
(2018) 07 GAU CK 0040
In the Gauhati High Court
Case No : Civil Writ Petitionl No.3485 Of 2016

Smti. Jusmita Borah

APPELLANT

Vs

State Of Assam And 3 Ors

RESPONDENT

Date of Decision : 16-07-2018

Acts Referred:

Constitution of India 1950 — Article 14, 15, 16(1)

Citation : (2018) 07 GAU CK 0040

Hon'ble Judges : NELSON SAILO, J

Bench : Single Bench

Advocate : C Goswami, A Das, SK Medhi

Final Decision : Disposed Off

Judgement

1. Mr. C Goswami, the learned counsel for the petitioner and Mr. A Das who appears on behalf of Mr. SK Medhi, learned Senior counsel, Gauhati

High Court.

2.Â Briefly, the case of the writ petitioner is that her father who was working as Sheristadar under the establishment of the District and Sessions

Judge, Jorhat died in harness on 17.01.2011. Thereafter, the brother of the present writ petitioner who is the son of late employee concerned submitted

an application for compassionate appointment before the respondent No.4, which was followed by another application submitted on 07.06.2011 by the

petitionerâ??s mother wherein it was indicated that since her son wanted to pursue further studies, petitioner may be considered for compassionate

appointment instead.

3.Â The case of the writ petitioner was placed before the District Level Committee (DLC) on 20.01.2012 and the petitioner was recommended for

appointment on compassionate ground. Thereafter, the Joint Legal Remembrancer and Joint Secretary to the Government of Assam, Judicial

Department vide communication dated 14.03.2013 sought for certain details with regard to the recommendation of the petitioner. Thereafter, the

respondent No.4 informed the Joint Legal Remembrancer and the Joint Secretary to the Government of Assam, Judicial Department vide

communication dated 03.04.2013 that the recruitment to the post of LD Assistant (Grade-III post) under the establishment of the respondent No.4

was to be centrally done by the Gauhati High Court and therefore, the petitioner may apply for the post as and when advertisement is published by the

Gauhati High Court.

4.Â The petitioner being aggrieved filed a writ petition which was registered and numbered as WP (C) No. 1041 of 2014. The writ petition was taken

up for final disposal on 26.06.2014 wherein, it was affirmed that the question of appointment on compassionate basis for employees working under the

judiciary should be taken up by the High Court only. Therefore, the petitioner was directed to submit an application before the respondent No. 4 once

again seeking her appointment on compassionate ground with all necessary information and details and to which, the respondent No. 4 was directed to

take necessary action within a time frame.

5.Â While the petitioner was expecting consideration of her appointment on compassionate basis, the impugned communication dated 22.06.2015 was

made to her whereby, she was informed that her prayer for appointment on compassionate ground could not be accepted on account of she being a

married daughter of late Surendra Nath Borah. Aggrieved with the communication, the petitioner is again before this Court through the instant writ petition.

6. Â Mr. C Goswami, the learned counsel appearing for the petitioner submits that the case of the petitioner for compassionate appointment could not

have been rejected on the ground of the petitioner being a married daughter of the deceased employee. He submits that in fact as per the Office

Memorandum issued by the High Court on 03.01.2017, a married daughter of an employee is very much included amongst the dependant family

members and therefore, on this ground, the case of the petitioner could not have been rejected. The learned counsel by referring to paragraph No-15

of the writ petition submits that although the petitioner is married but the fact is that her husband is unemployed and the petitioner therefore she is

looking after her mother and residing with her. The learned counsel further places his reliance upon the decision rendered by a coordinate Bench of

this Court in the case of Nandini Kalita vs- State of Assam & Ors reported in 2016 (1) GLT 560. The learned counsel thus submits that the

communication dated 22.06.2015 be interfered with by this Court and that the case of the petitioner be placed again before the respondent No. 4 for

fresh consideration. In fact, this Court vide interim order dated 10.06.2016 had directed that one Grade-III post in the establishment of the respondent

No. 4 be kept vacant until further orders. Therefore, he submits that there would be no difficulty to consider the case of the petitioner.

7.Â Appearing for the respondent No.4, Mr. A Das the learned counsel by referring to the affidavit in opposition filed by the respondent No.4 submits

that the Department of Personnel, Government of Assam on 02.03.2009 had issued an Office Memorandum with revised guidelines for making

appointment on compassionate basis. The said guidelines does not provide for a married daughter to be considered for compassionate appointment. It

is only in the case of unmarried daughters of Government servants who are eligible to be considered for appointment on compassionate basis.

Therefore, the Notification dated 03.01.2017 relied upon by the learned counsel for the writ petitioner will have no application to the case of the

petitioner since the same is only with prospective effect.

8.Â I have considered the submissions made by the learned counsel for the rival parties and I have perused the materials available on record including

the Office Memorandum dated 02.03.2009, Notification dated 03.01.2017 issued by the High Court and the Judgment and Order rendered by a co-

ordinate Bench of this Court in the case of Nandini Kalita (supra). From the submissions made by the learned counsel for the parties what can be

seen is that the only impediment for not appointing the writ petitioner on compassionate basis is due to the fact that she is a married daughter of the

employee concerned. Therefore, the moot question is as to whether a married daughter has the right to be considered for appointment on

compassionate basis. The Notification dated 02.03.2009 which excluded married daughter from being considered has been subsequently modified by

Notification dated 01.06.2015 as has been dealt with in the case of Nandini Kalita (supra). Furthermore, the Notification dated 03.01.2017 issued by

this Court has also taken care of the interest of married daughters in so far as appointment on compassionate basis is concerned. The issue with

regard the right of a married daughter to be considered for compassionate appointment has already been dealt with by a Co-ordinate Bench of this

Court in the case of Nandini Kalita (supra) wherein the rights available to citizens under Article 14, 15 and 16 (1) of the Constitution of India has been

reiterated irrespective of which sex the person belongs to. Moreover, it was opined that the State and its instrumentalities themselves are aware of

equal rights and it was felt that the Office Memorandum dated 02.03.2009 should be suitably modified and accordingly, the Office Memorandum dated

01.06.2015 included a married daughter for compassionate appointment. A similar step in this regard is also noticed in the present case as can be seen

from the Notification dated 03.01.2017. Having regard to the case as referred to above, I am only in respectful agreement with the decision

rendered by the co-ordinate Bench. Therefore, considering the case in its entirety, I find that the case of the writ petitioner for her appointment on

compassionate basis could not have been rejected by the respondent authorities concerned. Accordingly, the impugned communication dated

22.06.2015 stand interfered with.

9.Â In the result, the case of the petitioner shall be considered afresh by the respondent No.4 in terms of the observation made herein above within a

time frame of 6(six) weeks from the date of receipt of a certified copy of this order. It is needless to observe herein that while considering the case of

the writ petitioner, the respondent authority concerned will be at liberty to make necessary verification about the petitioner fulfilling the eligibility

criteria for the post of LD Assistant/ Grade-III post and proceed accordingly.

10.Â With the above observations and directions, the writ petition stands disposed of.