

GAHC020004392023



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

Case No. : WP(C)/174/2023

SMTI. ATOKALI AOMI,
W/O LT. AARON AOMI,
THAHEKHU VILLAGE, BLOCK I,
H/NO.454,
DIMAPUR, NAGALAND.

VERSUS

THE STATE OF NAGALAND AND 2 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT
OF NAGALAND

2:THE COMMISSIONER AND SECRETARY

DEPARTMENT OF FOOD AND CIVIL SUPPLIES

NAGALAND
KOHIMA

3:THE DIRECTOR

DEPARTMENT OF FOOD AND CIVIL SUPPLIES

NAGALAND
KOHIM

Advocate for the petitioner : Ms. Z. Zhimomi, Advocate

Advocate for the respondents : Mr. Mosem, Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 06.06.2024

Date of Judgment : 06.06.2024

JUDGMENT AND ORDER (ORAL)

The jurisdiction under Article 226 of the Constitution has been invoked by the petitioner being aggrieved by the non-consideration of the case of the petitioner for being appointed on compassionate ground in terms with the Office Memorandum dated 17.09.2015.

2. The facts relevant for the disposal of the instant writ petition are that the petitioner's husband was serving as the Store Keeper at Chessor under the establishment of the Assistant Director, Food and Civil Supplies of Tuensang. He died in harness on 16.10.2021. Thereupon, immediately the petitioner on 10.12.2021 applied for being appointed in terms with the Office Memorandum dated 17.09.2015. However, as the respondent authorities have not taken any steps for consideration of the case of the petitioner, the instant writ petition has been filed.

3. Before further proceeding, this Court finds it relevant to take note of the Office Memorandum dated 17.09.2015. A perusal of the said Office Memorandum shows that the appointment on compassionate ground shall be given only to one of the members of the deceased employee's family. It would either be the spouse or the son or the daughter. It is also seen that the appointment on compassionate ground shall be made only on regular basis to direct

recruitment posts and only if regular vacancies meant for that purpose are available in that Department where the deceased Government employee was serving. Clause 4 of the said Office Memorandum has great relevant to the instant proceedings in as much as the earlier ceiling for compassionate appointment of 5% of the direct recruitment vacancies in Group C and Group D posts were done away with thereby providing that such appointment on compassionate ground shall not exceed 50% of the vacancies during a year. It has also been mentioned that the appointment against the post for direct recruitment in Group C should be in Entry Grade only.

4. Upon filing of the instant writ petition, the respondents filed the affidavit-in-opposition wherein it has been stated amongst others that the petitioner's case is still under consideration in the chronological order for appointment in Grade-IV post on compassionate ground under the Department of Food and Civil Supplies, Nagaland and the petitioner stands at Sl. No.4. It was mentioned that the case of the petitioner for appointment in Grade-IV post on compassionate ground shall be considered as and when her turn comes up subject to availability of vacancy.

5. To the said affidavit-in-opposition, an affidavit-in-reply was filed by the petitioner. A perusal of the said affidavit-in-reply shows that the petitioner pursuant to obtaining certain information under the Right to Information Act, 2005 alleged that the authorities have not adhered to Clause 4 of the Office Memorandum dated 17.09.2015. From the said Annexure to the affidavit-in-reply, it is seen that 49 vacancies had arisen in Grade-IV post in the Food and

Civil Supplies Department during the period from 2015 to 2023. It is also pertinent to mention that 24 vacancies had arisen pursuant to the filing of the application by the petitioner. It is also seen from the said Annexure that since 2015, as many as 49 appointments have been made thereby all the posts which had arisen from 2015 to 2023 have been filled up. Interestingly, 24 posts have been filled up since 21.11.2022 either by direct recruitment or on land ownership basis.

6. This Court at this stage also finds it relevant to take note of the submission of Ms. Z. Zhimomi, the learned counsel for the petitioner to the effect that the direct recruitment which has been made since 21.11.2022 or for that matter, 22 direct recruitments have been made without following the due process.

7. Be that as it may, one aspect of the matter is clear that the State respondents have not taken into consideration the Clause 4 of the Office Memorandum dated 17.09.2015 while filling up the vacancies which arose since 22.11.2022 till the filing of the writ petition. It is also seen from the Annexure-3 to the affidavit-in-reply that during the period from 2024 to 2025 as many as 13 vacancies are going to arise starting from 30.01.2024 to 30.11.2025. The learned counsel for the petitioner submits that the case of the petitioner therefore is to be considered for compassionate appointment on the first four vacancies which are to arise taking into account that the petitioner is at Sl. No.4.

8. On the other hand, the learned counsel appearing on behalf of the respondents submits that if any direction is given to that effect,

it would violate the mandate of Clause 4 which permits not more than 50% per year.

9. This Court has duly heard the learned counsels appearing on behalf of the parties and given due consideration to their respective submissions. From the materials on record, it is seen that the petitioner herein is entitled to be considered in terms with the Office Memorandum dated 17.09.2015 in as much as it is also admitted by the respondents in the affidavit that the petitioner is at Sl. No.4 of the list in the chronological order and she would be duly considered when her turn comes.

10. This Court had taken note of that the respondent authorities while making 24 appointments during the period from 2022 to 2023 did not at all adhere to the norms as set out in Clause 4 in as much as no appointment was made on compassionate ground or for that matter the Office Memorandum dated 17.09.2015. Be that as it may, there is no challenge to those appointments, and as such, this Court would not further deal with that issue any further. However, it is seen from the Annexure-4 to the affidavit-in-reply that 13 new vacancies are going to arise of which 12 vacancies are arising on 30.06.2025.

11. Under such circumstances, it is the opinion of this Court that the petitioner therefore is required to be considered and accommodated in terms with the vacancies which are going to arise on 30.06.2025 taking into consideration the mandate of the Office Memorandum dated 17.09.2015.

12. This Court therefore disposes of the instant writ petition directing the respondents to consider the case of the petitioner in terms with Office Memorandum dated 17.09.2015 and accommodate the petitioner in terms with the Office Memorandum dated 17.09.2015 in respect to those vacancies which are to arise on 30.06.2025.

13. In view of the above, the instant petition stands disposed of.

JUDGE

Comparing Assistant