

GAHC020005782022



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

Case No. : WP(C)/216/2022

SHRI. K.TSOSHEJU
S/O LT. KHATIMONG,
R/O LONGMATRA TOWN, DISTRICT - KIPHIRE,
NAGALAND

VERSUS

THE STATE OF NAGALAND AND 4 ORS
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT OF NAGALAND, NAGALAND, KOHIMA

2:THE HOME COMMISSIONER

GOVERNMENT OF NAGALAND
NAGALAND
KOHIMA

3:THE COMMISSIONER

GOVERNMENT OF NAGALAND

NAGALAND
KOHIMA

4:THE DEPUTY COMMISSIONER

KIPHIRE
NAGALAND
KIPHIRE

5:THE EXTRA-ASSISTANT COMMISSIONER

LONGMATRA
KIPHIRE
NAGALAN

Advocate for the Petitioner : L LIKHASE SANGTAM

Advocate for the Respondent : GOVT ADV NL

:::B E F O R E:::

THE HON'BLE MR. JUSTICE NELSON SAILO

Date of Hearing : **16.02.2024**

Date of Judgment : **16.02.2024**

JUDGMENT & ORDER (Oral)

Heard Mr. L. Likhase Sangtam, learned counsel for the petitioner and Ms. S. Chang, learned State Counsel for the State respondents.

[2.] By filing this writ petition, the petitioner claims for his appointment to the post of Peon on regular basis. It is the case of the petitioner that his father died in harness while he was working as office Peon in the establishment of Deputy Commissioner, Kiphire and he was posted in the Office of the Extra Assistant Commissioner (EAC), Longmatra. The petitioner applied for appointment on compassionate basis and accordingly, an approval for his appointment was granted by the Additional Chief Secretary & Commissioner, Nagaland which was communicated to the Deputy Commissioner, Kiphire vide letter dated 15.05.2007 by the Extra Assistant Commissioner (HQ), Office of the Commissioner, Nagaland, Kohima.

However, the petitioner was only appointed on Adhoc basis for a period of one (1) year vide Office Order dated 04.07.2007 but he continues to work as such till date. The petitioner was recommended for regularization by the District Level Recruitment Board in its meeting held on 13.03.2012 but despite such recommendation, the petitioner not having been regularized, the petitioner is before this Court.

[3.] Mr. L. Likhase Sangtam, learned counsel submits that as per the Office Memorandum (O.M) dated 13.02.2002 which is the Scheme for compassionate appointment, appointment on compassionate ground is to be made on regular basis and in the Department where the deceased Government employee was working. Despite the same, the respondent have appointed the petitioner only Adhoc basis.

[4.] Ms. S. Chang, learned State Counsel referring to the affidavit-in-opposition filed by the respondents submits that the petitioner is at Serial No. 29 of the list of all Adhoc/Casual/Fixed Multitask Staff in respect of the District Administration in Kiphire and therefore, he not being the senior most amongst the Adhoc employees, he will be considered for regularization only when his turn comes.

[5.] I have heard the submissions made by the learned counsels for the parties and I have perused the materials available on record. There is no

dispute to the fact that the petitioner's father expired while he was working in the establishment of the Deputy Commissioner, Kiphire and posted in the EAC, Longmatra. The Govt. of Nagaland, Personnel and Administrative Reforms Department (Administrative Reforms Branch) vide O.M dated 13.02.2002 has formulated a Scheme for appointment on compassionate basis. Clause 2 of the said Scheme is abstracted hereunder:-

“Appointment on compassionate grounds shall be made only on a 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. Applicants shall have no claimed to appointment under this scheme in any other Department other than that where the deceased employee was serving.”

[6.] From a perusal of the above Clause, it can be seen that appointments on compassionate basis is to be made on regular basis to direct recruitment post subject to regular vacancies meant for that purpose are and no claim can be made for compassionate appointment under the Scheme in any other Department. The petitioner's father having worked under the establishment of the Deputy Commissioner, Kiphire, he was therefore appointed as Office Peon with the approval of the Additional Chief Secretary & Commissioner, Nagaland on 15.05.2007. However, his appointment was only on Adhoc basis

as per the Order dated 04.07.2007. Although the respondents have taken the stand that the seniority position of the petitioner does not merit his regularization at this stage, but a perusal of the seniority list annexed in the counter affidavit as 'Annexure-C' does not indicate as to whether the other enlisted Adhoc employees are also compassionate appointees or not. If there are other compassionate appointees under the establishment of the Deputy Commissioner, Kiphire who are senior to the petitioner, perhaps the stand of the respondents will be justified but if there are none, having regard to the specific provision of the O.M dated 13.02.2002, the respondents cannot place the case of the petitioner at par with other Adhoc employees.

[7.] In view of above, the respondent authorities shall examine the matter to find out if there is any other compassionate appointees under the establishment of the Deputy Commissioner, Kiphire who are senior to the petitioner and if there none, the respondent authorities shall consider regularization of the service of the petitioner without further delay and at any rate, within a period of three (3) months from the date of receipt of a certified copy of this Order.

[8.] With the above observations and directions, the writ petition stands disposed of. No cost.

Sd/-

JUDGE

Comparing Assistant