

(2021) 08 GAU CK 0063
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 485 Of 2021

Deraj Talukdar And Anr.

APPELLANT

Vs

State Of Assam And 5 Ors.

RESPONDENT

Date of Decision : 18-08-2021

Acts Referred:

Citation : (2021) 08 GAU CK 0063

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : U K Das

Final Decision : Disposed Of

Judgement

1. Heard Mr. UK Das, learned counsel for the petitioner, Mr. P Nayak, learned counsel for the respondent No.4 being the authorities in the Finance

Department of the Government of Assam, Mr. SR Barua, learned counsel for the respondents No.1, 2 and 6 being the Chief Secretary to the

Government of Assam, the Commissioner and Secretary to the Government of Assam, Personnel (B) Department and the Deputy Commissioner,

Nalbari as well as Mr. B Kaushik, learned counsel for the respondents No. 3 and 5 being the authorities in the Elementary Education Department of

the Government of Assam.

2. Two persons namely Sri Deraj Talukdar and Smti Mithu Devi have approached this Court by filing this common writ petition raising a grievance

that their respective predecessors-in-interest had died in extremist violence and therefore they are entitled to an appointment in a Government job

under the Assam Public Service (Appointment of Family Members of Persons Killed by Extremists/Terrorists) Rules, 1992 (hereinafter referred as

Rules of 1992). The respective legal rights to be appointed under the Rules of 1992 would be individual rights depending upon the individual facts and circumstance and therefore, prima-facie, we are unable to accept a joint petition by two separate claimants for such appointment. We have noticed that in this writ petition, the affidavit has been sworn by the petitioner Sri Deraj Talukdar. Accordingly, we entertain this writ petition on behalf of the petitioner Sri Deraj Talukdar and dismiss the petition on behalf of the other petitioner Smti Mithu Devi by giving liberty to approach again, if so advised.

3. The petitioner claims that his brother Sultan Talukdar was shot dead by extremists at a place called Gopal Than near the Gopal Than High School in the Nalbari district on 07.09.1999 at about 9.30 a.m. In connection with the same incident, Nalbari PS Case No.233/99 u/s 302 IPC was registered. It is also stated that after the death of Sultan Talukdar, an amount of Rs.1,00,000/- was granted by the Government of Assam to the father of Sultan Talukdar as ex-gratia as per letter No.RR.37/2003/28 dated 27.09.2004.

4. The petitioner Sri Deraj Talukdar claims to have passed the Class-VIII examination and being the brother of the deceased Sultan Talukdar had made an application for appointment as a Grade-IV on 24.06.2002 under the Rules of 1992. It is also stated that no other family member of the deceased Sultan Talukdar had been appointed by the respondents in a Government job under the Rule of 1992. The petitioner relies upon a communication dated 19.05.2017 from the District Elementary Education Officer, Nalbari which refers to a minutes of the DLC of Nalbari district for appointment under the Rules of 1992 in respect of the petitioner Deraj Talukdar.

5. Although the minutes of the DLC of Nalbari district is not made available in the writ petition, the petitioner by relying upon the communication dated 19.05.2017 seeks for a writ in the nature of mandamus directing the respondent authorities to issue an order of appointment to the petitioner under the Rules of 1992.

6. We have to take note of that the Rules of 1992 was subsequently repealed and withdrawn by the notification dated 22.06.2004 of the Commissioner and Secretary to the Government of Assam in the Personnel (B) Department. The notification dated 22.06.2004 provides that notwithstanding such repeal, anything done, any order made or action taken under the repealed Rules

shall be deemed to have been validly done, made or taken. Upon the repeal of the Rules of 1992, an issue had arisen as to what would be the status of such applications made under the Rules of 1992 for an appointment in a Government job that was made prior to 22.06.2004 when the Rules were repealed. It is stated that the said issue was decided by the Division Bench of this Court by the judgment dated 09.06.2010 in WP(C) No.3355/2007, which is reported in (2010) 3 GLT 443. The Division Bench held that as there existed a right to make an application under the Rules of 1992 prior to the said Rules being repealed, the right to consider such applications also survived and such applications cannot be rejected merely because the Rules of 1992 stood repealed by the notification dated 22.06.2004.

7. In the circumstance, the petitioner also claims that as his application for appointment was dated 24.06.2002 i.e. prior to 22.06.2004 when the Rules of 1992 was repealed, a right to be considered for an appointment survives.

8. In the aforesaid circumstance, an Office Memorandum dated 29.07.2013 was issued under the signature of the Principal Secretary to the Government of Assam in the Personnel (B) Department in which a reference was made to a list of 57 such applicants, who had submitted their respective applications for appointment prior to the cutoff date of 22.06.2004. Accordingly, in the Office Memorandum, it was provided that upon proper verification of the genuineness of the enlisted persons, the persons enlisted in the list of 57 would be provided with appointment.

9. Clause IV(iii) of the Office Memorandum dated 29.07.2013 also provided that in case of any further application over and above 57 applications are subsequently detected in a district, the concerned Deputy Commissioner will carefully examine the authenticity of such applications and on being satisfied place the same before the District Level Committee for taking similar action for appointment as was done in respect of the other 57 applicants.

10. Mr. UK Das, learned counsel for the petitioner also places reliance on clause IV(iii) of the Office Memorandum dated 29.07.2013 to raise the contention that as the petitioner had submitted his application prior to 22.06.2004, therefore he would belong to the category of applicants, whose applications may have been detected subsequently over and above the other 57 applications and therefore it needs a consideration. Accordingly, it is

the submission that in consideration thereof, the DLC, Nalbari district had included the claim of the petitioner in its minutes dated 22.03.2017 and

accordingly the petitioner is entitled to a direction to be appointed.

11. Mr. P Nayak, learned counsel for the Finance Department on the other hand has produced the original file related to the claim of the petitioner for

appointment under the Rules of 1992. Mr. Nayak, learned counsel brings it to the notice of the Court that firstly the petitioner had submitted an

application for appointment on 30.09.2013, the copy whereof is available at page 23 of the concerned file. By referring to the said application, it is the

submission of Mr. Nayak, learned counsel that there is a possibility that the petitioner may have submitted the application subsequent to 20.06.2004

and therefore, he is not entitled to the benefit under the Office Memorandum dated 29.07.2013 as well as the decision of the Division Bench in the

judgment dated 09.06.2010 in WP(C) No.3355/2007. Mr. Nayak, learned counsel also refers to another application from the petitioner in the

prescribed format of application for appointment under the Rules of 1992, which is available at page 24 of the same file. Mr. Nayak, learned counsel

points out that although the application is said to be dated 24.06.2002, but in clause 13 thereof, the petitioner writes his age to be 31 years as on the

first January, 2010. Accordingly, Mr. Nayak, learned counsel raises an apprehension that if the petitioner had made his application on 24.06.2002,

what was the necessity to state his age in the application to be 31 years as on first of January, 2010, which was definitely a future date for an

application which is claimed to have been filed on 24.06.2002.

12. Mr. Nayak, learned counsel thereafter refers to a note put up by the Finance Department in the note-sheet at page 23 dated 16.12.2020. The

purport of the notes of the Finance Department dated 16.12.2020 is related to the communication dated 22.06.2004 from the Commissioner and

Secretary to the Government of Assam in the Personnel (B) Department addressed to all Deputy Commissioners, which provided that after the repeal

of the Rules of 1992, the authorities may be given the particulars of the families affected by extremist violence for the purpose of any recruitment to a

Government/Semi-Government job and further preference to such persons may also be given in respect of selection of benefits under the prevailing

employment guaranteed schemes of the various departments and other welfare

and relief scheme of the Social Welfare Department etc.

13. We are not considering the relevance of the note of the Finance Department dated 16.02.2020, but for the purpose of this writ petition, we take

note of Clause IV(iii) of the Office Memorandum dated 29.07.2013, which inter-alia provides that in case of any further application being detected

subsequently, the concerned Deputy Commissioner will carefully examine the authenticity of such application and on being satisfied place the same

before the respective DLC for taking appropriate action for appointment. Clause IV(iii) of the Office Memorandum dated 29.07.2013 is extracted

below:-

â??IV(iii) In case of any further applications, over and above what has been included in the list of Annexure-I, made on or prior to 22.06.2004 if

detected subsequently, in the district, the concerned Deputy Commissioner will carefully examine the authenticity of such applications and on being

satisfied, place the same before the Committee and take similar action as at (i) and (ii) above. But in all cases the cut-off date shall be as per the APS

Rules 1992.â??

14. A reading of the provisions of clause IV(iii) of the Office Memorandum dated 29.07.2013 would go to show that if any subsequent application is

detected, which is claimed to have been submitted prior to 22.06.2004, the concerned Deputy Commissioner is required to carefully examine the

authenticity of such application.

15. In the instant case, it is not known as to on what basis the application of the petitioner was placed before the DLC of Nalbari district resulting in

the minutes of the DLC dated 22.03.2017. In the absence of any such records, we are unable to arrive at any conclusion as to whether the Deputy

Commissioner, Nabari had made a careful examination of the authenticity of the application of the petitioner as required under clause IV(iii) of the

Office Memorandum dated 29.07.2013.

16. The requirement of making a careful examination of the authenticity of the application assumes a further relevance from the aspect that it is the

specific statement of Mr. P. Nayak, learned counsel for the Finance Department that firstly the application of the petitioner in the appropriate format

dated 24.06.2002 which is available in page 24 of the file concerned is itself doubtful inasmuch as the petitioner had stated his age to be 31 years as on

01.01.2010 in a situation where the application was filed on 24.06.2002. The existence in the record of the other application of the petitioner dated

13.09.2013 which is available at page 23 of the said file also leads to an element of doubt as regards the authenticity of the application made by the

petitioner for appointment under the Rules of 1992 prior to 22.06.2004.

17. We do not express any opinion on the submission of Mr. P Nayak, learned counsel for the Finance Department, but at the same time take note of

that the submissions made by Mr. P Nayak, learned counsel requires some serious examination to be made on the authenticity and genuinenity of the

application made by the petitioner and whether it was actually submitted prior to 22.06.2004. As it is a requirement of law for the Deputy

Commissioner under clause IV(iii) of the Office Memorandum dated 29.07.2013 to make a careful examination of the authenticity of such application,

we decline the prayer of the petitioner for a direction for appointment. But at the same time, remand the matter back to the Deputy Commissioner,

Nalbari to make a careful examination of the authenticity of the application claimed to have been submitted by the petitioner which is available at page

23 and 24 of the file concerned of the Education Department which was produced by Mr. P Nayak, learned counsel. The Education Department shall

make it available before the Deputy Commissioner, Nalbari all the records that are in their custody for the careful examination of the Deputy

Commissioner, Nalbari.

18. The Deputy Commissioner, Nalbari after the careful examination as required under clause IV(iii) of the Office Memorandum dated 29.07.2013

and also by taking note of the submission of Mr. P Nayak, learned counsel for the Finance Department as regards the inconsistencies in the

applications of the petitioner available at pages 23 and 24 of the concerned file of the Education Department, shall pass a reasoned order thereon. By

requiring the Deputy Commissioner to pass a reasoned order, we do not indicate that there is any observation by this Court in this order that the

application of the petitioner is required to be accepted or rejected and it is for the Deputy Commissioner to arrive at his own independent finding on the

matter by giving reasons. The outcome of the exercise of the Deputy Commissioner be informed to the petitioner.

19. The Education Department to make available the file concerned before the

Deputy Commissioner, Nalbari within a period of 15(fifteen) days from today and the Deputy Commissioner, thereafter shall pass a reasoned order within a period of three months thereafter.

20. Writ petition stands disposed of in the above terms.