percentage earmarked for filling up vacancies to compassionate appointment only one name was recommended.

4. The learned counsel for the petitioner submits that subsequently there was

another District Level Committee (DLC) meeting held on 04.06.2015, in which names of two other persons were recommended for Grade-III and Grade-IV post respectively. It is the submission of the learned counsel for the petitioner that the names of these two persons were also considered along with the petitioner by the earlier District Level Committee (DLC) held on 18.09.2014. The names of these persons are Sri Ranjit Baruah and Sri Nitu Borgohain. The names of Sri Ranjit Baruah and Sri Nitu Borgohain were appeared at serial number 5 and 7 respectively in the list of names considered by the earlier District Level Committee (DLC) on 18.09.2014.

5. The learned counsel for the petitioner submits that there is no intimation given to the petitioner as to why his name was not considered along with the other two persons when the vacancies were available.

6. That apart in a special District Level Committee (DLC) meeting held 11.02.2022, the name of the petitioner was again considered. However, for want of vacancies his name could not be recommended. It is the grievance of the petitioner that in terms of the Office Memorandum dated 01.06.2015 the case of the petitioner ought to have been considered against the vacancies available under other Administrative Department as per Clause 15 of the Office Memorandum.

7. Ms. M. Bhattacharjee, learned additional senior Government Advocate and Mr. N. Upadhyay, learned standing counsel, Irrigation Department strongly opposes the prayers made in the writ petition. It is submitted by the learned Government Advocate that the case of the petitioner was duly considered by the District Level Committee (DLC) on 18.09.2014 and the same could not be recommended because of the lack of vacancies. Thereafter it was again placed before the District Level Committee (DLC) on 20.11.2022 on which date also no recommendation could be made because the case of the petitioner was found to be considered by

the earlier DLC dated 18.09.2014.

8. Ms. M. Bhattacharjee, learned additional senior Government Advocate submits that there is no requirement for repeated consideration of the names once it is considered and not recommended by the DLC. That apart why the name was not placed before the subsequent DLC which was held on 04.06.2015 would be known to the departmental authorities and who are represented by Mr. N. Upadhyay, learned standing counsel, Irrigation Department.

9. Ms. M. Bhattacharjee, learned additional senior Government Advocate submits that the case of the petitioner does not merit consideration by this court in view of judgment of the division bench of this court rendered in *Bahar Uddin Laskar Vs State of Assam and Ors* reported in 2022 (4) GLT 349.

10. Ms. M. Bhattacharjee, learned additional senior Government Advocate submits that by this judgment this Court considered a similar case and rejected the appeal preferred on the ground that consideration of compassionate appointment is not a matter of right and there are other consideration, including financial standing which are required to be taken into consideration and it is only upon such materials being available or placed before the Court to its satisfaction that such claims for due consideration under the Office Memorandum dated 01.06.2015 ought to be ordered.

11. Mr. N. Upadhyay, learned standing counsel, Irrigation Department submits that he has no instructions as to why the name of the petitioner was not placed before the subsequent DLC in its meeting held on 04.06.2015. He reiterates the submissions made by the learned Government Advocate and submits that once the name has been not recommended, there is no question of repeated consideration. He submits that there is no infirmity in the decision of the DLC held on 11.02.2022, wherein it is reflected that the name of the petitioner was earlier considered by the

DLC on 18.09.2014 and could not be recommended because of lack of vacancies.

12. The learned counsels for the parties have been heard. The minutes of the DLCs available and the pleadings have been carefully perused. The judgment of this court rendered in *Bahar Uddin Laskar Vs State of Assam and Ors* reported in 2022 (4) GLT 349 has also been carefully perused. In *Bahar Uddin Laskar (Supra)* the question before the Division Bench of this Court was whether, in terms of the judgment of the *N. C. Santhosh Vs State of Karnataka and Ors* reported in (2020) 7 SCC 617 rendered by the Apex court, an application seeking compassionate appointment which was filed prior to the issuance of the Office Memorandum dated 01.06.2015 ought to be considered in terms of the subsequent office memorandum or in terms of the earlier office memorandum which was in force when the application seeking compassionate appointment was filed by the petitioner. The appellant urged that in terms of the Judgment of Apex Court in *N.C. Santosh (Supra)* it is the Rules prevailing on the date when the application is considered that will govern the claims raised by the claimant. The appellant before the Division Bench urged that notwithstanding his application for compassionate appointment, filed prior to 01.06.2015, by the time the claims were decided the OM dated 01.06.2015 came to be issued by the Government. As such, it is in terms of that OM that his claims will have to be adjudicated. The Division Bench while accepting the law laid down by the Apex Court, however, declined to accept the claims of the petitioner as no material was placed to the satisfaction of the Division Bench as regards the financial status of the appellant in the interregnum as several years had elapsed between the death of the parent of the appellant and the date of rejection of the claims of the appellant by the respondent department.

13. The Division Bench of this Court rejected the claims of the appellant therein and held that the consistent view of the Apex court in several judgments rendered and the law enunciated by the Apex Court in *Umesh Kumar Nagpal Vs State of*

*Haryana* reported in (1994) 4 SCC 138 and the subsequent judgments thereafter that financial standing is one of the criteria to be examined while considering cases of the claim of compassionate appointment of a petitioner has to be considered.

While there is no quarrel with the law laid down by the Apex Court as well in the ratio laid down in the Division Bench Judgment in W.A. No. 92/2022, reported in 2022 (4) GLT 349, the question before this Court is whether the claim of the petitioner was considered fairly along with other similarly situated persons by the respondent authorities.

14. It is seen from the minutes dated 18.09.2014 that as many as 10 (ten) candidates were considered for given the benefit of compassionate appointment in cases of any vacancies. The vacancy position for Grade-III was 1, whereas for Grade-IV there was Nil vacancies. Under such circumstances, the person at serial number 3 of that list, namely, Sri Arup Gohain, was recommended for appointment. Subsequently, there was another DLC meeting held on 04.06.2015. In the said meeting, names of 2 (two) persons were recommended for the vacancies which arose. The names of these persons are Sri Ranjit Baruah and Sri Nitu Borgohain respectively, and their names also appeared at serial numbers 5 and 7 respectively, alongwith the name of the petitioner at serial No. 6 in the list of candidates considered by the DLC in its earlier meeting held on 18.09.2014. The subsequent minutes of the DLC meeting held on 04.06.2015 are silent as to the names of other candidates, including that of the writ petitioner, as to why their names were not recommended. The Executive Engineer, Irrigation, Dhemaji Division may have the specific reasons available in the records as to why the name of the petitioner were not considered. Although in the Special DLC meeting held on 11.02.2022, name of the petitioner was shown to have been considered earlier on 18.09.2014, even in this minutes, there is no also reference to the subsequent meeting held on 04.06.2015 pursuant to 18.09.2014 for consideration of the candidates as per the

list shown and which inter alia also included the name of the petitioner.

16. Under such circumstances, this Court is of the view that the Department is required to give reasons as to why the name of the petitioner was not put up for consideration before the DLC in its meeting held on 04.06.2015, when two other similarly situated persons were considered and were given appointment on a compassionate ground. These reasons not being available before the Court in spite of opportunities being granted earlier, this Court is of the view that the matter would require consideration at the hands of the DLC and examine the reasons as to why the name of the petitioner was not forwarded and/or not considered by the DLC in its meeting held on 04.06.2015, at a time when cases of 2 (two) other similarly situated persons were considered. The respondents, more particularly, the Executive Engineer, Irrigation Dhemaji Division, is duty bound to furnish the reasons for not forwarding or non consideration of the case of the petitioner by the DLC. If such reasons were placed before the DLC, then the DLC would be required to examine those reasons and pass a reasoned order in respect of the case of the petitioner.

18. In terms of the above direction, the writ petition stands disposed of. The directions contained shall be carried out within a period of 60 (sixty) days from the date of receipt of a certified copy of this order. Writ petition is disposed of accordingly.

19. The petitioner will furnish a certified copy of this order to the Executive Engineer, Irrigation, Dhemaji Division.

**JUDGE**

**Comparing Assistant**