

GAHC010119742016



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

Case No. : WP(C) 6173/2016

1:DWIPEN CHANDRA KALITA
S/O LT. BHOBIT CHANDRA KALITA R/O VILL and P.O. BALA DIST.
NALBARI, ASSAM.

VERSUS

1:THE STATE OF ASSAM AND 3 ORS
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, EDUCATION
DEPARTMENT, DISPUR, GUWAHATI - 781006.

2:THE UNDER SECRETARY
TO THE GOVT. OF ASSAM
EDUCATION SECONDARY DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI -19.

4:THE INSPECTOR OF SCHOOLS
GOALPARA DISTRICT CIRCLE
GOALPAR

Advocate for the Petitioner : MS.K DAS

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

Date : 27-04-2018

JUDGMENT & ORDER (ORAL)

Heard Ms. K Devi, learned counsel for the petitioner. Also heard Mr. N Sarma, learned Standing counsel Secondary Education Department.

2. The father of the petitioner, who was working as a Grade IV in the PR Govt. HS and MP School, Goalpara died in harness on 31.08.1996. On his death, the petitioner, who at that relevant point of time was duly qualified for applying for a Government job submitted an application for compassionate appointment, through the Inspector of Schools, Goalpara praying for appointment against any Grade IV vacant post. In response thereof, the Under Secretary to the Govt. of Assam in the Education Department by the communication dated 16.02.1999 addressed to the Inspector of Schools, Goalpara had informed that the Govt. of Assam had approved the appointment of the petitioner to a Grade IV post on compassionate ground subject to fulfillment of all terms and conditions of Office Memorandum dated 09.09.1998. It is not the case of the respondents that the petitioner does not fulfill any terms or conditions of the said Memorandum. But be that as it may, no appointment was made in favour of the petitioner.

3. The petitioner approached this Court by way of WP(C)No.8739/2001 which was disposed of by the order dated 21.12.2001, requiring the petitioner to be appointed if any vacant post exists. A communication of the Inspector of Schools, Goalpara dated 01.11.2007 exists on record, which was addressed to the Director of Secondary Education Assam stating that the then Inspector was not aware as to why the earlier Inspector had not appointed the petitioner at the relevant point of time. Another communication dated 03.03.2008 from the Director of Secondary Education, Assam addressed to the Commissioner and Secretary to the Govt. of Assam in the Secondary Education Department is also available on record, wherein it was clearly stated that the Government had already accorded approval for appointment of the petitioner on compassionate ground as per the Government letter dated 16.02.1999. The said communication also states that it is not known to the Director as to why the concerned Inspector of School had not appointed the petitioner against a vacant post in the PR Government Higher Secondary and MP School.

4. Be that as it may, the Director had requested the Government to accord the necessary approval for appointment on compassionate ground. In spite of that as nothing happened, the petitioner again approached this Court and by the order dated 26.05.2016 in WP(C)No.7486/2015, the State respondents were given the opportunity to consider the case of the petitioner. Consequent thereof, the order dated 06.06.2016 was passed by the Director of Secondary Assam, wherein the Director took a view that as 20 years had elapsed since the death of the father of the petitioner, therefore, the claim of the petitioner cannot be carried along. In the view of this Court, the Director had totally misconceived the aspect, *inasmuch as*, the Director was not considering whether to appoint the petitioner or not to consider the petitioner for appointment.

5. The Director in the earlier communication dated 03.03.2008 was of the view that approval for appointment of the petitioner was already granted in the year 1999, and it is the Inspector of Schools, who is the authority under the Director to appoint, had not taken the appropriate steps for issuing the appointment order. Secondly, even if there may be a delay of 20 years that delay cannot be attributed in any manner to the petitioner and the entire delay, if any, was caused by the authorities within the respondents alone. From that point of view, the view taken by the Director would be hit by the legal maxim of *Nullus Commodum Capere Potest De Injuria Sua Propia* which means that no man can take advantage of his own wrong. In the view of this Court, the conduct of the Director as well as the Inspector of Schools appears to be squarely covered by the aforesaid maxim.

6. Moreover, Mr. N Sarma, learned Standing counsel has also produced the communication dated 24.05.2017 from the Inspector of Schools, Goalpara which clearly states that one post of Grade IV is presently lying vacant in the PR Higher Secondary MP School, Goalpara. As the petitioner was approved for appointment by the highest authority in the Government against a vacant post and presently the vacant post still exists, the respondent authorities are hereby directed to give a consideration as to why the petitioner should not be appointed against the said posts. No doubt, there is a delay of 20 years but the 20 years delay firstly cannot be attributed to any fault of the petitioner and secondly, approval for appointment of the petitioner had already been granted by the highest authority in the Government.

7. Had it been the case that the petitioner was not considered for 20 years and now he is trying to

raise the claim for being considered to be appointed, the delay of 20 years may be relevant. But in the facts and circumstances of the present case, the said principle of delay of 20 years in the view of this Court would not be applicable as sought to be projected by the Director.

8. In view of the above, the matter is remanded back to the Secondary Education Department for a fresh consideration.

9. Accordingly, the order dated 06.06.2016 is set aside.

10. In terms of the above, this writ petition stands disposed of.

11. The entire exercise shall be carried out within a period of 2(two) months from the date of receipt of the certified copy of this order.

JUDGE

Comparing Assistant