

GAHC010269962022



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

Case No. : WA/14/2023

AZAD HUSSAIN LASKAR
S/O- LATE AFZAL HUSSAIN LASKAR, R/O- VILL. DHONIPUR, P.O.- SONAI,
P.S.- SONAI, DIST.- CACHAR, ASSAM.

VERSUS

THE STATE LEVEL COMMITTEE FOR COMPASSIONATE APPOINTMENT
(SLC) AND 4ORS.
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM, DISPUR, GUWAHATI-06.

2:THE STATE OF ASSAM
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM

HOME DEPARTMENT
DISPUR
GUWAHATI-06.

3:THE DISTRICT LEVEL COMMITTEE FOR COMPASSIONATE
APPOINTMENT (DLC)
CACHAR
TO BE REPRESENTED BY ITS CHAIRMAN CUM THE DEPUTY
COMMISSIONER
CACHAR
SILCHAR
ASSAM.

4:THE SUPERINTENDENT OF POLICE
CACHAR
SILCHAR
ASSAM.

5:THE COMMANDANT
6TH AP BATALION

KATHAL
SILCHAR
CACHAR
ASSAM

Advocate for the Petitioner : MR. M H LASKAR

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE THE CHIEF JUSTICE (ACTING)
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

24.01.2023

[Soumitra Saikia, J]

Heard Mr. M.H. Laskar, learned counsel for the appellant and Ms. R.B. Bora, learned Government Advocate, Assam for the State.

2. The father of the appellant Late Afzal Hussain Laskar was an Assam Police (AP) Constable under the 6th A.P. Battalion, Silchar who died in harness on 27.05.2005. Pursuant thereto, the mother of the appellant filed an application seeking compassionate appointment. However, the same remained pending without being considered. Subsequently, when the appellant attained the age of majority in the year 2009, his mother again submitted an application on 06.11.2009 to the Commandant, 6th AP Battalion, Kathal, Silchar, Cachar with a

prayer for appointment of her son, namely, the appellant herein, on compassionate appointment. However, as the said application had not been considered by the District Level Committee (hereinafter referred to as "DLC"), the appellant approached this Court by filing W.P(C) No. 6368/2017. The learned Single Judge vide order dated 27.02.2018 rejected the prayer seeking direction for compassionate appointment and dismissed the writ petition as being devoid of merit.

3. Being aggrieved, the appellant preferred an intra-Court appeal before this Court being W.A. No. 117/2018. This Court vide order dated 07.05.2018 allowed the appeal in part by directing the authorities to place the application furnished by the appellant's mother seeking compassionate appointment, to be placed before the District Level Committee (DLC). The order passed by the learned Single Judge was interfered with and the writ appeal was allowed to that extent and the respondents were directed to place the application before the DLC.

4. Pursuant to the order passed by this Court, the DLC by its meeting held on 04.10.2018 at 4 PM and upon due consideration of the case of the appellant, rejected the application made by the appellant and held that the application could not be considered as per Principle 16 of the Govt. OM No. ABP.50/2006/Pt./182 dated 1st, June 2015.

5. Being aggrieved, the appellant/petitioner challenged the DLC Minutes of the meeting held on 04.10.2018 by filing writ petition being W.P(C) No. 409/2019. The learned Single Judge disposed of the writ petition with a direction to the authorities to place the application of the appellant/petitioner for re-consideration by treating his age on the date of consideration of the District Level Committee (DLC) and not to reject the same on the ground that the applicant was a minor at the time of submitting the application for appointment under the die in harness scheme.

6. In pursuance to the order dated 10.04.2019 passed by this Court in W.P. (C) No. 409/2019, the DLC decided to forward the application of the appellant to the State Level Committee (hereinafter referred to as "SLC") for consideration. By communication dated 04.10.2019, the recommendation of the DLC recommending the appellant, inter alia, for appointment on compassionate ground was forwarded to the Office of the Commandant, 6th AP Battalion, Kathal, Cachar, Silchar. Pursuant thereto, the SLC in its meeting held on 10.02.2022 at 10.30 AM rejected the application of the appellant on the ground of late submission.

7. Being aggrieved, the appellant as a writ petitioner had approached this Court again by filing writ petition being W.P.(C) No. 6861/2022. The learned

Single Judge vide order dated 21.11.2022 dismissed the writ petition as being devoid of merit.

8. The leaned counsels for the parties have been heard. Pleadings on record have been carefully perused.

9. It is seen that vide order dated 10.04.2019 passed in W.P(C) No. 409/2019, a Single Bench of this Court had disposed of the writ petition with a direction to the respondents to place the application of the petitioner/appellant for consideration by treating the age on the date of consideration of the DLC and not to reject the same on the ground that the applicant was a minor at the time of submitting the application for appointment under the die in harness scheme. The relevant paragraph is extracted below:

“6. Accordingly, present petition is disposed of with the direction to the respondent authorities to place the application of the petitioner for reconsideration by treating his age on the date of consideration of the District Level Committee (DLC) and not to reject the same on the ground that the applicant was a minor at the time of submitting the application for appointment under the die in harness scheme.”

10. Pursuant thereto, the DLC vide Minute of meeting held on 09.07.2019 forwarded the application of the appellant to the SLC for consideration. It is not disputed that no appeal or review has been preferred by the respondent authorities against the order dated 10.04.2019 passed in W.P(C) No. 409/2019. The said order not only attained finality but the same was complied with by the

DLC by forwarding the application to the authorities concerned.

11. The appellant relied upon ***Syed Khadim Hussain Vs. State of Bihar and Ors.*** reported in ***(2006) 9 SCC 195*** and which has not been held to be not applicable by the learned Single Judge. We have carefully perused the said Judgment of the Apex Court which has also been relied upon. In ***Syed Khadim Hussain (Supra)***, the Apex Court was considering the claim of compassionate appointment under similar circumstances. Before the Apex Court, the appellant's mother had filed an application for being appointed on compassionate ground upon the expiry of her late husband in the year 1991. The appellant's mother applied for compassionate appointment in the year 1993 which was rejected merely on the ground that it was not in the prescribed format. The appellant, thereafter, applied in the year 1995 but his application for compassionate appointment was rejected in the year 2001 on the ground that at the time of filing the application he was aged around 13 years. The Apex Court upon due consideration of the matter in its entirety held that the rejection of the appellant's application was not justified as at the time of rejection of the application he had attained the age of 18 years and the authorities were directed to consider his application and give appropriate appointment within three months. We find that the Apex Court under similar circumstances had granted relief to the applicant therein.

12. In the present case, this Court on an earlier occasion vide order dated 10.04.2019 passed in W.P(C) No. 409/2019 directed the authorities to place the application of the appellant for reconsideration by treating his age on the date of consideration of the District Level Committee (DLC) and not to reject the same on the ground that the applicant was a minor at the time of submitting the application for appointment under the die in harness scheme. That being, the direction of this Court, it must be complied with unless the Department files an appeal or seeks a review against the said order. The action of the SLC to reject the case of the appellant on the ground of late submission cannot be accepted in the face of the specific directions of this Court vide order dated 10.04.2019 passed in W.P(C) No. 409/2019. There is no dispute that the Department did not prefer any appeal or review against the said order and therefore, the same is binding on the Department and they are duty bound to carry out the same. Where a direction has been passed by a Writ Court, it is not open to the administrative authorities to take a contra view so long the direction/order of the Writ Court prevails. Such action of the Department may be perceived to be contumacious.

13. Under such circumstances, we are unable to agree with the conclusions and findings arrived at by the learned Single Judge in the impugned order dated 21.11.2022. This Court is accordingly of the considered opinion that the matter

needs to be considered again by the State Level Committee (SLC) in view of the directions contained in the order dated 10.04.2019 passed in W.P(C) No. 409/2019.

14. The impugned order dated 21.11.2022 of the learned Single Judge is, therefore, interfered with and set aside.

15. The Minutes of the meeting dated 10.02.2022, in so far as it relates to the appellant, is also interfered with and set aside.

16. The matter is remanded back to the authorities to be placed before the SLC for re-consideration and by keeping in view of the directions contained in the order dated 10.04.2019 passed in W.P(C) No. 409/2019.

17. The writ appeal is, accordingly, allowed and disposed of. No order as to costs

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant