

(2018) 01 GAU CK 0062
In the Gauhati High Court
Case No : 4210 of 2017

PALLAB CHAKRABORTY

APPELLANT

Vs

THE STATE OF ASSAM and ORS.

RESPONDENT

Date of Decision : 24-01-2018

Acts Referred:

[Constitution of India](#), [Article 309](#) -
Recruitment and conditions of service of persons serving the Union or a State

Citation : (2018) 01 GAU CK 0062

Hon'ble Judges : Nelson Sailo

Bench : Single Bench

Advocate : IH Saikia, MR Adhikari

Final Decision : Disposed

Judgement

1. Heard Mr. IH Saikia, the learned counsel for the petitioner and Mr. MR Adhikari, the learned Government Advocate for all the respondents.

2. The case of the writ petitioner in brief is that his father who was working as an Accountant in the establishment of North Karimganj Block

Development Office died in harness on 28.05.2013. The petitioner in terms of the relevant compassionate appointment scheme formulated by the

State Government submitted his application for appointment on compassionate basis before the respondent authority concerned on 24.6.2013 i.e.

the respondent No.3. The respondent No. 3 thereafter forwarded the application to the Deputy Commissioner, Karimganj district who is also the

Chairman of the District Level Committee (DLC) for considering the case of the petitioner. Subsequently, the DLC held its meeting on 21.02.2014

and upon considering the application of the petitioner, recommended him for appointment to the post of Lower Division Assistant. Be it stated

herein that at the time when the petitioner applied for the post of Lower Division Assistant, he had the educational qualification of Higher

Secondary School Leaving Certificate.

3. The case of the petitioner upon being recommended by the DLC was then forwarded to the State Level Committee (SLC) by the Additional

Deputy Commissioner of Karimganj district vide his letter dated 10.03.2014. However, when the SLC finally held its meeting on 31.10.2015, the

case of the petitioner was rejected on account of being not qualified for the post of Lower Division Assistant which is Grade-III post.

4. Mr. IH Saikia, the learned counsel appearing for the petitioner submits that the father of the petitioner died in harness on 28.05.2013

whereafter, the petitioner submitted his application for compassionate appointment on 24.06.2013 for the post of Lower Division Assistant. He

submits that as per the relevant rules i.e The Assam Ministerial District Establishment Service Rules, 1967, more particularly, Rule-7 provides the

educational qualification of Higher Secondary Examination pass for being eligible to be appointed as LD Assistant. The petitioner therefore was

clearly eligible to be considered for appointment in terms of the aforesaid Rules. Mr. IH Saikia further submits that although the Rules have been

amended with the coming into force of Assam Ministerial Rules (Amendment Rules) 2015 w.e.f 16.10.2015 amending Rule 7 of the principal

Rules by providing educational qualification of Graduate for appointment to the post of LD Assistant, the same cannot be applied to the case of the

petitioner as he was qualified when he submitted his application. He submits that the petitioner submitted his application on 24.06.2013 and

therefore, if the SLC had met soon after the recommendation was made by the DLC, the question of the petitioner being not qualified would not

have arisen. At any rate, he submits that since the petitioner is not responsible for such delay, the SLC could not have rejected the case of the

petitioner on this ground. He thus submits that the respondent authorities, more particularly, the SLC should be directed by this Court to reconsider

the case of the petitioner. Mr. IH Saikia also submits that the petitioner in the meantime has obtained her graduation in Commerce sometime in the

middle of the year 2015. He submits that this fact was brought to the notice of the respondent No.3 for conveying the same to the authorities

concerned who would be responsible to consider the case of the petitioner. Similarly, a recommendation was also made by the local MLA

informing the respondent No.1 that the petitioner had acquired B.Com Degree. However, despite such information given to the respondent

authorities, the SLC found the petitioner to be under qualified for the post of LD Assistant. Mr. IH Saikia submits that application of the amended

Rules which came into force w.e.f. 16.10.2015 to the case of the petitioner is not correct since he was qualified on the date of submitting his

application and therefore, the SLC be directed to consider the case of the petitioner.

5. Mr. MR Adhikari, the learned Government Advocate submits that there is nothing wrong with the rejection of the petitioner's application on

account of being under qualified by the SLC. He submits that in fact as per the Notification dated 15.11.2011 issued by the Panchayat and Rural

Development (B) Department on 15.11.2011, the qualification of Graduate in any stream has been fixed in order to be appointed as Junior

Assistant/ LD Assistant under the establishment of the issuing authority. The petitioner on the other hand pursuant to the death of his father in

harness on 28.05.2013 submitted his application on 24.06.2013 and therefore, the petitioner was clearly under qualified at the time of submitting

his application. In that view of the matter, he submits that there is no merit in the writ petition and the same should be dismissed.

6. I have considered the submission advanced by the learned counsel for the rival parties and I have perused the materials available on record. As

can be seen, the facts broadly are not in dispute but however what is to be seen is as to whether the application of the petitioner can be rejected in

the manner it has been done. Petitioner submitted his application on 24.06.2013 whereafter the DLC recommended his case for compassionate

appointment on 21.02.2014. It was only on 30.10.2015 that the SLC conducted its meeting to consider the case of the petitioner. In the

meantime, the amendment of the relevant Rules had come into force w.e.f. 16.10.2015. With regard to the qualification of graduate prescribed for

the post of Junior Assistant / LD Assistant by Notification dated 15.11.2011, it may be seen that Rule 7 of the Assam Ministerial District

Establishment Service Rules, 1967 prescribed the educational qualification of HSSL pass . The said Rules have been framed in exercise of the

powers conferred by the proviso to Article 309 of the Constitution of India. Therefore, the Notification dated 15.11.2011 cannot override the

statutory provisions unless the Rules are amended by due process. No doubt the same was done by amendment of the Rules w.e.f. 16.10.2015

which is only after the petitioner submitting his application on 24.06.2013 and the DLC recommending him on 21.02.2014. Therefore, applying the

amendment to the case of the petitioners would not be proper. Moreover, this Court in the case of Achyut Ranjan Das -vs- State of Assam

reported in 2006 4 GLT 674 while considering the case of compassionate appointment had clearly laid down the guidelines to be followed, more

particularly at paragraph-7 (iv) and 7 (viii) wherein it is provided that the DLC should meet once in every two months and likewise SLC also

should have its meeting once in three months respectively. Therefore, considering the said decision of this Court, there is admittedly delay in

considering the case of the petitioner by the SLC. It may also be noticed that this is not a case of appointment on regular basis but a case of

compassionate appointment wherein the State in its own wisdom had thought it proper to give to the next kith and kin of the Government employee

who died in harness some relief through employment. Therefore, taking an overall view of the matter, I find substance in the writ petition and

consequently, the writ petition is disposed of with a direction to the respondent authorities, more particularly, the respondent No.5 to consider the

case of the petitioner afresh in the next SLC meeting. It is also hereby provided that since the petitioner in the meantime has obtained Graduation in

Commerce, the petitioner will be at liberty to submit his testimonials before the respondent No.1. The respondent No.1, thereafter shall place the

same before respondent No.5 within a period of 15 days from the date of receipt of such testimonials and a certified copy of this order. It is also

expected that SLC will conduct its meeting at regular intervals as was directed in the case of Achyut Ranjan Das (supra). It is needless to state

herein that impugned SLC meeting minutes dated 31.10.2015 so far as it relates to the case of the petitioner is also hereby set aside.

7. With the above observation and direction, the writ petition stands disposed of.