



GAHC010006672020

Page No.# 1/5



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/243/2020

KABIR AHMED CHOUDHURY
S/O LT. SAMIR UDDIN CHOUDHURY, R/O VILL. GONIRGRAM PART. IV, P.O.
GONIRGRAM, DIST. CACHAR, ASSAM, PIN-788025

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, PUBLIC HEALTH
ENGINEERING DEPTT. DISPUR, GUWHATI-6

2:THE DEPUTY COMMISSIONER
CACHAR
ASSAM

3:THE DISTRICT LEVEL COMMITTEE
HEADED BY THE DEPUTY COMMISSIONER
CACHAR
CHAIRMAN OF THE DISTRICT LEVEL COMMITTEE
CACHAR

4:THE CHIEF ENGINEER
PHE (P)
ASSAM
HENGRABARI
GUWAHATI-36
KAMRUP (M)
ASSAM

5:THE ADDITIONAL CHIEF ENGINEER
PHE
BARAK VALLEY ZONE
SILCHAR-788001



6:THE EXECUTIVE ENGINEER
PHE SILCHAR DIVISION NO. 1
SILCHAR
CACHAR
ASSA

Advocate for the Petitioner : MR J I BARBHUIYA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 10-08-2022

JUDGMENT & ORDER (ORAL)

Heard Mr. FA Laskar, learned counsel for the petitioner, Mr. D Gogoi, learned counsel for the respondents no. 1, 4, 5 and 6 being the authorities in the PHE Department of the Government of Assam and Mr. SS Roy, learned Junior Government Advocate for the respondents No. 2 and 3 being the Deputy Commissioner, Cachar.

2. The father of the petitioner Samir Uddin Choudhury, who was working as a Khalasi in the establishment of the Executive Engineer, PHE, Silchar, died in harness on 03.03.2017 and on his death, the petitioner submitted an application for compassionate appointment on 29.05.2017. Although the application is dated 29.05.2017 i.e. after 01.04.2017, but as the death had taken place on 03.03.2017 i.e. prior to 01.04.2017, the provisions of the earlier prevailing scheme for compassionate appointment would govern the case of the petitioner and not by the new compassionate family pension scheme which became effective from 01.04.2017. Even the Hon'ble Supreme Court in State of Madhya



Pradesh and others –vs- Ashish Awasthi, reported in (2022) 2 SCC 157 in paragraph 5 had held that a compassionate appointment would be governed by the scheme that prevailed at the time of death.

3. In the instant case, the application of the petitioner was given a consideration by the DLC of Cachar district in its meeting of 05.08.2017, but the claim of the petitioner stood rejected by providing that there was no vacancy available for the post applied for.

4. We reiterate that an application for compassionate appointment is made against any vacant post in any department for which the person concerned may be qualified for even though the applicant may refer to a post in his application. From such point of view, it was incumbent upon the DLC to consider the petitioner against any vacant post in any department to which he was entitled without restricting it to the post which may have been referred in his application.

5. From such of point of view, we find an infirmity in the rejection by the DLC of the application of the petitioner.

6. Paragraph 15 of the Office Memorandum dated 01.06.2015 inter-alia provides that if sufficient vacancies are not available in any particular office to accommodate the persons in the waiting list for compassionate appointment, it will open to the administrative department/ office to take up the matter with other departments/offices of the Government to provide an early appointment on compassionate ground to those in the waiting list.

7. Although paragraph 15 of the Office Memorandum dated 01.06.2015 provides that a consideration is required to be made against any vacant post in any department to which the person may be qualified for, but paragraph 15



itself provides for a procedure that the department to which the application is made would take it up with any other department as regards availability of vacancies and if the information that would flow back from the other department would indicate that vacancies are available, after completing the said procedure, consideration may be made to an application against any vacant post in any other department.

8. Accordingly, in the instant case, it is taken note that the department to which the petitioner had applied is the department of PHE. Accordingly, the Executive Engineer, PHE Department, Silchar is directed to take up the matter on an urgent basis with all other departments to enquire as to in which department vacancies are available to accommodate a person from the PHE Department of Silchar and in doing so, it is also a requirement that the other departments would respond at the earliest. Upon obtaining such information, the Executive Engineer, PHED, Silchar is directed to again place the application of the petitioner before the DLC of Cachar district for its consideration in the next available meeting.

9. On the Executive Engineer, PHED, Silchar seeking information from the other departments, and if the other departments do not respond in the required manner, it would be construed that the other departments are not doing the needful as per the requirement of this order. The Executive Engineer, PHED, Silchar while seeking for information shall also provide a copy of this order to the other departments for doing the needful.

10. We also take note that it is a provision of the Hon'ble Supreme Court that compassionate appointments are to be given its consideration at the earliest and in no case later than six months from the date of the death.



11. The said aspect shall also be kept in mind by the DLC as well as by the Executive Engineer, PHED, Silchar and the other departments before whom information may be sought for by the Executive Engineer.

The writ petition is allowed to the extent as indicated above.

JUDGE

Comparing Assistant