

WP(C) 1489/2013

BEFORE

THE HON'BLE MR JUSTICE UJJAL BHUYAN

Heard Mr. RM Choudhury, learned counsel for the petitioner and Mr. HK Mahanta, learned counsel for respondent No.1, Mr. J Handique, learned Govt. Advocate, Assam appears for respondent Nos. 2 & 3, whereas Dr. B Ahmed, learned Standing Counsel, Co-operation Department, Assam appears for respondent Nos. 4 & 5.

Case of the petitioner is that his father late Sumendra Daimary was killed by extremists on 26.06.1989. Petitioner has stated that he had filed an application before the Govt. for appointing him in a Grade-III post as per provisions contained in the Assam Public Services (Appointment of Family Members of Persons killed by Extremists/Terrorists) Rules, 1992., but the date of filing of such application is not available. Govt. of Assam in the Personnel (B) Department had requested the Deputy Commissioner, Darrang to appoint the petitioner as LDA under the 1992 Rules vide letter dated 28.09.1993 but petitioner was not appointed. Petitioner again filed representation dated 06.01.2012 before the Govt. for his appointment under the aforesaid Rules, which was forwarded to the Deputy Commissioner, Darrang.

The Assam Public Services (Appointment of Family Members of Persons killed by Extremists/Terrorists) Rules, 1992 was repealed by the Govt. in the year 2004. However, following order of this Court, Govt. in the Personnel Department has issued office memorandum No. ABP.24/2009/Vol/658, dated 29.07.2013, providing that in respect of those cases where applications were made prior to June 22, 2004 (the date on which the 1992 Rules were repealed), provisions of the 1992 Rules would still be applicable.

In spite of that petitioner has not been appointed though similarly placed persons like one Shri Ranjan Daimary has been appointed in a Grade-IV post in the establishment of Deputy Commissioner, Darrang.

Accordingly this petition has been filed.

Affidavits have been filed by the respondents, wherein stand has been taken that at the relevant point of time, there was no vacancy and, therefore, the matter was sent back to the Deputy Commissioner, Darrang.

Petitioner has filed an affidavit on 21.02.2014 stating that advertisement has been issued by the respondent No. 3 to fill up 5 posts of Peon, 3 posts of Chowkidar and 2 posts of Mali. He, therefore, submits that vacancies are available in the establishment of respondent No. 3 where petitioner can be appointed.

Howsoever unfortunate the factum of death of the petitioner's father at the hands of extremists may be, petitioner's father was killed way back on 26.06.1989. He has filed the writ petition 24 years thereafter seeking appointment in a Grade-III post in terms of the Assam Public Services (Appointment of Family Members of Persons killed by Extremists/Terrorists) Rules, 1992. There is no explanation in the writ petition as to what steps the petitioner had taken during this long period except submitting the representation dated 06.01.2012 and why he has approached this Court so belatedly.

All vacancies that may arise in an establishment cannot be filled up by candidates seeking either compassionate appointment or appointments of similar nature, such as victims of terrorists' violence. Appointment in public service cannot be the sole means and method of giving relief to the victims of terrorists' violence or candidates seeking appointment on compassionate ground. In fact the office memorandum dated 29.07.2013 itself provides for payment of ex-gratia grant of Rs . 3.00 lakhs to the relatives of persons killed in extremist violence.

Coming to the case of Shri Ranjan Daimary, it is seen from the documents placed on record that he had approached this Court in the year 2006 by filing WP(C) No. 2379/2006 which was disposed of on 07.09.2007 by directing consideration of his case for appointment. Present writ petition has been filed 6 years thereafter. Taking all the facts into consideration, Court is of the considered view that no direction can be issued to the respondents to appoint the petitioner under the 1992 Rules at this distant point of time.

Notwithstanding the above, since the office memorandum dated 29.07.2013 provides for payment of ex-gratia of Rs.3.00 lakhs to the relatives of persons killed in extremist violence, such ex-gratia payment should be released to the petitioner and other members of his family, if not already paid. This shall be done within a period of 4 months from the date of receipt of a certified copy of this order .

Writ petition is accordingly disposed of.