
(2022) 09 GAU CK 0047

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 9564 Of 2019

Trishna Moni Ray

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 28-09-2022

Acts Referred:

Citation : (2022) 09 GAU CK 0047

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : P Saikia

Final Decision : Allowed

Judgement

1. Heard Ms. M Das, learned counsel for the petitioner. Also heard Ms. A Talukdar, learned counsel for the respondents.

2. The father of the petitioner who was working as a Havildar under the establishment of

Assam Police 8th Battalion died on 30.10.2008 along with other five police personnel due to ambush laid down by extremists at Dimadao village in the Cachar district while they were on duty. Technically, the father of the petitioner was also killed in an extremist attack and therefore, his family would be entitled to the benefits under the Assam Public Services (Appointment of Family Members of Persons Killed by Extremists/Terrorists) Rules, 1992 (in short, the Rules of 1992). Accordingly, the petitioner made an application for an appointment under the Rules of 1992. The application of the petitioner was given a consideration in the minutes of the Committee under the aforesaid Rules of 1992, chaired by the Deputy Commissioner, Bongaigaon which was held on 16.09.2016. The minutes recorded that the father of the petitioner Havildar Mukunda Chandra Ray was killed in extremist firing on 30.10.2008. The minutes of the meeting of the Committee took note of an order dated 04.05.2016 of this Court in WP(C) No. 1993/2015 which was instituted by Mahananda Kalita claiming for a similar relief.

3. This Court in its order took note of the stand of the learned Standing Counsel for the Personnel B Department of the Government of Assam that the recommendation made by the District Authority had been sent back to the Deputy Commissioner, Bongaigaon for consequential decision. The minutes of meeting held on 16.09.2016 was in furtherance of the requirement of the order dated 04.05.2016 in WP(C) No. 1993/2015, where there was a requirement of a consequential decision to be taken by the Deputy Commissioner.

4. In the minutes, in respect of the petitioner, it is provided as extracted:

"1. DLC discussed the application of Miss Trishna Moni Ray, D/O Late Hav Mukunda Chandra Ray, R/O Village, P.O. & P.S- Manikpur, District- Bongaigaon. Relevant records relating to killing of Late Hav Mukund Chandra Ray father of the applicant by the handiwork of extremist on 30/10/2008 as per the report submitted by Commandant 8th APBn, Abhayapuri was verified and found authentic. Application of Miss Trishna Moni Ray along with attached documents also verified and found to be in order.

Since, it is an establish fact that the applicant's father was killed by extremist on 30/10/2008, hence the applicant is eligible for appointment in any post of the Govt. departments/ Public sector undertakings/ Boards/ Authorities etc under "The Assam Public Services(Appointment of Family members of Person Killed by extremists/ terrorists) Rules, 1992- Repeal Thereof". After a thorough verification and in reference to relevant office OMs and in compliance with the order of Hon'ble High Court in W.P.(C) No.1993/2015 the DLC decided to recommend the application of Miss Trishna Moni Ray for appointment against the available Grade – IV vacancy in the O/O Commandant 8th APBn, Abhyapuri (Sanctioned vide No. HMA.1482/82/130 dated 7/2/1992) for the year 2016."

5. A reading of the afore-extracted portion of the minutes of the Committee dated 16.09.2016 makes it discernable that the application of the petitioner Trishna Moni Ray, daughter of Havildar Mukunda Chandra Ray, who was admittedly killed in extremist violence on 30.10.2008, while he was on official duty for the State, was found to be authentic upon the verification. It further provides that it is an establish fact that the father of the petitioner was killed by extremist on 30.08.2008 and, therefore, the applicant is eligible for appointment in any post of the Government Departments/ Public sector undertaking/ Boards/ Authorities etc. under the Rules of 1992. Accordingly, the minutes provided that the Committee had decided to recommend the petitioner Trishna Moni Ray for appointment against available Grade-IV vacancies in the office of the Commandant 8th APBn, Abhayapuri with reference to sanction no. HMA.1482/82/130 dated 07.02.1992.

6. Although there was a recommendation by the Committee under the Rules of 1992, but for the reasons unknown, the application of the petitioner was again placed before the DLC of Bongaigaon district for Compassionate Appointment in its meeting of 10.09.2019. The DLC very conveniently while considering the

application of the petitioner provided that the application was not made within one year but was made after six years two months and therefore, rejected.

7. Firstly, as already observed, as the petitioner was recommended by the appropriate Committee under the Rules of 1992, there was no requirement of the authorities to again place it before the DLC of regular compassionate appointment, which itself would be a non-application of mind. Secondly, the DLC, even if, it has the jurisdiction to entertain the matter, had acted in an arbitrary manner, inasmuch as they did not even bother to look into as to what is the claim of the petitioner and simply took a mechanical stand that the application had been made after one year of the death and therefore, rejected.

8. In the view of the Court, as already noted, that as the application of the petitioner under the Rules of 1992 had been given its due consideration and the petitioner was recommended for an appointment, there was no requirement under the law to place it before the DLC for regular compassionate appointment and therefore, all such decisions that the DLC may have taken would be without jurisdiction and accordingly, stands rejected.

9. As the petitioner had been duly recommended by the appropriate Committee under the Rules of 1992, after verification of all the aspects required to be verified, we see no reason as to why the recommendation should not be acted upon, meaning thereby to give appointment to the petitioner against the Grade-IV post in the office of the Commandant 8th APBn, Abhayapuri, as recommended. We also take note that it is not only a case where the father of the petitioner was killed in extremist violence but it was done in the circumstance when the father of the petitioner was performing his duties for the protection of the State and had to face the bullets of the extremist while performing his duties. It is rather unfortunate that the respondent authorities had totally lost sight of the aforesaid fact and had merely been moving around the matter in a mechanical manner without having any reason for doing so.

10. We are also of the view that the petitioner being the daughter of a police personnel who was killed by extremist bullets while performing his duty for the State, a legal right has accrued in favour of the petitioner to be considered for appointment under the Rules of 1992. At the same time, the father of the petitioner being a Government employee, there is also a parallel and unconnected right to be considered for appointment under the regular law for compassionate appointment. The two legal rights being parallel and unconnected with each other, the respondent authorities cannot mix up both and by doing so, ultimately rejects the legitimate claim of the petitioner.

11. The Commissioner and Secretary to the Government of Assam in the Home Department is directed to take immediate steps to ensure that the appointment letter is issued to the petitioner forthwith. The requirement be done within a period of one month from the date of receipt of certified copy of this order.

Writ petition stands allowed as indicated above.