

GAHC010219202022



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

Case No. : WP(C)/6922/2022

AFSAR HUSSAIN LASKAR
S/O. LT. ABDUL HAQUE LASKAR, VILL. BANSKANDI PART-II, P.O.
BANSKANDI, P.S. LAKHIPUR, DIST. CACHAR, ASSAM.

VERSUS

THE STATE LEVEL COMMITTEE (SLC) FOR COMPASSIONATE
APPOINTMENT AND 3 ORS.
ASSAM (TO BE REP. BY ITS CHAIRMAN CUM THE CHIEF SECRETARY TO
THE GOVT. OF ASSAM, DISPUR, GUWAHATI-06.)

2:THE COMMISSIONER

PANCHAYAT AND RURAL DEVELOPMENT DEPTT.
PANJABARI
JURIPAR
GUWAHATI-37.

3:THE DEPUTY COMMISSIONER CUM CHAIRMAN OF THE DISTRICT
LEVEL COMMITTEE (DLC)

CACHAR
ASSAM.

4:THE CHIEF EXECUTIVE OFFICER (CEO)

CACHAR ZILLA PARISHAD
DIST. CACHAR
SILCHAR
ASSAM

Advocate for the Petitioner : MR. M H LASKAR

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

O R D E R

09.01.2023

Heard Mr. MH Laskar, learned counsel for the petitioner, Mr. R Dhar, learned counsel for the respondents No. 1 and 3 respectively being the Chief Secretary to the Government of Assam and the Deputy Commissioner, Cachar and Mr. S Dutta, learned counsel for the respondents No. 2 and 4 being the authorities in the P&RD.

2. The father of the petitioner Abdul Haque Laskar, who was a LDA in the Lakhipur Anchalik Panchayat, died in harness on 10.01.2010 and on his death, the petitioner submitted an application for compassionate appointment on 27.02.2010. The said application was considered by the DLC of Cachar district in its meeting of 21.12.2011, but it was rejected on the ground that it was submitted beyond the permissible time limit. Upon representation being submitted by the petitioner, the application was again placed before the DLC in its meeting of 27.10.2017, but it was rejected on the ground that it had spent its force.

3. Being aggrieved, the petitioner instituted WP(C) No. 594/2018 and by the order dated 07.02.2018, the DLC was directed to reconsider the case of the petitioner. The DLC upon reconsidering in its meeting of 14.10.2018 had recommended the petitioner, but this time the SLC in its meeting of 15.02.2019 rejected the claim of the petitioner on the ground that there was no vacancy.

4. When the petitioner again approached the Court by way of WP(C) No. 1915/2020, by the order dated 16.12.2021, the SLC was directed to reconsider the case of the petitioner. Upon reconsideration, the SLC in its meeting of 02.08.2022 had found a new ground that the applicant was 17 years of age on the date of application and therefore, it stood rejected.

5. The entire approach of the DLC and the SLC appears to be a misdirected approach without undertaking the fundamental requirements as to how to consider an application for compassionate appointment. Firstly, if an application was made within 17 days of the date of the death of the employee, it could not have been an application submitted beyond the permissible time limit. When it was reconsidered on 27.10.2017, it could not have been a situation where the application had spent its force as there is nothing under the law of compassionate appointment of an application having spent its force. All that the law provide is that if an application was rejected for there being no vacancy and remained pending as such for more than two years, it does not require any further consideration.

6. The same principle cannot be applied in a situation where the application was never considered on its own merit without examining the existence of vacancies, but because of the fault of the respondents it remained pending for seven years. The DLC when it had evaluated that six vacancies are available for compassionate appointment and accordingly by its resolution of 04.10.2018 recommended the petitioner, it is again not understood how the SLC in its meeting of 15.02.2019 can reject the same on the ground of being no vacancy unless with a reasoned order arrived at its conclusion that the DLC had incorrectly evaluated the existence of six vacancies for compassionate appointment. When the matter was sent back to the SLC by the order of the

Court, now the SLC find out a new ground that the applicant was 17 years of age on the date of application.

7. Even the said reason by the SLC is unacceptable in law inasmuch as, the Hon'ble Supreme Court in ***N.C Santosh –vs- State of Karnataka and others***, reported in ***(2020) 7 SCC 617*** in **paragraph 19** had been held that the norms prevailing on the date of consideration would be relevant meaning thereby that the age of the applicant when his application was considered would be the relevant factor rather than his age when the application was made.

8 In view of all such misdirection, the matter is remanded back to the SLC for taking a fresh consideration of the recommendation of the DLC of Cachar district in its meeting of 04.10.2018 in respect of the petitioner as per law.

The writ petition is disposed of as indicated above.

JUDGE

Comparing Assistant