



GAHC010122782022

Page No.# 1/10



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

Case No. : WP(C)/4172/2022

DIPI GOSWAMI
W/O- LATE SATYENDRA GOSWAMI, R/O- PACHANIZAR, P.O. AND P.S.
KAMPUR, DIST. NAGAON, PIN- 782426, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY, DEPARTMENT
OF REVENUE, DISPUR, GUWAHATI-6.

2:THE COMMISSIONER
CENTRAL ASSAM DIVISION
NAGAON
CAMP GUWAHATI
OFFICE OF THE COMMISSIONER OF CENTRAL ASSAM DIVISION
PANBAZAR
GUWAHATI-781001.

3:THE DEPUTY COMMISSIONER
NAGAON
PIN- 782002
ASSAM

4:HEMANTA GOSWAMI
S/O- LATE HIRANYA GOSWAMI
R/O- PACHANIZAR
P.O. AND P.S. KAMPUR
DIST. NAGAON
ASSAM
PIN- 782426

Advocate for the Petitioner : MR G RAHUL
Advocate for the Respondent : GA, ASSAM

B E F O R E**Hon'ble MR. JUSTICE SANJAY KUMAR MEDHI**

Advocate for the petitioner : Shri G. Rahul, Advocate.

Advocate for the respondents : Shri S. Dutta, SC, Revenue,
Shri S. R. Baruah, GA,
Shri B. D. Das, Sr. Advocate,**Date of hearing : 10.10.2023****Date of judgment : 12.10.2023****JUDGMENT & ORDER**

The legality and validity of an order dated 15.06.2022 by which the Commissioner, Central Assam Division, Nagaon has granted approval to the appointment of the respondent no. 4 as the Mouzadar of Kampur Mouza in the district of Nagaon is the subject matter of challenge in the present writ petition. The challenge is based on the grounds that there has been violation of the principles for appointment envisaged in the Executive Instructions under the ***Assam Land and Revenue Regulations, 1886***. Recourse to the ***Hindu Succession Act, 1956*** has also been taken in support of the said challenge.

2. Before going to the issue, it would be convenient, if the basic facts of the case are narrated in brief.

3. The husband of the petitioner, Satyendra Goswami, was the Mouzadar of the Kampur Mouza in the district of Nagaon (hereinafter called the Mouza). It may be mentioned that the father of the husband of the petitioner was also the

erstwhile Mouzadar and upon his death, the husband of the petitioner was appointed as Mouzadar in the year 1989. The respondent no. 4 is the nephew of the husband of the petitioner being his brother's son.

4. On 13.08.2021, the husband of the petitioner expired and there was an occasion to fill up the aforesaid post of Mouzadar. Both the petitioner and the respondent no. 4 had applied for the said post and vide the impugned order dated 15.06.2022, the appointment of the respondent no. 4 has been approved. Being aggrieved by the said action, the petitioner has approached this Court. This Court while issuing notice had passed an interim order staying the impugned order dated 15.06.2022.

5. I have heard Shri G. Rahul, learned counsel for the petitioner. I have also heard Shri S. Dutta, learned Standing Counsel, Revenue Department appearing for the respondent no. 1, Shri S. R. Baruah, learned counsel for the respondent nos. 2 & 3 and Shri B. D. Das, learned Senior Counsel for the respondent no. 4. The materials placed before this Court have been carefully examined.

6. Shri Rahul, the learned counsel for the petitioner by referring to the Executive Instructions framed under the ***Assam Land and Revenue Regulations, 1886*** has submitted that the impugned action is in gross violation of such Executive Instructions. He submits that Instructions No. 116 pertains to appointment of Mouzadar and under Clause (ii), it has been stated that successors would have a preference. Clause (v) is with regard to the qualification wherein it has also been stated that preference maybe given to higher qualified candidates. It is submitted that while the petitioner is a

Matriculate, the respondent no. 4 has passed the Higher Secondary Examination.

7. It is the contention of the learned counsel for the petitioner that these Regulations were of the year 1886 whereafter there has been a marked change in the concept of 'heir' after the enactment of the ***Hindu Succession Act*** in the year 1956. Under the said Act, 'heir' has been defined under Section 3 (f). By referring to Section 4, the learned counsel submits that overriding effect has been given to the provisions of this Act. Under Section 8, it is submitted that the general rules of succession has been laid down and by referring to the schedule, it is submitted that while the wife of a deceased is a Class-I heir, a nephew, i.e. son of a brother is a Class-II heir and Section 9 stipulates that Class-I heir would be preferred over Class-II heir.

8. By drawing the attention of this Court to the affidavit-in-opposition filed by the respondents, Shri Rahul has submitted that the stand of the respondents is that the concept of Class-I heir would not come *qua* the appointment of Mouzadar. He has also submitted that higher qualification has been taken into account and cited as a reason to prefer the respondent no. 4. He submits that the difference in qualification is not significant and should not have been a factor inasmuch as the petitioner, possesses the other required qualification.

9. Shri Rahul, the learned counsel submits that the private respondent no. 4 had also filed IA No. 2117/2022 for vacation of the interim order, which however was not vacated by this Court vide order dated 05.08.2022. He submits that presently the authorities running the Mouza on their own. The learned counsel

for the petitioner accordingly submits that due interference may be made in the present case by setting aside the impugned order dated 15.06.2022. While concluding, Shri Rahul, the learned counsel has also referred to an order dated 18.07.2022 of this Court passed in WP(C) No. 4552/2022 (Jackie Rabha Vs The Principal Secretary to the Govt. of Assam & Ors.) in which it has been held that a cousin cannot be held to be a family member. It may however be mentioned that in the said case an observation was made with regard to The Assam Public Services (Preferential Appointment) Rules, 1999

10. Per contra, Shri Dutta, the learned Standing Counsel, Revenue Department has submitted that the Department has filed affidavit-in-opposition on 16.11.2022. By relying on the definition of 'family' appearing in the **Black's Law Dictionary**, the learned Standing Counsel has submitted that there can be no manner of doubt that both the petitioner and the respondent no. 4 are family members and therefore were equally placed. Under those circumstances, taking the higher qualification of the respondent no. 4 cannot be said to be an irrelevant consideration. By referring to the Executive Instruction 120 wherein it has been laid down that Mouzadar is a public servant, he submits that the provisions of the Hindu Succession Act are not applicable at all. He further submits that the concept of Class-I or Class-II legal heir will not arise in this case, as the selection is amongst the members of the family.

11. "Family" as per **Black's Law Dictionary** has been defined as follows:-

"Family, n, 1. A group consisting of parents and their children — also termed immediate family. 2. A group of persons connected by blood, by affinity, or by law 3. A group of persons, relatives, who live together. — familial."

12. Shri S. R. Baruah, learned counsel for the State, has submitted that the respondent no. 3 has filed the affidavit-in-opposition on 20.10.2022. By endorsing the submission of the Department, Shri Baruah, the learned State Counsel has submitted that the respondent no. 4 is also the grandson of the original Mouzadar. He submits that Mouzadar is a public servant and therefore the question of succession will not arise for the purpose of appointment. He further submits that higher qualification being prescribed in Instructions 116 (5), regard to the same is a relevant factor and therefore the impugned order does not call for any interference.

13. Smt. B. D. Das, learned Senior Counsel for the respondent no. 4, by referring to the family tree submits that his client is very much a member of the family as his grandfather was the original Mouzadar before his uncle Satyendra Goswami. He submits that there is a fundamental error in the projection of the case by the petitioner by bringing in the ***Hindu Succession Act*** which is only with relation to property. By referring to Section 8 of the said Act, it is submitted that there would be no dispute that the Act only lays down the mode of succession under the personal law of Hindu regarding devolvment of property. He further submits that under the Executive Instructions 121, 122, 123, and 124, various duties of Mouzadar including special duties are laid down, and considering the same, the age of the proposed candidate would also be relevant. He submits that while his client is aged about 40 years, the petitioner is aged about 61 years and this would also be relevant in proper dispensation and discharge of duties by a Mouzadar. He submits that under Instructions 125, the Mouzadar is also required to assist in administrative matters.

14. The Senior Counsel has also referred to an Office Memorandum dated 20.07.2016 of the Central Government which defines 'members of family'. The relevant extract of the same is quoted here in below:-

"2. As per rule 2 of the CCS (Conduct) Rules, 1964, the definition of "Members of Family" may differ from that given in the rule 2, sub clause (c) in the context of a rule. For removal of doubts it is clarified that in the context of rule 4 (1) and 4 (3) "Members of family" in relation to a Government servant include the wife or husband, son or daughter, parents, brothers or sisters or any person related to any of them by blood or marriage, whether they are dependent on the Government servant or not."

15. The learned counsel for the respondent no. 4 accordingly submits that both the respondent no. 4 and the petitioner being members of the family and eligible, recourse to higher educational qualification is justified for which there is also preference under the statute. He emphasized that there is no application of the **Hindu Succession Act** and age of the respondent no. 4 is also a relevant factor and would give an advantage.

16. Contentions advanced have been duly considered.

17. The procedure for appointment of Mouzadar has been laid down in the Executive Instructions framed under the **Assam Land and Revenue Regulations, 1886**. For ready reference, the relevant Instructions 116 is extracted herein below:-

"116. Principal in making appointments. – In making appointments the following principles shall be observed as far as possible.

(i) *Mouzas inhabited by such indigenous races as Cacharis and Mikirs*

shall be committed to a mauzadar who himself belongs to the indigenous population.

(ii) Subject to such changes as may be required in order to give effect gradually to the foregoing principle, a mauzadar's successor shall ordinarily be selected from amongst the members of his family -including relations on the female side if no qualified heir is available on the male side. If an heir, otherwise suitable, is a minor, the post may be kept open for him for a period not exceeding three years, an agent being appointed, provided that the Deputy Commissioner is satisfied that the minor is doing his best to qualify himself for the appointment; but the family of a mauzadar who is dismissed for misconduct loses its hereditary claims.

Note.--*The same procedure shall be followed with regard to the appointment, suspension and dismissal of mauzadars appointed for the collection of grazing fees.*

(iia) When it is necessary to appoint an agent (Sarbarahkar) during the minority of an heir of a deceased mauzadar as provided for in sub-clause (ii) above, one-fourth of the commission on the total collection made by the agent (Sarbarahkar) shall be paid to the minor heir by the agent (Sarbarahkar).

(iii) When it is necessary to appoint as mauzadar a man who has no family claims to the post he shall as a rule, be selected from a family which is resident in the mauza.

(iv) It is essential that a person who is selected for appointment as mauzadar should be a man who inspires confidence both by his character and by his financial stability.

(v) Qualifications for appointment to the post of mauzadar will include a fair vernacular education, such as is required for the keeping of the mauzadari accounts. It is desirable that the education should have extended to the middle vernacular standard. Further, other things, being equal, preference shall be given to candidates who have higher educational qualifications such as those connected by matriculation or higher passes."

18. A plain reading of the said instructions would show that the post of Mouzadar has to be filled up by selection which should ordinarily be from the members of the family. Clause (iii) further makes it clear that in a given case

when there is no claim from the members of the family, the incumbent has to be a local resident. The qualification for such appointment has also been laid down as per which the minimum qualification has been stated to be a fair vernacular education. It also makes it clear that a higher qualified candidate would be preferred if other things are equal. There is no dispute to the fact that while the respondent no. 4 is Higher Secondary Pass, the petitioner is a Matriculate.

19. This Court is therefore required to consider the submissions regarding the application of the ***Hindu Succession Act, 1956***. The learned counsel for the petitioner has given immense stress on its application and to impress upon the Court that the petitioner being the wife of the deceased Mouzadar would have a preference as she is a Class-I heir whereas the respondent no. 4 being the brother's son is a Class-II heir under the said act. The overriding effect of the Act as laid down in Section 4 has also been emphasised. However, the entire objective of the aforesaid enactment is for devolution of property. An appointment to the post of Mouzadar cannot be equated with a devolution of property. Though it is true that under the Executive Instructions, the family members of a deceased Mouzadar would be given preference, such recruitment process is an open one and there is no question of any devolution of the post upon any of the heirs of the deceased Mouzadar. This Court finds force in the contention advanced by Shri Das, the learned Senior Counsel for the respondent no. 4 that the ***Hindu Succession Act, 1956*** will not have any application at all.

20. Under Section 3(f) of the Act the definition of 'Heir' is in the context of the property of an intestate. Further, over-riding effect of the Act under Section 4

is in the context of any matter for which provision is made in the Act. Section 6,7 and 8 make it abundantly clear that the application of the Act is only with respect of property. Therefore, this Court is of considered opinion that the Hindu Succession Act will have no application in the instant case.

21. This Court is therefore required to examine as to whether, the considerations made by the authorities in making the appointment are based on relevant factors germane to the issue at hand. Both the petitioner and the respondent no. 4 being held to be eligible, taking recourse to the higher qualification possessed by the respondent no. 4 cannot be said to be irrelevant or extraneous by any means when such preference is recognised by the statute itself. Shri Rahul, the learned counsel for the petitioner has tried to make an argument that no substantial difference should be there in possessing the qualification of Matriculation or the qualification of Higher Secondary, when the statute recognises that preference is to be given to a higher qualified person when all other things are similar, such contention advanced on behalf of the petitioner would not be tenable.

22. Under the aforesaid facts and circumstances, this Court is of the considered opinion that no case for interference with the impugned order dated 15.06.2022 has been able to be made out and accordingly the writ petition is dismissed.

23. Consequently, the interim order dated 22.06.2022 stands vacated.

JUDGE

Comparing Assistant