

GAHC010254222022



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

Case No. : WP(C)/8092/2022

KAMAL SAIKIA
S/O- LATE NIRMAL SAIKIA,
VILLAGE- SOLMARI, P.O.- DOOLAHAT,
P.S.- LALUK, DISTRICT- NORTH LAKHIMPUR, 787031, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM,
DISPUR, GUWAHATI- 781006, ASSAM.

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
IRRIGATION DEPARTMENT
DISPUR
GUWAHATI- 781006
ASSAM.

3:THE CHAIRMAN
STATE LEVEL COMMITTEE
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM

DISPUR
GUWAHATI- 781006
ASSAM.

4:THE CHIEF ENGINEER
IRRIGATION DEPARTMENT
CHANDMARI
GUWAHATI- 781003
ASSAM.

5:THE EXECUTIVE ENGINEER
IRRIGATION DEPARTMENT
NORTH LAKHIMPUR

DISTRICT- LAKHIMPUR
ASSAM.

6:THE DISTRICT LEVEL COMMITTEE
REPRESENTED BY THE DEPUTY COMMISSIONER

NORTH LAKHIMPUR
LAKHIMPUR

P.O.- NORTH LAKHIMPUR

DISTRICT- LAKHIMPUR
ASSA

Advocate for the Petitioner : MR P R SARMA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

Date : 06-01-2023

Heard Mr. P.R. Sarma, learned counsel for the petitioner and Mr. H. Sarma, learned Addl. Senior Government Advocate for the respondents No. 1, 3 and 6, respectively being the Chief Secretary to the Government of Assam and the Deputy Commissioner, Lahimpur. Also heard Ms. D.S. Neog, learned counsel for the respondents No. 4 and 5, being the authorities under the Irrigation Department of the Government of Assam.

2. The father of the petitioner Nirmal Saikia who was an employee in the Irrigation Department at Nowbachia, Lakhimpur and was engaged as a Tractor Driver in the department died in harness on 21.03.2006 and on his death, the

petitioner submitted an application for compassionate appointment on 05.06.2021. Being aggrieved to the extent that the application was not placed before the DLC, the petitioner has approached this Court.

3. The respondents have taken a stand that earlier the elder brother of the petitioner Nitul Saikia had also made an application for compassionate appointment but was rejected and therefore a subsequent application by the petitioner being the younger brother would not be maintainable. A consideration arose on the aforesaid submission as to in what manner the application of the elder brother of the petitioner Nitul Saikia was rejected i.e. whether it was rejected on an inter-se financial comparison or it was rejected because of any other ineligibility.

4. It is stated by the respondents upon obtaining the information that the application of the elder brother of the petitioner was rejected because it exceeded the 5% vacancy for compassionate appointment in the Irrigation Department. Consequently, under Clause 15 of the O.M. dated 01.06.2015, there appears a legal right of the elder of the petitioner to have his application also considered against vacancies in any other department. As the stand is that the application of the petitioner cannot be given consideration as because there was an earlier application by the elder brother of the petitioner and having arrived at a conclusion that the elder brother of the petitioner has a legal right to also be considered against vacancies in any other department, we direct the application of the petitioner being the younger brother be placed before the next available DLC of Lakhimpur district for consideration against any other vacancies in any other department that is in continuance of the legal right of the elder brother. It is stated that in the mean time, the elder brother of the petitioner may have been appointed in a Government service. If it is so, the DLC

to examine the same and if yes, appropriate order in respect of the application of the petitioner may be passed.

Writ petition stands disposed of as indicated above.

JUDGE

Comparing Assistant