

GAHC010279562019



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

Case No. : WP(C)/8383/2019

NAMITA DAS
W/O LT. SWPAN KUMAR DAS, R/O A/T-3/1 APSAPA APARTMENT NEAR
DISPUR LAW COLLEGE, P.O. ASSAM SACHIVALAYA, P.S. DISPUR, DIST.
KAMRUP (M), ASSAM, PIN-781006

VERSUS

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

2:THE SECRETARY
TO THE GOVT. OF ASSAM
GENERAL ADMINISTRATION DEPTT. DISPUR
GUWAHATI- 781006

3:THE SECRETARY
TO THE GOVT. OF ASSAM
URBAN DEVELOPMENT DEPTT. DISPUR
GUWAHATI- 781006

4:THE DIRECTOR OF MUNICIPAL ADMINISTRATION
ASSAM
DISPUR
GANESHGURI NEAR GANESH MANDIR
GUWAHATI-781006

5:THE STATE LEVEL SELECTION COMMITTEE
REP. BY ITS CHAIRMAN
THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-781006

6:THE DISTRICT LEVEL SELECTION COMMITTEE
REP. BY ITS CHAIRMAN
THE DEPUTY COMMISSIONER
KAMRUP (M)
GUWAHATI-78100

Advocate for the Petitioner : MS. M DEV

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 27.06.2023

Heard Ms. M. Dev, learned counsel for the petitioner. Also heard Mr. R. Dhar, learned Additional Senior Government appears for respondents.

2. This writ petition has been filed by the petitioner, namely, Smti. Namita Das, who is aggrieved by the non consideration of the claim of the petitioner for compassionate appointment although her case was recommended for appointment by the District Level Committee.

3. Petitioner's husband who was working under the respondent No.4 died-in-harness on 24.12.2016 leaving behind the petitioner and their 2 (two) daughters. Petitioner applied for compassionate appointment by filing an application on 20.01.2017. The application remained pending although petitioner had approached the authorities on several occasions. Thereafter, the District Level Committee in its meeting held on 06.08.2018 had recommended the

petitioner's case for appointment for the post of Grade-III, (Community Organizer) under the Directorate of Municipal Administration, Assam. The name of the petitioner is found mentioned at serial No.15 of the Minutes of the DLC. It is submitted by the learned counsel for the petitioner that as she satisfies all the eligibility criteria as well as the required norms, she was duly recommended by the DLC for appointment for the post of Grade-III (Community Organizer). The matter was required to be considered by the State Level Committee. However, the petitioner submits that the matter remained pending and no orders were passed. Subsequently the petitioner came to be informed by the impugned order dated 19.09.2019 wherein it was mentioned that the SLC in its meeting held on 19.07.2019 considered the reconsideration of DLC in respect of the petitioner and another candidate. It was mentioned that there was no vacancies for consideration for appointment on compassionate ground as the posts have already been filled up in the case of Directorate of Municipal Administration, Assam and the proposals could not be considered.

4. Pursuant thereto, the petitioner filed an application under RTI and was informed that several vacancies are available in the Establishment of Town and Country Planning in Grade.III since the year 2016 to the year 2023.

5. The learned counsel for the petitioner submits that the Directorate of Town and Country Planning is an arm of the Department of Urban Development Department. Learned counsel for the petitioner submits that inspite of vacancies being available,

rejection of the petitioner's case on the ground that no vacancies are available is contrary to the information available to RTI as well as not in conformity with the Office Memorandum dated 01st June, 2015.

6. Mr. R. Dhar, learned Additional Senior Government Advocate appears for all the respondents. He refers to the counter affidavit filed by the department to submit that at the time of the application of the petitioner, the vacancies available under Grade III was 29 and Grade IV was 6, as such the case of the petitioner could not be considered by the SLC as the 5% quota on compassionate ground has already been filled up under the Directorate of Municipal Administration, Assam.

7. Mr. Dhar, however has fairly submitted that the speaking order makes no reference to the provisions of refer Clause 15 of the Office Memorandum dated 01.06.2015.

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

9. It is seen from the Office Memorandum dated 01.06.2015 that the Government has laid down certain principles while taking up applications made for filling up of vacancies through compassionate appointment.

10. Under Clause-15 of the said Office Memorandum it is provided as under:-

“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.”

11. Learned counsel for the respondent does not dispute the fact that at the time when the application of the petitioner was filed before the authorities concerned, the Office Memorandum dated 01.06.2015 was in force. The order dated 19.09.2019 passed by the respondent authorities does not reflect as to whether the case of the petitioner was considered under the provisions of Clause 15 of the Office Memorandum dated 01.06.2015. That apart a copy of the minutes of the SLC meeting held on 19.07.2019 is also brought on record by the respondent No.3 in its affidavit-in-opposition.

12. A perusal of the minutes of SLC meeting dated 19.07.2019 also does not reflect that the case of the petitioner has been considered for compassionate appointment in terms of the recommendations made in the said minutes dated 19.07.2019 although the office order dated 19.09.2019, which is impugned in the present writ petition clearly mentioned that the Urban Development Department held the SLC meeting on 19.07.2019 and scrutinized the cases as recommended by the DLC and that in view of the absence of any vacancies for consideration for appointment on compassionate ground, the cases of the petitioner and two other persons could not be considered. The SLC also did not consider the aspect of availability of vacancies in other departments for consideration of the case of the petitioner for appointment on compassionate ground in

terms of Clause 15 of the Office Memorandum dated 01.06.2015, which was in operation at the relevant point in time.

13. Having heard the learned counsels for the parties and in view of the observations made above, this Court is of the view that the writ petition deserves to be allowed.

14. The impugned order dated 19.09.2019 passed by the Secretary, Government of Assam, Urban Development Department stated to have been issued on the basis of the minutes dated 19.07.2019 and which minutes are available on record as a part of the enclosures to the affidavit-in-opposition filed by the respondent No.3, does not reflect that the case of the petitioner has been considered at all.

15. Under such circumstances, this Court is of the view that the impugned order dated 19.09.2019 in so far as it relates to the writ petitioner deserves to be interfered with and the same is therefore set aside.

16. The matter is remanded back to the SLC and it is directed to reconsider the case of the petitioner in the light of the recommendations of the DLC made in favour of the petitioner read with the provisions of Clause 15 of the Office Memorandum dated 01.06.2015 as it stood then and consider the case of the petitioner sympathetically in respect of her claim for appointment on compassionate ground.

17. The Committee will pass a speaking order reconsidering the case of the petitioner as directed and pass appropriate recommendations if applicable in terms of the Office Memorandum dated 01.06.2015.

18. The matter is accordingly remanded back to the State Level Committee for re-deciding the claims of the petitioner in terms of the above directions. The State Level Committee will pass appropriate orders within a period of 60 (sixty) days from the date of a receipt of certified copy of this order.

19. A copy of this order be marked to the office of the Senior Government Advocate for onward communication of the State Level Committee through the office of the Chief Secretary.

20. Writ petition is accordingly allowed and disposed of. No order as to cost.

JUDGE

Comparing Assistant