
(2009) 04 GAU CK 0038
In the Gauhati High Court

Mina Kumari Oza Das

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 21-04-2009

Acts Referred:

Citation : (2009) 04 GAU CK 0038

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Amitava Roy, J.—Being aggrieved by the rejection of her candidature for compassionate appointment by the State Level Committee in its meeting held on 1/12/2007, the petitioner seeks redress by invoking the extra ordinary jurisdiction of this Court.

2. I have heard Mr. M. Bhagabati, learned Counsel for the petitioner, Mr. U. K. Goswami, learned Standing Counsel, Education Department and Mr. H.G. Baruah, learned Counsel for the respondent No. 4 and 5.

3. To appropriately understand the rival submissions it is indispensable to notice in brief the pleaded versions of the parties.

4. The petitioner having lost her husband Late Paramananda Das who died in harness on 4/9/2002 as a Grade IV employee of the Hajo Girls H.S. School in the District of Kamrup applied for compassionate appointment against an identical post on 27/11/2002. As her petition lay unattended, being exasperated, she approached this Court with WP(C) 1670/2005 which was disposed of on 4/3/2005 by directing the respondent authorities to consider her representation for compassionate appointment within a period of three months. It was thereafter following some official exchanges including the one No. ELC/WP(C) 1670/2005/155/24 dated 17/3/2005 of the Officer on Special Duty, Education Department, Government of Assam that her claim along with those of other similarly situated candidates was placed before the District Level Committee,

Kamrup (for short hereafter referred to as the DLC) for scrutiny and an appropriate decision. The DLC in its meeting held on 2/6/2007 having regard to the number of vacancies to be two ear marked four candidates in order of preference, the petitioner, respondent No. 4 and the respondent No. 5 being placed at Sl. No. 2, 3 and 4 respectively. The petitioner thus in order of preference cited by the DLC was placed above the respondent No. 4 and 5 in terms of the guidelines laid down by this Court in Achyut Ranjan Das and Others Vs. State of Assam and Others, .

5. The recommendations of the DLC were duly placed before the State Level Committee (for short hereafter referred to as the SLC) which in its meeting dated 1/12/2007 rejected the candidature of the petitioner on the sole ground that on the date of the consideration of her case by the DLC, it had remained pending for over two years. Being aggrieved, the petitioner is before this Court.

6. The Director of Secondary Education, Assam, in its affidavit while affirming the recommendation of the petitioner by the DLC and reversal thereof by the SLC on the ground that her request for compassionate appointment had remained pending for two years has however endeavoured to contend that her case having been espoused on 17/3/2005, she in terms of the office memorandum dated 28/10/2003 embodying the scheme for compassionate appointment even otherwise had forfeited her claim therefor. In other words, the answering respondent has sought to plead that the petitioner having registered her prayer for compassionate appointment for a Grade IV post in the year 2005, the demise of her husband on 2/9/2002 notwithstanding, her claim was even otherwise untenable in law. The answering respondent has averred that though in terms of the decision of the SLC a list of selected candidates had been drawn up, in view of the interim restraint imposed by this Court vide order dated 24/7/2008, no appointment to the Grade IV cadre has yet been made.

7. The respondent No. 4 and 5 while generally endorsing the stand of the State respondents as above have questioned the maintainability of the writ petition on the ground of non-joinder of the Inspector of Schools, Kamrup District Circle, Kamrup, and the SLC. According to them, their applications filed on 19/5/2006 and 18/9/2006 for compassionate appointment are valid in all respects and construed in the letter and spirit of the guidelines laid down by this Court in Achyut Ranjan Das, supra, the rejection of the case of the petitioner, and the recommendation of their case for appointment is unassailable in law.

8. The learned Counsel for the parties have reiterated the pleaded versions as set out herein above.

9. Though the petitioner has not in categorical terms mentioned about the date of her application for compassionate appointment in her pleadings, it is a matter of record that she had approached this Court with WP(C) 1670/2005 being aggrieved by the inaction of the State respondents in attending to her request therefor. That the above writ proceeding was disposed of on 4/3/2005

demonstrates unmistakably that the plea of the state respondents that she had applied for compassionate appointment on 17/3/2005 is untenable. As a matter of fact, the letter dated 17/3/2005 issued by the Officer on Special Duty, Education Department, Government of Assam and addressed to the Director of Secondary Education Assam, refer to WP(C) 1670/2005 exhorts the latter to submit a formal proposal in proper format before the Government at the earliest. This official communication, in any view of the matter, cannot be construed to be an application for compassionate appointment and at best has to be taken as a follow up step in compliance of the order passed by this Court in WP(C) 1670/2005. That the petitioner had not applied for compassionate appointment for the first time on 17/3/2005 is also obvious from the minutes of the meeting dated 1/12/2007 of the SLC which records that she had done so on 27/11/2002 and that her prayer was rejected on the ground that the same had remained pending for about two years on the date of the meeting of the DLC as mandated in Achyut Ranjan Das, *supra*.

10. Noticeably the pleadings of the respondents do not suggest that the petitioner's prayer for compassionate appointment had remained pending for over two years on the date of the meeting of the DLC for want of vacancies. It is not their case either that adequate vacancies on the date of the meeting of the DLC did not exist to accommodate the petitioner on being recommended on a comparative assessment of the suitability of the eligible candidates. The State respondents have not asserted that the respondents 4 and 5 on an appraisal of the candidates had been rated above the petitioner.

11. This Court being confronted with a similar debate had in its order dated 2/9/2008 passed in WP(C) 2447/2008 *Shri Ajit Pator and Ors. v. the State of Assam and Ors.* had observed thus:

Reading the aforesaid two directions issued by the Court, it clearly appears that as a one-time measure all pending cases were required to be considered in accordance with the other specific directions contained in paragraph 7 of the judgment. Once consideration of a case as a one-time measure is over, such applications that may remain pending are not required to be considered, if a period of more than two years had elapsed.

12. It is more than apparent from hereinabove that as a one time measure all pending cases for compassionate appointment are required to be considered in accordance with the directions contained in paragraph 7 of the judgment and that thereafter such applications that may be pending, are not required to be considered, if meanwhile a period of two years had elapsed. Tested on the above touch stone, the decision of the SLC on the face of it is untenable in law and has to be interfered with.

13. The plea of non-joinder of the Inspector of Schools and the SLC also does not appeal to this Court as the adjudication of issues raised is feasible on the basis of the records available. The contention of "first applied and first appointed" sought

to be pressed into service on behalf of the respondents 4 and 5, in view of the above determination, does not advance their case as well. If the petitioner's claim for compassionate appointment, on a true interpretation of the judgment rendered by this Court in Achyut Ranjan Das, supra, survives on the date of the meeting of the DLC, the applications of the respondents 4 and 5 being admittedly subsequent in point of time, this norm adopted by the SLC even if invocable cannot supercede her (petitioner's) candidature in absence of any plea that these respondents, on a comparative assessment by the SLC, had been adjudged to be superior to her.

14. On a totality of the considerations enumerated hereinabove, the decision of the SLC vis-à-vis the petitioner rejecting her claim for compassionate appointment is set aside. Consequently the cases of the parties involved in the instant proceeding would stand remitted to the SLC for a fresh consideration in the background of this adjudication and strictly with the guidelines laid down by this Court in Achyut Ranjan Das. As the matter pertains to compassionate appointment and some delay in the meantime has crept in, the State respondents would ensure that their cases are placed before the SLC in its next meeting. The petition stands allowed in the above terms. No costs.