

GAHC010187432020



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

Case No. : WP(C)/13/2021

MERI TUDU
W/O LATE BENIAL MARDI
VILLAGE BAGHSAL CHUBURI, PO NALKHAMARA, PS UDALGURI, DIST
UDALGURI, BTAD, ASSAM

VERSUS

THE REGISTRAR GENERAL GAUHATI HIGH COURT AND 2 ORS
GUWAHATI 781001

2:THE REGISTRAR (ADMINISTRATION) CUM IN CHARGE
CENTRALISED RECRUITMENT
GAUHATI UNIVERSITY HIGH COURT
GUWAHATI 781001

3:THE CHIEF JUDICIAL MAGISTRATE

UDALGURI
BTAD
ASSA

Advocate for the Petitioner : MR K K KALITA

Advocate for the Respondent : SC, GHC

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 24/07/2024

Heard Mr. B. Prasad, learned counsel for the writ petitioner. Also heard Mr. H.K. Das, learned Standing Counsel, Gauhati High Court, appearing for the respondents.

The facts of the case, in a nutshell, are that the deceased husband of the petitioner late Benial Mardi, who was serving as a Process Server under the establishment of the SDJM, Udalguri (now CJM Udalguri) died in harness on 03/11/2007. Since the husband of the petitioner was the sole bread winner in the family, the petitioner being the widow, had submitted an application seeking appointment on compassionate ground against any Grade-IV post. The application of the petitioner was examined by the competent authorities, whereafter, the same was approved not only by the Judicial Department but also by the Finance (SIU) Department, Govt. of Assam and instruction was also issued to appoint the petitioner against a Grade-IV post in the establishment of the CJM, Udalguri, on compassionate ground. However, when the petitioner approached the concerned authority, she was not issued any appointment order on the ground that no vacancy was available.

Mr. Prasad submits that the petitioner was assured time and again by the concerned authorities that she will be appointed as and when a vacancy in the Grade-IV arises. As the petitioner was awaiting the order of appointment, the scheme for appointment on compassionate ground came to be replaced by the new scheme i.e. "Scheme for compassionate family pension in lieu of compassionate appointment", which was notified by the Government of Assam in the official Gazette on 14/09/2017. He submits that after the publication of the new scheme, the earlier scheme permitting issuance of appointment on compassionate ground has been discontinued and/or replaced by the "compassionate family pension scheme".

Mr. Prasad submits that in view of the clause 5.11 of the notification dated 14/09/2017, the petitioner may not be entitled to compassionate family pension since her husband had died before 31/03/2017 i.e. before the date of coming into effect of the subsequent scheme. However, the petitioner cannot be denied benefit under the scheme which was in force on the date on which her

husband had expired.

Mr. Prasad has further submitted that advertisements were issued by the establishment of the CJM, Udalguri for appointment in the Grade-IV category. However, the authorities did not issue any appointment order in favour of the petitioner despite the availability of Grade-IV vacancy. He further submits that there is no formal communication to the petitioner as to the reason for not appointing her on compassionate ground despite the approval and recommendation by the competent authority including the Finance Department nor has her claim been rejected till today. Under the circumstances, the petitioner has been compelled to approach this Court by filing the instant writ petition.

Mr. Das, learned Standing Counsel, Gauhati High Court, on the other hand, submits that the petitioner would not get any benefit under the "Compassionate Family Pension Scheme" since her husband died before 31/03/2017. However, whether the petitioner ought to have been appointed under the previous scheme is a matter that may require proper verification.

Responding to the above, Mr. B. Prasad, learned counsel for the petitioner, by referring to the guidelines issued vide OM dated 31/10/2017, more particularly, clause 1(i), submits that the time period for application of the new scheme has subsequently been extended by the Government and, therefore, the petitioner would come within the purview of the "compassionate family pension scheme".

After hearing the arguments advanced at the Bar, without expressing any opinion on the merit of claims and counter claims, the writ petition stands disposed of by providing that the petitioner would submit a detail representation before the respondent no.1 renewing her claim for appointment, within a period of two weeks from today.

If such representation is preferred by the petitioner by enclosing a certified copy of this order, the same be examined and considered in accordance with law. The representation be disposed of by a speaking order within a further period of 45 (forty five) days thereafter. In doing so, the respondent

no. 1 shall bear in mind the peculiar facts and circumstances of the case as well as the transitional phases in stages of operation of the two schemes, which might have overlapping periods of operation due to extension of time frame.

With the above observation, the writ petition stands disposed of.

JUDGE

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Comparing Assistant