

GAHC010280642018



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

Case No. : WP(C)/8746/2018

MAIDANGSRI BASUMATARY
W/O- LATE PRAHLAD BASUMATARY, R/O- VILL KHARA PT-II, P.O-
DUDHNOI, UNDER DUDHNOI POLICE STATION, DIST- GOALPARA, ASSAM,
PIN- 783124

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECRETARY, JUDICIAL DEPTT, GOVT
OF ASSAM, DISPUR, GUWAHATI- 781006

2:GAUHATI HIGH COURT
REP. BY THE REGISTRAR GENERAL
GAUHATI HIGH COURT
GUWAHATI- 781001

3:THE REGISTRAR (ADMN)
CUM IN CHARGE CENTRALIZED RECRUITMENT GAUHATI HIGH COURT
GUWAHATI- 781001

4:SPECIAL JUDGE
ASSAM
GUWAHATI- 78100

Advocate for the Petitioner : MR. K SARMA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

24.04.2024.

Heard Shri K Sarma, learned counsel for the petitioner and Shri D Bora, learned State Counsel, Assam. Also heard Ms. S Sarma, learned counsel appearing for the Gauhati High Court.

2. The issue raised in this petition is with regard to a claim for appointment on compassionate ground.

3. The facts projected is that the husband of the petitioner, Prahlad Basumatary, who was working as a Driver in the establishment of the Special Judge, Assam at Guwahati (respondent no. 4) had died-in-harness on 12.07.2015. The petitioner had, accordingly submitted an application on 30.07.2015 for appointment on compassionate ground. The said application was forwarded by the learned Special Judge, Guwahati to the High Court on 20.08.2015. Initially, vide a communication dated 14.09.2015, the High Court had informed that the same would be considered as and when vacancy would arise. At that point of time, an advertisement was issued on 05.12.2018 by the establishment of the respondent no. 4 for filling up of 1 post of Peon in the said establishment.

4. Being aggrieved, the petitioner had filed this writ petition with a contention that if the said vacancy is filled up, her claim for appointment on compassionate ground would not be able to be considered.

5. This Court vide order dated 19.12.2018 while issuing notice had directed that till the returnable date, the post of Peon advertised was not to be filled up without taking the leave of the Court.

6. Shri Sarma, learned counsel for the petitioner has submitted that the impugned advertisement would be in conflict with the communication of the High Court dated 14.09.2015 wherein, there was a stipulation that the case of the petitioner would be considered as and when vacancy would arise. He submits that by the impugned advertisement, the scope of such consideration would come to an end forever. The learned counsel has also referred to a guidelines adopted by this Court on 03.01.2017 for appointment on compassionate ground which, however, was discontinued vide a notification dated 19.04.2018 with a stipulation that the government notification in regard to compassionate appointment would apply. Shri Sarma, learned counsel submits that though a notification dated 14.09.2017 was subsequently issued by the Finance Department, Government of Assam on the subject of compassionate appointment wherein the concept of payment of family pension in lieu of such appointment was also made, it is submitted that there is a Clause 5.11 in the said notification as per which, the cases wherein the death of the government servant was before 31.03.2017, the earlier notification would apply and therefore, the case of the petitioner was still liable to be considered for appointment on compassionate ground.

7. Ms. Sarma, learned counsel appearing for the High Court has, however, submitted that the present claim of the petitioner is not within the scope for such consideration. By referring to the affidavit-in-opposition filed in this

proceeding by the respondent no. 2 on 13.12.2021, the learned counsel has drawn the attention of this Court to the communication dated 19.04.2017 which has been annexed as Annexure-5. The said communication issued by the Registry of this Court to the Special Judge, Assam has stated that there are 6 nos. of posts in Grade-IV and 4 nos. of posts in Grade-III in the establishment and clubbing the same would make the total strength as 10. However, the percentage for compassionate appointment being at 5%, any appointment on such ground is not possible.

8. Shri Bora, learned State Counsel while endorsing the views and submissions of the learned counsel appearing for the High Court has also submitted that though as per the clarificatory clause, the case of an incumbent would still be liable to be considered as per the earlier notification, such consideration has to be within the permissible limit.

9. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

10. The existence of a scheme for compassionate appointment is not in dispute. Though a separate guideline was framed by this Court on 03.01.2017, the same was discontinued on 19.04.2018 with a stipulation that the Government notifications covering the field would apply. It is also on record that initially, a communication was issued on 14.09.2015 by the Registry of this Court that the case of the petitioner would be considered as and when vacancy would arise.

11. Be that as it may, it is not in dispute that the quota fixed for appointment on compassionate ground is 5%. From the notification dated 19.04.2017, it is clear that the total number of posts in Grade-IV and Grade-III where appointment on compassionate ground can be considered is 10 and therefore, the scope of reserving any post for such appointment is not there at all. This Court is of the opinion that the communication dated 19.04.2017 issued by the Registry of this Court apart from not being the subject matter of challenge, the same also cannot be faulted with as a clarification has been given so far as the case of the petitioner is concerned.

12. In view of the aforesaid facts and circumstances of the case and the discussions made, this Court is of the considered view that no relief can be granted to the petitioner in this case and accordingly, the writ petition is dismissed.

13. It is made clear that the petitioner would have the liberty to offer her candidature against the post advertised on 05.12.2018.

14. The interim order dated 19.12.2018 accordingly stands vacated.

JUDGE

Comparing Assistant