GAHC010153472017

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

Case No. : WP(C) 7839/2017

1:MANJULA BORA
W/O- LT ASHOK BORA R/O-VILL- BENGENAKHUA NABA NAGAR, G.F.ROAD, DIST- GOLAGHAT, ASSAM

VERSUS

1:THE STATE OF ASSAM and 4 ORS.
REPRESENTED BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM, ENVIRONMENT and FOREST DEPTT., DISPUR, GHY-6

2:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST
AND HEAD OF FOREST FORCE
ASSAM
PANJABARI
GHY-37

3:THE DEPUTY COMMISSIONER
SIVASAGAR
CHAIRMAN OF THE DISTRICT LEVEL COMMITTEE ON COMPASSIONATE APPOINTMENT DIST- SIVASAGAR
PIN-785640

4:THE STATE LEVEL COMMITTEE
FOR COMPASSIONATE APPOINTMENT
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GHY-6

5:SRI PRANAB KR. DAS
S/O- LT PRAFULLA CH. DAS R/O- VILL- BIHUMPUR
P.O. MULANKUCHI

DIST- NALBAR

Advocate for the Petitioner : MR.M K NEOG

Advocate for the Respondent :

BEFORE
HONOURABLE MR JUSTICE SONGKHUPCHUNG SERTO

ORDER

Date : 19-02-2020

Heard Mr. J. Kalita, learned counsel appearing for the petitioner. Also heard Ms. M.B. Borah, learned Govt. Advocate, appearing for the State respondents Nos. 1 to 4. None appears for the private respondents.

2. This is a petition challenging the minutes of the meeting of SLC for appointment on compassionate ground held on 11.08.2017 particularly relating to the resolution No. 7, wherein the case of the petitioner requesting for compassionate appointment was rejected due to over age, want of vacancy and lapse of 7 years since the date of the demise of her husband and, praying for a direction directing the respondent No. 4 to re-consider the case of the petitioner in terms of the recommendation of the DLC meeting minutes held on 27.04.2015, wherein the petitioner's case was recommended for appointment to the post of junior assistant.

3. The facts which led to the filing of this writ petition as submitted by the learned counsel for the petitioner are briefly stated as follows :-

The petitioners husband who was serving as Forester-1 in the department of Forest of Govt. of Assam died in harness due to motor vehicle accident on 07.04.2010. Having no choice the petitioner applied for appointment on compassionate ground by submitting a representation on 09.06.2010 to the respondent No. 4. Thereafter she also submitted another application in the prescribed format on 28.12.2011. As per the procedure provided for consideration of applications asking for compassionate appointment the petitioner's case was placed before the District Level Committee (DLC) held on 27.04.2015. The DLC recommended the case of the petitioner for appointment against a vacancy of the year 2013-2014. The recommendation was conveyed by the Additional Deputy Commissioner (P), Sivsagar to the Divisional Forest Officer (T), Sivsagar vide his letter No. SVPP.12/2015/CG/37 dated 16th June, 2015. However, the petitioner's case was kept pending without consideration for a fairly long time and that compelled her to file the writ petition WP(C) No. 276/2017. The writ petition was disposed of by an order dated 20.01.2017 in which a direction was issued

to the effect that the petitioner's case should be considered in the next meeting of SLC if it has not been considered earlier. As per the direction of the Court the petitioner's case was considered in the meeting of the SLC for appointment on compassionate ground held on 11.08.2017 but did not recommend her case. At serial No. 7 of the minutes of the meeting the case of the petitioner is recorded as follows :-

> "*The case pertains to the year 2010 and SLC considered her application in its last meeting held on 01.04.2015 and 09.12.2015 but could not recommend due to over age. However, as per Hon'ble High Court orders dated 20.01.2017 the case is again considred by the SLC but due to over age and want of vacancy it decided that as more than 7 years have elapsed, this case no longer falls within the period of consideration on compassionate ground. Hence as per the SLC this case has spent it force."*

4. Being aggrieved, the petitioner, once again, has come before this Court praying for quashing and setting aside of the minutes of the SLC and also praying for a direction to re-consider her case for appointment to any suitable post.

5. It is submitted by Mr. J. Kalita, learned counsel for the petitioner that the petitioner became over age because of the delay in considering her case by the respondents therefore she can not be made to suffer for that reason. The learned counsel also submitted that an application for compassionate appointment cannot be rejected for reasons of over age as per the judgment of this Court dated 13.05.2015 passed in WP(C) No. 798/2015 therefore the SLC was clearly at fault in having rejected the petitioner's case on that ground. It is also submitted by the learned counsel that the petitioner's case was considered by the DLC against the clear vacancy therefore the SLC was also at fault in not considering her case on the ground of non existence of vacancy.

6. Ms. Borah, learned Govt. Advocate appearing for the respondents submitted that the process for appointment on compassionate ground is governed by the Office Memo No. ABP 50/2006/Pt./182 dated 1st June, 2015 issued by the Government of Assam, Department of Personnel: Personnel (B). The learned Govt. Advocate further submitted that the relevant paragraphs of the memo in the case of the petitioner are (15) and (16). The contents of (15) and (16) of the memo referred to by the learned Govt. Advocate are quoted herein below :-

> "*15. If sufficient vacancies are not available in any particular office to accommodate the persons in the waiting list for compassionate appointment, it is open to the administrative Department/ Office to take up the matter with other Departments/ Offices of the Government to provide at an early appointment on compassionate grounds to those in the waiting list.*

16. The upper age limit could be relaxed wherever found to be necessary as per the existing Government policy. The lower age limit shall, however, in no case be relaxed below 18 years. Age eligibility shall be determined with reference to the date of application and not the date of appointment. The State Level Committee shall be competent to grant relaxation of upper age limit for making such appointment as per existing Government policy."

7. Considering the facts of the case as narrated above, it appears that when the petitioner applied for compassionate appointment she was well within the eligibility age and the fact that she had crossed the eligibility age is not because of any omission on her part, therefore the SLC could not have rejected her case on that ground. Furthermore, the SLC at (16) of the memo is empowered to relax the upper age limit. For a women whose husband died in harness that too with a minor son the SLC could have relax the age limit even if it is considered required. Therefore, the resolution/ minute of the SLC rejecting the petitioner's case on the ground of over age does not appear to be reasonable and fair and it is against the very spirit of the memo. Secondly, the DLC under whose jurisdiction the petitioner's husband was serving and died were aware of the fact that there was one vacancy as they have indicated in their resolution. Therefore, I am of the view that the SLC was wrong in having said that there was no vacancy. Even assuming that there was no post, the petitioner could have been adjusted to any vacancy in any other department as per the (15) of the memo. The word compassionate appointment needs no explanation. Though it may not be an accrued right persons responsible in dealing with such applications ought to remember that it is a compassionate appointment and it should be considered compassionately by exploring all avenues instead of brushing them aside for reasons which are not reasonable and non-resistant.

8. With the above conclusions and observations the writ petition is disposed of with a direction to the SLC headed by respondent No. 4 to re-consider the case of the petitioner so that she and her minor son no longer suffer from all the sufferings they have already gone through during the passed years. The SLC should consider the case of the petitioner on the next available SLC meeting. The petitioner shall communicate this order to the respondents through a certified copy.

JUDGE

Comparing Assistant