
(2022) 08 GAU CK 0006
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 135 Of 2020

Babita Ray

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 03-08-2022

Acts Referred:

Citation : (2022) 08 GAU CK 0006

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : P Saikia

Final Decision : Allowed

Judgement

1. Heard Ms. M Das, learned counsel for the petitioner and Mr. JK Goswami, learned Additional Senior Government Advocate for the respondents.

2. The father of the petitioner Nimananda Ray, who was working as a Naik in the 8th Assam Police Battalion, died in harness on 30.10.2008 along with five other police personnel when he was taking part in an operation by the police against the extremists at Dimadao village in the Cachar district of Assam. He laid down his life in an ambush by the extremists while performing the duties for the State. Accordingly, the father of the petitioner Nimananda Ray is certified to be a person who was also killed in extremists violence.

3. As a person who had been killed in extremists violence, the family of the deceased police personnel would be entitled to the benefits provided in the Personnel (B) Department's circular dated 22.06.2004 and the benefits thereof are extracted as below:-

"(1) Preference to Members of the affected families certified as such by competent district authority in recruitments to Govt. and Semi Govt. Jobs.

(2) Preference to such certified persons in selection of beneficiaries under self-employment generation scheme of different departments and welfare and relief

scheme of Social Welfare etc Departments.

(3) Enhancement of the ex-gratia amount paid to the next of kin of a person killed in extremist violence to Rs. 3.00 lakhs (Three lakhs).

(4) Alternative means of livelihood to families of earning victims of extremist violence to be determined by the district authorities after assessing the economic conditions of each family separately.

(5) Free education to children of the poor affected families till they become eligible to earn.”

4. No doubt the petitioner and the other family members would be entitled to the benefits provided in the circular dated 22.06.2004, but at the same time, the father of the petitioner was also a Government employee, who had died in harness during service and he not only died in harness, but laid down his life for the duty of the State by facing extremists bullets. As the deceased father of the petitioner would also be a Government employee, who had died in harness, under the law, there would also be an entitlement to the family members of the deceased employee to be considered for compassionate appointment under the scheme of compassionate appointment that may have been in force at the relevant point of time.

5. From the records, it is available that there is an application by the petitioner dated 19.07.2013. When the application of the petitioner was not given its due consideration, WP(C) No. 1993/2015 was instituted, which was given a final consideration by the order dated 04.05.2016, wherein it was taken note of that the petitioner had submitted an application on 19.07.2013 before the Director General of Police, Assam seeking employment in any Grade-III or Grade-IV post as a member of a person killed by extremists. Accordingly, in the said order of the Court, there was a direction to the respondent authorities to consider the application of the petitioner under the appropriate laws that may be in force at the relevant point of time.

6. Considering the application of the petitioner dated 19.07.2013 under the appropriate law would also include the said application being considered under the law of compassionate appointment, which was in force at that relevant point of time. It is stated in the affidavit in opposition of the respondents that the application of the petitioner was placed before the DLC of Bongaigaon district for compassionate appointment in its meeting of 10.09.2013, but the application stood rejected on the ground that it was made seven years nine months after the death of the deceased.

7. The deceased was a police personnel, who laid down his life for the State by facing extremists bullets, which itself is an act of bravery and requires some further compassionate consideration by the authorities. In the circumstance, rejecting the application on a mechanical application of mind that it was made after seven years nine months appears to the Court to be a non-application of

mind as regards taking a compassionate view by the authorities.

8. Secondly, the Court in its order dated 04.05.2016 in WP(C) No. 1993/2015 had already taken note that the father of the petitioner died on 30.10.2008 when he came under extremists bullets and the application was made on 19.07.2013. The delay of more than seven years was already in the notice of the Court. If the respondents intended to raise any objection on the ground of delay, it was open for the State respondents to have raised it in WP(C) No. 1993/2015.

9. A reading of the order dated 04.05.2016 in WP(C) No. 1993/2015 goes to show that no such objection was raised and there was a requirement of the Court to consider the application as per its own merit.

10. In the circumstances, we are unable to accept the reasoning of the DLC in its meeting of 10.09.2013 to reject the application for compassionate appointment on the ground of it being submitted after seven years and nine months of the death. The said ground to reject would no longer be available by operation of the principle of constructive res-judicata inasmuch the issue of delay was already an issue before this Court in the earlier proceeding of WP(C) No. 1993/2015.

11. Accordingly, the rejection of the claim for compassionate appointment of the petitioner by the DLC of Bongaigaon district in its meeting of 10.09.2013 stands interfered and the matter is remanded back to the DLC of Bongaigaon district for a fresh consideration to the claim of the petitioner.

12. Accordingly, the matter be now placed before the next available DLC of Bongaigaon district. In doing so, the DLC shall consider the application of the petitioner against any vacant post in any department for which the petitioner may have been duly qualified for.

The writ petition is allowed to the extent as indicated above.