

WP(C) 4271/2006  
BEFORE  
HON'BLE MR. JUSTICE AMITAVA ROY  
JUDGMENT AND ORDER

1. A writ of mandamus has been sought for by the petitioner directing the respondent authorities to provide her appointment in the State service as a family member of persons killed by the extremists/terrorists under the Assam Public Service (Appointment of Family member of persons killed by extremists/terrorists) Rules, 1992 (hereinafter referred to as the 'Rules').

2. I have heard Mr. N. Dutta, learned Senior counsel assisted by Mr B. Talukdar, Advocate for the petitioner and Mrs V.L.Singha, learned State counsel for the official respondents.

3. The case of the petitioner in short is that she is a graduate in Arts and has also acquired the LLB Degree. On 17.8.96 at about 6.30 pm her mother while at her residence was killed by some extremists. The Superintendent of Police, Darrang, Mangaldoi on 13.12. 2000 submitted a detailed report to the Deputy Commissioner, Darrang, Mangaldoi about the incident. The petitioner thereafter applied for appointment under the aforementioned Rules. The application was accompanied amongst other by a certificate issued by the Deputy Commissioner, Darrang, Mangaldoi to the effect that the mother of the petitioner was killed by extremists. The petitioner has claimed that she is educationally qualified to be appointed to a post in Assam Civil Service. As her application remained pending an advertisement was published on 18th August, 2006 in the daily newspaper 'Assam Tribune' to fill up the vacancies in various posts under the State service. The petitioner having unsuccessfully pleaded with the authorities for appointment under the Rules has approached this court for redress.

4. The respondent No.3 through the affidavit affirmed by EAC, Darrang, Mangaldoi, Assam has admitted the murder of the petitioner's mother by the extremists on 16.8.96 and also her application to the Deputy Commissioner, Darrang, Mangaldoi seeking appointment under the Rules. The respondent, however, has indicated that an amount of Rs. 1(one) lakh in the meanwhile has been disbursed to the petitioner by way of an ex-gratia grant. The respondent, however, expressed inability on the part of the concerned State respondents to accommodate the petitioner against one of the advertised vacancies. No other respondents has filed affidavit.

5. Mr. N. Dutta, learned Senior counsel for the petitioner has urged that as the killing of the petitioner's mother by the extremists on 16.8.96 is admitted, her application seeking appointment under the Rules then in force ought to have been processed and the relief sought for ought to have been accorded. According to the learned Senior counsel, though the Rules got repealed by the Government notification dated 22.6.04 enumerating a fresh set of norms to deal with such claims, the petitioner's application not having been considered during the subsistence of the Rules, this notification has no application to her case and therefore, an appropriate writ or direction ought to be issued on the State respondents to appoint her in the post of Assam Civil Service or any other post in the state service commensurate to her qualifications. To re-inforce his argument, Mr. Dutta has placed reliance on the decision of a Division Bench of this Court rendered in Dhaniswar Basumatary & Ors Vs State of Assam & Ors, reported in 2010 (3) GLT 443.

6. Mrs. V.L. Singha, learned State counsel, on the other hand, has urged that as admittedly the petitioner's application though made under the Rules had not been acted upon till the same was replaced by a new set of guidelines contained in the notification dated 22.6.04 the direction as sought for by the petitioner ought not be issued.

7. That the petitioner's mother had fall to the bullets of the extremists on 16.8.96 and that she had submitted the application for her appointment under the Rules is not in dispute. The Rules, however, were later on substituted

vide notification dated 22.6.04 introducing a new set of guidelines to govern the issue. A Division Bench of this Court in Dhaniswar Basumatary (supra) in essence has held that if a request for appointment under the Rules has been made during the subsistence thereof, the formulation to new norms embodied on 22.6.04 would not affect the applicant's right to be considered for appointment under the Rules. In other words, in view of the state of law as on date, the request for appointment made under the Rules if had remained pending on the date of notification as above it would survive to be considered under the Rules, the intervening developments notwithstanding.

8. In view of the above matter, the petitioner's application for appointment in the State service against a post for which she is eligible as on date has to be examined in terms of the provisions of the Rules. The process initiated by the advertisement dated 18.8.06 referred to in the petition has since been completed. No interim order had been passed either interdicting the said process or keeping any post vacant to abide by the decision in this proceeding.

9. In that view of the matter, this petition stands disposed with a direction to the Commissioner & Secretary, Personnel (B) Department, Dispur, Guwahati to cause steps to be taken forthwith to process the petitioner's application for appointment under the Rules and to take a decision having regard to her academic qualification and experience for her appointment to a post in the State service commensurate thereto however subject to the availability of vacancies enumerated therefor. As the petitioner is waiting in expectation, the process as ordered should be completed within a period of 2(two) months from the date of receipt of the certified copy of this order. No costs.