

(2006) 05 GAU CK 0101
In the Gauhati High Court
Case No : Writ Petition (C) No. 6737 of 2005

Chamsun Nahar Begum

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 19-05-2006

Acts Referred:

Citation : (2011) 1 GLR 339

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : D. Choudhury and A.K. Choudhury, for the Appellant; P. Das and U.K. Das, for the Respondent

Judgement

Ranjan Gogoi, J.—Heard Mr. D. Chaudhury, learned Counsel for the Petitioner and Mr. I. Chaudhury, learned Standing Counsel, PWD, Assam.

Following the death of the father of the Petitioner, who was working as Subordinate Engineer in the Public Works Department of the State, the Petitioner staked a claim for appointment on compassionate ground. The father of the Petitioner, it may be noticed, died sometime in the year 1994. The claim for compassionate appointment made by the Petitioner in accordance with the die-in-harness scheme in force as circulated by the Office Memorandum dated 9.9.1983 was considered at different levels in the State Government and the Petitioner was eventually appointed as work-charged section assistant on temporary basis for a period of 3(three) months by an order dated 20.6.1995. The appointment, though on compassionate ground, was made against a post in the Work-Charge Establishment and that too for a period of 3(three) months. The Petitioner accepted the appointment and all along has been representing the authority for her appointment on regular basis in a duly sanctioned post so as to give her permanency of tenure. Her case had also been recommended favorably by the officers at different levels. Notwithstanding the above, as no action has been forthcoming, the instant recourse to the writ-remedy has been made.

Having regard to the subject-matter involved, the court had repeatedly require the State Respondents to file an affidavit in the case indicating its stand in the matter. By order dated 19.12.2005 specifically the learned Standing Counsel, PWD was required to file a comprehensive affidavit in the matter. No affidavit has been filed till date. At the hearing, the learned Standing Counsel has placed before the court certain instructions received, which may now be noted.

According to the learned Standing Counsel, the Petitioner having been appointed in a Work-Charge Establishment is being proposed for regularization on application of the norms governing regularization of the work charged employees. It is incomprehensible as to how the department/Government even remotely decide on such a course of action. In the first instance, the Petitioner should not have been appointed as a Work-Charged employee; her claim being on the basis of Government Policy for compassionate appointment, such appointment should have been against a regular vacancy. If that was not possible on account of dearth of vacancy, a temporary arrangement in a work charged establishment is understandable. But what prompted the Respondent to continue the Petitioner in a temporary position in a Work-Charged Establishment all these years is not understandable. The aforesaid situation should not have been allowed to continue for 11 years. As a decade had already elapsed in the meantime, surely and certainly, the department ought to have regularized the Petitioner in a substantive vacancy and should not have treated the Petitioner at par with other work-charged employees awaiting their turn for regularization, inasmuch as, the case of the Petitioner is fundamentally different from such other work-charged employees, who may be awaiting regularization. The above view, which this Court has taken, finds ample authority in a Division Bench judgment of the court in the case reported in *State of Nagaland and Another Vs. Asieno Sakhrie*, . In view of the above discussion, I deem it appropriate to close this writ petition by commanding the Commissioner and Secretary to the Government of Assam, PWD, Assam to forthwith appoint the Petitioner in a regular vacancy and to grant all benefits as may be due to her.

This will dispose of the writ petition.