
(2021) 12 GAU CK 0017
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 897 Of 2021

Shah Jahangir Alom

APPELLANT

Vs

State Of Assam And 5 Ors

RESPONDENT

Date of Decision : 07-12-2021

Acts Referred:

Citation : (2021) 12 GAU CK 0017

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Heard Mr. PK Deka, learned counsel for the petitioner, Ms. MB Bora, learned counsel for the respondents No. 5 and 6 being the Deputy Commissioner, Nagaon and the Chief Secretary of the State of Assam as well as Mr. A Roy, learned counsel for the respondents No. 1, 2, 3 and 4 being the authorities in the Panchayat and Rural Development Department, Government of Assam.

2. The father of the petitioner Akbar Ali, who was working as a Gram Sevak in the office of the Block Development Officer in the Lawkhowa Development Block, died in harness on 09.02.2004 and on his death, the petitioner submitted an application for compassionate appointment on 20.02.2004. It is stated that the application of the petitioner was forwarded to the Secretary to the Government of Assam in the Panchayat and Rural Development Department on 29.07.2006. The DLC of Nagaon district in its meeting of 15.05.2017 had recommended the petitioner for appointment to a Grade-III post. When the said recommendation was placed before the SLC, the SLC in its meeting of 15.02.2019 rejected the recommendation made in favour of the petitioner by the DLC on the ground that the application was made after a period of one year from the date of death.

3. We have taken note that when the application of the petitioner was not given its consideration, WP(C) No. 6080/2016 was instituted and by the order dated 04.04.2017, there was a direction that the said application be placed before the

concerned DLC. When the application of the petitioner was required to be placed before the DLC pursuant to a direction of this Court, we are of the view that no further discretion is available either on the DLC or on the SLC to now take a stand that the application is not to be given its consideration because of any late submission since the date of the death.

4. The said stand of rejecting the application on the ground of there being a delayed submission of the application would be hit by the principle of constructive res-judicata inasmuch as, the said stand ought to have been taken in the earlier writ petition being WP(C) No. 6080/2016 and it having not been taken, the said stand can further be no longer raised. Also the period of one year of submission of application for compassionate appointment had already been held by this Court to be a discretionary requirement and not a mandatory requirement that it cannot be construed to be a limitation being imposed by the law.

5. For both the reasons, the rejection of the recommendation made by the DLC in favour of the petitioner by the SLC stands interfered and the matter is remanded back to the SLC for a fresh consideration to the recommendation of the DLC of Nagaon dated 15.05.2017 made in favour of the petitioner and pass a reasoned order thereon. The matter be placed before the next available SLC.

The writ petition is allowed to the extent indicated above.