

WP(C) 387/2015

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

Heard Mr. UK Das, counsel appearing on behalf of the petitioners and Ms. RB Bora, standing counsel for BTC appearing on behalf of the respondent No. 5. Also heard Mr. BJ Talukdar, counsel for the respondent Nos. 1, 3 and 6 and Mr. HK Mahanta, for respondent No. 2.

The petitioner's counsel submits that the petitioners are family members of those killed in extremist/terrorist prior to 22-06-2004 and who had applied for appointment under the Assam Public Services (Appointment of Family Members of Persons killed by extremists/terrorists) Rules, 1992 (hereinafter referred to as 'the 1992 Rules').

The 1992 Rules came into effect on 08-04-1992 and the said Rule was published for regulating appointment in public service under the Government of Assam for the next of kin of persons, who are killed in violent activities in the hands of the extremists since 01-01-1985.

The petitioners' family members had been killed by the extremists within the period of 01-01-1985 and 22-06-2014. As per Rule 4 of the 1992 Rules, one family member was eligible to be given appointment to a Government job under the State Government/ undertaking/ Board. The petitioners applied for appointment to a post as per the 1992 Rules and submitted their applications prior to 22-06-2004. The petitioners were also given ₹1 lac each as ex gratia payment for the death of their family members at the hands of the extremists as per the Office Memorandum dated 29-07-1995, issued by the Secretary to the Government of Assam, Relief and Rehabilitation Department.

The petitioners continued waiting for appointment orders to be issued by the respondents. However, instead of issuing appointment orders to the petitioners, the respondents repealed the 1992 Rules vide notification dated 22-06-2004.

Pursuant to the repeal of 1992 Rules, the Commissioner and Secretary to the Government of Assam, Personal (B) Department, issued a letter dated 22-06-2004, which gave the following guidelines in place of the 1992 Rules to give relief to the affected families of persons, who were killed at the hands of extremists/terrorists. The guidelines given in the letter dated 22-06-2004 is reproduced below:

I am directed to inform you that the Assam Public Services (Appointment of Family Members of persons killed by Extremists/Terrorist) Rules, 1992 has been repealed by the Govt. vide this Deptt. Notification No. ABP.121/92/Pt-V/135 dt. 22.6.2004. The Govt. has also decided to consider the following measures in place of said Rule to give relief to the affected families -

1. Preference to Members of the affected families certified as such by competent district authority in recruitments to Govt. and semi Govt. jobs.
2. Preference to such certified persons in selection of beneficiaries under self-employment generation scheme of different departments and welfare and relief schemes of social welfare etc. Departments.
3. Enhancement of the ex-gratia amount paid to the next of kin of a person killed in extremist violence to Rs. 3,00 Lakhs (Three lakhs).
4. Alternative means of livelihood to families of earning victims of extremist violence to be determined by the district authorities after assessing the economic conditions of each family separately.
5. Free education to children of the poor affected families till they become eligible to earn.

The difference in 1992 Rules and the guidelines in the letter dated 22-06-2004 is to the effect that as per the 1992 Rules, the family members are to be given an appointment to a Government job. However, in the guidelines laid down in the letter dated 22-06-2004, the family members were to be given ex gratia payment of ₹3 lakhs plus given preference at the time of recruitment to Government job.

The petitioners not having been given any appointment to a Government job in pursuance to the 1992 Rules, filed WP(C) No. 2036/2006 etc. WP(C) No. 2036/2006 etc. was disposed of by this Court vide order dated 05-06-2007 with the direction that the decision of this Court rendered in WP(C) No. 2947/2005 (Ms. Manju Narzar

y v. State of Assam) and WP(C) No. 6403/2006 (Mrs. Shajnaj Sultana vs. State of Assam) should be followed.

In the case of WP(C) No. 2947/2005, the decision of this Court was to the effect that all applications of family members of persons killed at the hands of the extremist would have to be considered as per the guidelines laid down in the letter dated 22-06-2004. However, in WP(C) No. 6403/2006 (Mrs. Shajnaj Sultana vs. State of Assam), this Court had directed that all applications of family members of persons killed at the hands of extremists would have to be considered as per the dates of submission of their applications, i.e., the applications submitted prior to 22-06-2004 would be considered as per the 1992 Rules and applications submitted subsequent to 22-06-2004 would have to be considered as per the guidelines laid down in the letter dated 22-06-2004. The respondents did not take any action in pursuance to the order dated 05-06-2007 passed in WP(C) No. 2036/2006. That in the meantime, a Division Bench of this Court had the occasion to settle the dispute with regard to the applications of family members of persons killed at the hands of the extremists. The Division Bench of this Court in the case of Dhaniswar Basumatary and ors. -vs- State of Assam and ors., reported in 2010 (3) GLT 443, held that those applications, which had been submitted prior to 22-06-2004 would have to be considered as per the 1992 Rules and those applications submitted after 22-06-2004 would have to be considered as per the guidelines laid down in the letter dated 22-06-2004.

In pursuance to the order passed by the Division Bench of this Court in Dhaniswar Basumatary (supra), the Principal Secretary to the Government of Assam, Personnel (B) Department, issued the Office Memorandum, dated 29-07-2013 and issued guidelines as follows:

II. Government in Personnel 'B' Department have prepared a list of applicants who had submitted applications for jobs prior to 22nd June 2004 i.e. the date on which the APS Rules of 1992 were repealed, on the basis of information received from the Deputy Commissioners. The list contains the names of 57 such applicants and is appended at Annexure I. A similar list of applicants has also been prepared containing names of persons who were killed prior to 22nd June 2004, but whose relatives had not applied for any government job prior to 22nd June 2004. This list contains names of 63 such persons and appended at Annexure II.

III. Now in pursuance of the Rule 5 of the aforementioned Rules, this list as at Annexure I is enclosed herewith which is to be verified carefully by all Govt. Departments/Public Sector undertakings/Boards/Authorities, etc. as the case may be and as required under Rule 4 (ii) and immediately appoint the applicants who are found genuine and otherwise eligible as per the aforesaid Rules to the first available vacant posts in their respective establishments.

IV. Considering the fact that the Deputy Commissioners may face undue hardship while verifying the cases received from various Government Departments/Public sector undertakings/Boards/Authorities etc., Govt. in exercise of power under Rule 7 provides that:

i) The Deputy Commissioners having to dispose of such application(s) for verification will constitute a Committee to oversee the genuineness of the candidates and place the applications for appointments before a committee. The Committee will consist of Deputy Commissioner as Chairman, Superintendent of Police, District Labour Officer, District Social Welfare Officer as members and ADC (Revenue) as Member Secretary, and any one officer from the concerned Departments in which a appointment is being made to examine and verify the authenticity of the applications on case to case basis and recommend candidates for appointment to the Department/Public sector undertakings/Boards/Authorities etc. concerned.

ii) On receipt of recommendation of the Committee as stated above, the Department will make arrangement for appointment of the candidates so recommended following proper procedure and after obtaining approval from the Finance Department.

iii) In case of any further applications, over and above what has been included in the list at Annexure-I, made on or prior to 22.06.2004 if detected subsequently, in the district, the concerned Deputy Commissioner will carefully examine the authenticity of such applications and on being satisfied, place the same before the Committee and take similar action as at (i) and (ii) above. But in all cases

es the cutoff date shall be as per the APS Rules 1992.

iv) The Deputy Commissioner will submit action taken report on quarterly basis to the Personnel B Department.

v) In case of persons killed in extremist violence prior to 2004, but whose relatives did not apply for any appointment prior to 22nd June 2004 and had applied after 22nd June 2004 and may or may not have received ex-gratia grant under 2004 notification i.e. Rs. 3.00 lakhs, - (a) they shall now be given appropriate ex-gratia payment as per No.ABP 121/92/Pt-V/136 dated 22.06.2004 adjusting the amount already received if any and (b) they shall also be entitled to be considered under the scheme envisaged in the Government Circular above i.e. No.ABP 121/92/Pt-V/136 dated 22.06.2004.

The Government Circular No. ABP 121/92/Pt-V/136 dated 22.06.2004 will remain in force for all the cases in which applications for any relief received after 22nd June 2004.

The petitioners' name were not included in the Annexures appended to the Office Memorandum dated 29-07-2013. However, the respondents thereafter conducted a verification and the Additional Deputy Commissioner, Baksa, wrote a letter dated 04-09-2014 addressed to the Secretary to the Government of Assam, Personnel (B) Department, wherein the genuineness of the claim of the petitioners were verified.

The petitioners' name are reflected in the list of candidates appended to the letter dated 04-09-2014 issued by the Additional Deputy Commissioner, Baksa and their names are reflected at Sl. Nos. 4, 6 and 10.

The petitioners' counsel submits that in the meantime the Executive Council of the Bodoland Territorial Council held a meeting on 03-06-2014 wherein they had resolved that for the purpose of accommodating the applicants of family members killed by extremists pertaining to BTAD area, the cases of such candidates would be accommodated in the BTC subject to approval of all the new posts proposed by BTC in all the transferred subjects by the Government of Assam.

The petitioners' counsel submits that the condition to be followed by the BTC before accommodating the petitioners in the Government Department is arbitrary and should be set aside.

The petitioners' counsel also submits that the resolution of the BTC in its meeting minutes dated 03-06-2014 is not supported by the affidavit-in-opposition filed by the respondent No. 6, which is to the effect that the notification dated 29-07-2013 is not for creation of new posts to accommodate the candidates. The petitioners' counsel thus submits that in view of the factual position as stated above, a direction should be issued to the respondents to appoint the petitioners to Government jobs. He, however, submits that as the Government jobs to which the petitioners should be accommodated have not been identified by the Deputy Commissioner, the case of the petitioners should be referred to the Deputy Commissioner, Baksa district, who shall thereafter verify the petitioners claim and recommend the petitioners in specific posts in terms of the office memorandum dated 29-07-2013.

Mr. BJ Talukdar and Mr. HK Mahanta, counsel for the respondent Nos. 1, 3, 6 and 2 respectively submit that they do not object to the prayer of the petitioners' counsel in view of the fact that the Office Memorandum dated 29-07-2013 has to be complied in toto.

Ms. RB Bora, standing counsel for the BTC submits that though the Office Memorandum dated 29-07-2013 requires the applicants to be appointed to first available vacant posts, the 1992 Rules do not make any mention of such applicants being appointed to any vacant post. She thus submits that in view of the above, the posts would have to be first created as per the 1992 Rules to accommodate the petitioners.

I have heard the counsels of the parties.

The basic objection of the BTC to the appointment of the petitioners is on the ground that unless new posts are created and approved by the State Government, the petitioners cannot be accommodated. The standing counsel for BTC submits that the 1992 Rules does not speak of the applicants being appointed to a vacant post

Rule 3 of the 1992 Rules states as follows:

Application: These rules shall apply to all the services and posts under the Government of Assam, recruitment to which is made through the Commission or otherwise than through the Commission.

The application of the said 1992 Rules pertain to all the services and posts under the Government of Assam. The word posts in Rule 3 could only be relatable to an existing post and not to any future posts to be created.

In that view of the matter, I am of the view that 1992 Rules also allows for appointment of the petitioners to a vacant posts and not to a post to be created in future. The Office Memorandum dated 29-07-2013 also categorically states that applicants are to be appointed to the first available vacancy. The further requirement under the Office Memorandum dated 29-07-2013 is that verification should be done by the Deputy Commissioner. As the BTC has been transferred with 39 Departments by the State Government, the BTC can accommodate the petitioners in any of the 39 Departments, which is under its control. As the Home Department and Revenue Department are not transferred Departments, the BTC need not attempt to accommodate the petitioners in the Home and Revenue Department. However, the BTC is the competent authority to appoint the petitioners in any Grade-III or Grade-IV posts in the 39 Departments it has under its jurisdiction. However, as submitted by the petitioners' counsel that the Deputy Commissioner has not completed verification of the petitioners claims and having failed to identify the vacant posts to which the petitioners are to be accommodated into, I am of the view that a direction should be issued to the Deputy Commissioner, Baksa to comply with the Office Memorandum dated 29-07-2013 at the earliest. Accordingly, the Deputy Commissioner, Baksa, is directed to make a verification of the petitioners' claims as per the Office Memorandum dated 29-07-2013 and identify the vacant posts to which the petitioners can be accommodated. The respondent authorities concerned, i.e., the BTC shall thereafter pass necessary consequential orders for appointment of the petitioners.

The exercise to be undertaken by the Deputy Commissioner, Baksa will be completed within a period of two months from the date of receipt of a certified copy of this order. The BTC authorities shall thereafter pass necessary consequential orders within a further period of one month.

The above direction is in line with the order dated 27-04-2015 passed by this Court in WP(C) No. 5579 of 2014.

The writ petition is accordingly disposed of.