

GAHC010047622017



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

Case No. : WP(C)/6717/2017

SYEDA SAHERA BEGUM
W/O. LT. SYED BABUL ALI, R/O. VILL. RAJABAZAR, P.O. KALITAKUCHI,
PIN-781102, KAMRUP RURAL, ASSAM.

VERSUS

THE STATE OF ASSAM and 2 ORS.
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
ENVIRONMENT and FOREST DEPTT., HAVING ITS OFFICE AT DISPUR,
GUWAHATI-781006, DIST. KAMRUP METRO, ASSAM.

2:THE COMM. and SECY. TO THE GOVT. OF ASSAM

ENVIRONMENT and FOREST DEPTT.
HAVING HIS OFFICE AT DISPUR
GUWAHATI-781006
DIST. KAMRUP METRO
ASSAM.

3:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST and HEAD OF
FORESTS FORCE
ASSAM

HAVING HIS OFFICE AT REHABARI
GUWAHATI-781001
DIST. KAMRUP METRO
ASSAM

Advocate for the Petitioner : MR A ISLAM

Advocate for the Respondent : MR. P N GOSWAMI

**BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR**

ORDER

Date : 05.03.2024

Heard Mr. G. Z. Ahmed, learned counsel for the petitioner. Also heard Mr. D. Gogoi, learned standing counsel, Forest Department for all the respondents.

2. The husband of the petitioner late Syed Babul Ali, died-in-harness on 21.09.1991, while serving as Forester Grade-I. Thereafter, the petitioner made an application for compassionate appointment before the concerned authorities. By a communication dated 6th of July, 1993, issued by the Deputy Secretary to the Government of Assam, Forest Department and addressed to the Chief Conservator of Forest (WL), Assam it was conveyed that the Government had no objections for appointment of the petitioner on compassionate ground as recommended vide letter dated 30.04.1993, subject to vacancy against sanctioned post and observation of existing rules and procedures. Accordingly, the Chief Conservator of Forests (HQ) by an order dated 29th of October, 1994, appointed the petitioner to officiate as temporary Mali on compassionate ground and was posted to the DFO, Social Forestry Division, Biswanath Chariali against a vacant post of Mali.

Thereafter, the petitioner submitted her joining report on 01.11.1994.

3. As required under law, the petitioner ought to have been appointed on regular basis against such recommendation for compassionate appointment.

However, the respondent authorities appointed the petitioner as a casual employee instead of a regular employee. The petitioner having no alternative had to accept the appointment as a casual employee.

4. The respondents thereafter, stopped the wages paid to the petitioner towards the end of the year 2014 and she was also disengaged as a casual worker. Being aggrieved, the petitioner is before this Court.

5. The learned counsel for the petitioner also places reliance in the judgment and order dated 04.12.2014, passed by a co-ordinate bench of this Court in WP(C)/528/2011, wherein, a case for regularizing of a casual employee who was appointed on compassionate ground was disposed of directing the respondents to take up the case of the petitioner for regularization of her services and to release her salary which was withheld. The respondents appealed against the order dated 04.12.2014, by way of Writ Appeal No. 278 of 2016, which was however dismissed by the Hon'ble Division Bench.

6. Mr. D. Gogoi, learned standing counsel, Forest Department in his usual fairness submits that compassionate appointment is to be made against sanctioned post on a regular basis, however, in the case of the petitioner, the respondents have only appointed her as a casual employee. He therefore submits that the respondents may be directed to consider the case of the petitioner for regular appointment, subject to availability of vacancy within a specific time period.

7. After considering the arguments submitted by the learned counsel for the parties as well as the materials available on record, particularly, the appointment letter dated 29th of October, 1994, it is seen that the petitioner was appointed as a casual Mali against a vacant post of Mali. In any case, the compassionate appointed is neither illegal nor irregular mode of appointment and such appointment has to be made on a regular basis. No affidavit has been filed by the respondents and as the learned standing counsel, Forest Department is unable to clarify before this Court as to whether there is any vacancy available at this stage, this Writ petition is disposed of directing the respondents to consider the case of the petitioner for regularization as Mali as and when any vacancy arises but not later than 6(six) months from today. However, the arrear wages of the petitioner as casual Mali starting from the period the wages were stopped and the current wages of the petitioner shall be paid as expeditiously as possible but not later than 2(two) months from the date of receipt of a copy of the order of this Court.

8. With the above observations and directions, this Writ Petition is disposed of.

JUDGE

Comparing Assistant