

(2019) 07 GAU CK 0040

In the Gauhati High Court

Case No : Writ Petition (C) No. 5237 Of 2015

Momin Uddin Ahmed

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 22-07-2019

Acts Referred:

Assam Services (Pension) Rules, 1969 — Rule 82
Constitution Of India, 1950 — Article 14, 16, 16(2), 226

Citation : (2019) 07 GAU CK 0040

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : R. Islam, A. Hussain, G. Pegu

Final Decision : Dismissed

Judgement

1) Heard Mr. R. Islam, the learned advocate for the petitioner. Also heard Mr. G. Pegu, learned Govt. Advocate for the respondent No.1. None appears on call for the respondents No.2 to 5.

2) In view of the nature of challenge made in this writ petition, this writ petition has been heard in the admission stage by issuing rule returnable forthwith.

3) By this writ petition under Article 226 of the Constitution of India, the petitioner has challenged the impugned order dated 26.05.2015, passed by the Registrar (Administration) - Cum- In-charge, Centralised Recruitment Cell, Gauhati High Court (respondent No.3), thereby rejecting the candidature of the petitioner for appointment as Grade-IV (peon) on compassionate ground in the establishment of District & Sessions Court, Dhubri.

4) The case as canvassed by the learned counsel for the petitioner is that the father of the petitioner was working as Process Server in the Office of the Court of the learned District & Sessions Judge, Dhubri. While in service, the father of the petitioner had taken voluntary retirement on medical grounds w.e.f. 30.04.2014. As no other person is holding any public employment, on

12.08.2013, the father of the petitioner had applied for the petitioner's appointment on compassionate ground. It is submitted that the petitioner was Higher Secondary pass and was holding a Diploma in Computer Application and, as such, he was having the requisite qualification for being appointed as Grade-IV (peon). Thereafter, the learned District & Sessions Judge, Dhubri, upon considering the testimonials of the petitioner and after conducting interview of the petitioner, had forwarded the application of the petitioner to the Registrar General of this Court vide forwarding letter dated 15.04.2014. In this regard, it is submitted that the Registry of this Court was sitting over the application of the petitioner for a long time and in the meanwhile, the Selection Board recommended the name two others, including one Anisur Rahman and the respondent No.5 for being appointed on compassionate ground on the death of his father, who was working as Office Peon in the Office of the Court of the learned Munsiff, Bilasipara. It is submitted that thereafter, the respondent No.3 had written to the learned District & Sessions Judge, Dhubri to inform whether the applications were considered in light of the decision dated 17.02.2014, rendered by this Court in the case of W.P.(C) 1978/13 [Babita Nath Vs. State of Assam & Ors., (2016) 5 GLR 9: (2016) 3 GLJ 48: (2016) 2 GLT 1178] by adhering to the criteria laid down vide Office Memorandum dated 02.03.2009 issued in connection with W.P.(C) No. 3875/2005 [Achyut Ranjan Das Vs. State of Assam & Ors., 2006 (4) GLT 674]. It is submitted that although the learned District & Sessions Judge, Dhubri had informed by letter dated 01.04.2015 that the said criteria had been followed, by the impugned letter dated 26.05.2015, the respondent No.3 had rejected the candidature of the petitioner and one Anisur Rahman on the ground that their respective father had taken voluntary retirement from service on medical grounds with full pensionary benefit. Accordingly, the learned counsel for the petitioner has assailed the said impugned letter on the ground that the said order was in violation of the guidelines (Annexure-4 to the writ petition).

5) The learned Govt. Advocate has submitted that the guidelines referred to by the petitioner was not relating to the Govt. of Assam.

6) It is seen that in the State of Assam, the revised guidelines for appointment on compassionate ground of a son, daughter of a government servant is covered by Office Memorandum No. ABP.357/80/Vol-I/303 dated 02.03.2009, which was issued by the Personnel (B) Department, Govt. of Assam pursuant to the directions contained in the case of Achyut Ranjan Das (supra).

7) In paragraph 9 of the said OM dated 02.03.2009, it is provided as under:-

"The benefit of compassionate appointment may be extended to a son, daughter or any other near relative of a Government servant retired on medical grounds under the provisions of Rule 82 of the Assam Services (Pension) Rules, 1969 if the appointing authority is satisfied that the family member is in indigent circumstances and in immediate need of assistance."

8) It is seen that there is no material on record to show that at whose instance the father of the petitioner was retired, i.e. whether the father of the petitioner had himself prayed for his voluntary retirement on medical grounds or if the authorities had initiated the process. It is also not known how much service period was left when the father of the petitioner went on voluntary retirement. It is also not disclosed in the writ petition, whether the father of the petitioner had availed full pension and other retirement benefits. Therefore, if the authorities are arbitrarily and blindly allowed to follow Rule 82 of the Assam Services (Pension) Rules, 1969 without applying their mind on the poser indicated hereinbefore, it would create right to appointment by descent, which would be violative of Article 16(2) of the Constitution of India, which provides that "No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State."

9) In this regard, it is further seen that the Division Bench of this Court in the case of *Afruja Sakia Yasmin Ahmed Vs. District & Sessions Judge, Golaghat & Ors.*, 2008 (4) GLT 140, by referring to the decision rendered in the case of (i) *Auditor General of India & Ors. Vs. G. Ananta Rajeswara Rao*, (1994) 1 SCC 192; (ii) *Director of Education (Secretary) Vs. Pushpendra Kumar*, (1998) 5 SCC 192; and (iii) *Govt. of A.P. Vs. D. Gopaiah*, (2001) 6 ALT 553 (FB), it was held that compassionate appointment on the ground of medical invalidation does not satisfy the requirements of Article 14 and 16 of the Constitution of India, further holding that any policy decision taken by the State in this regard was unconstitutional. Accordingly, the Court has no hesitation to hold that in the present case in hand, no case has been made out for providing the petitioner with compassionate appointment by following Rule 82 of the Assam Services (Pension) Rules, 1969 in terms of paragraph 9 of the Office Memorandum No. ABP.357/80/Vol-I/303 dated 02.03.2009.

10) It is further seen that there is no material available on record to show that the guidelines that is annexed as Annexure-4 to the writ petition is in force in the State.

11) Therefore, this writ petition fails and the same is dismissed. No interference is called for in respect of the impugned order dated 26.05.2015. The rule is discharged in terms of this order.

12) No cost.