

GAHC010004232023



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

Case No. : WP(C)/613/2023

SANJAY BARMAN AND 7 ORS
(ASSISTANT TEACHER OF PROTAPGANJ HIGH SCHOOL),
S/O- LT. MAHESWAR BARMAN,
R/O- VILL. PURNI, P.O.- KACHAKHANA,
P.S.- GOLAKGANJ,
DIST.- DHUBRI, PIN- 783334.

2: DIPANKAR PRODHANI
(ASSISTANT TEACHER OF 1931 NO. GAIKHOWA MAZARCHAR LP
SCHOOL)

S/O- LT. KANTESWAR PRODHANI

R/O- VILL.- LAKHIMARI PT-III

P.O.- DHUBRI
ASSAM
PIN- 783334.

3: AMINUR RAHMAN AHMED
(HEAD MASTER OF 342 NO. RAJARHAT LP SCHOOL)

S/O- LT. SABEDUR ALI AHMED

R/O- VILLAGE- DIGHALTARI

P.O.- DIGHALTARI
P.S.- GOLAKGANJ

DIST.- DHUBRI
ASSAM. PIN- 783335.

4: AJIT KUMAR CHOUDHURY
(ASSISTANT TEACHER OF 735 NO. KUTI BHAMANDANGA L.P. SCHOOL)

S/O- RAMDULER CHOUDHURY

P.O.- JHAPUSABARI
P.S.- GOLAKGANJ

DIST.- DHUBRI
PIN- 783335.

5: SAHIDA BEGUM
(ASSISTANT TEACHER OF KONARCHAR L.P. SCHOOL)

D/O- LT. SAHAJUL HOQUE MONDAL

R/O- VILLAGE- KHALISAMARI

P.O.- PIAZBARI
P.S.- SOUTH SALMARA

DIST.- SOUTH SALMARA
PIN- 783128.

6: ABDUL ROFIQUE MOLLAH
(HEAD MASTER OF 2123 NO. SOUTH MONULLAPARA LP SCHOOL)

S/O- LT. ABDUL AZIZ MOLLAH

R/O- VILLAGE- MONULLAPARA

P.O.- MONULLAPARA

P.S.- SOUTH SALMARA

DIST.- SOUTH SALMARA
PIN- 783135.

7: ABDUL WAHAB SK.
(ASSISTANT TEACHER OF SOUTH DANGA M.E. MADRASA)

S/O- LT. AMAL UDDIN SK.

R/O- VILL. SOUTH SALMARA

P.O. FEKAMARI
P.S.- SOUTH SALMARA

DIST.- SOUTH SALMARA
PIN- 783135.

8: SAHAJAMAL HOQUE
(ASST. TEACHER OF KALDOBA M.E. SCHOOL)

S/O- LT. MOZIBOR RAHMAN

R/O- VILL. BANIAMARI

P.O.- SAHEBGANJ
P.S. GOLAKGANJ

DIST.- DHUBRI
PIN- 783331

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION (ELEMENTARY) DEPARTMENT, DISPUR,
GUWAHATI-781006.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-781019.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHUBRI
ASSAM.

4:INSPECTOR OF SCHOOLS
DHUBRI DISTRICT CIRCLE
DHUBRI
ASSAM

Advocate for the Petitioner : MR. M. K. CHOUDHURY

Advocate for the Respondent : MR. B. KAUSHIK

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 08-02-2023

Heard Mr. M. K. Choudhury, the learned counsel appearing on behalf of the petitioners and Mr. B. Kaushik, the learned Standing counsel appearing on behalf of the respondent Nos. 1, 2, 3 and 4.

2. The instant matter has been taken up for disposal at the motion stage itself.

3. In the instant petition, 8 petitioners have joined together seeking a Mandamus thereby directing the respondents to provide pensionary benefits to the petitioners under the Old Pension Scheme.

4. To appreciate the facts involved in the instant proceedings, it would be seen that the father of the petitioners had expired on various dates ranging between 1982 to 2003. The petitioners herein thereupon on the basis of the scheme for compassionate appointment floated by the Government of Assam have filed application seeking compassionate appointment. Though the applications were initially forwarded by the District Level Committee in the case of the petitioners but the State Level Committee for compassionate appointments did not take into consideration the cases of the petitioners for which the petitioners have approached this Court by filing writ petitions.

5. This Court vide an order dated 09.09.2008 in WP(C) No.1060/2008 directed the State Level Committee to consider the cases of some of the

petitioners herein and vide another order dated 19.01.2009 in WP(C) No.4967/2008, the said writ petition was closed on the instructions being furnished by the Standing counsel of the Education Department that the petitioners cases would be taken up for consideration in the next meeting of the State Level Committee. Thereupon, it appears that vide various orders enclosed as Annexure C, C(1) and C(2), which are dated 24.06.2009, 24.06.2009 and 27.06.2009 respectively, the petitioners herein were appointed as Assistant Teachers on compassionate grounds. It was made clear that in all the three orders enclosed as Annexure C, C(1) and C(2), that the incumbents who were appointed on compassionate grounds would be governed by the New Pension Rules in the line with the Contributory Pension Scheme of the Government of India which was to be notified in due course.

6. The petitioners thereupon after taking their appointments on the basis of the appointments orders enclosed as Annexure C, C(1) and C(2) on 03.12.2022 had submitted a representation to the Director of Elementary Education, Assam to give the benefit of the Old Pension Scheme to the petitioners on the ground that their father died at the time when the Old Pension Scheme was in existence and they therefore had a rights to be appointed on compassionate grounds upon the death of their father. The said representation however not being taken into consideration, the petitioners have approached this Court under Article 226 of the Constitution of India.

7. In the backdrop of the above facts, let this Court take into consideration the concept of compassionate appointment on the basis of which the petitioners claims their right to be entitled to the Old Pension Scheme. It is well settled that compassionate appointment is not a condition of service. It is also not automatic

upon the death of an employee in harness. Under such circumstances, the right to be appointed on compassionate grounds cannot be said to be a vested right in law. Appointment on compassionate grounds is subject to strict scrutiny of various parameters including the financial position of the family, the economic dependence of the family upon the deceased employee and the avocation of the other members of the family. Therefore, no one can claim to have a vested right for appointment on compassionate grounds.

8. In support of the above conclusions, this Court would rely upon the judgment of the Supreme Court rendered in the case of ***Secretary to the Government, Department of Education (Primary) and Others Vs. Bheemesh alias Bheemappa*** reported in ***(2021) SCC Online SC 1264*** and more particularly paragraph No.18 which is quoted hereinbelow:

“18. If compassionate appointment is one of the conditions of service and is made automatic upon the death of an employee in harness without any kind of scrutiny whatsoever, the same would be treated as a vested right in law. But it is not so. Appointment on compassionate grounds is not automatic, but subject to strict scrutiny of various parameters including the financial position of the family, the economic dependence of the family upon the deceased employee and the avocation of the other members of the family. Therefore, no one can claim to have a vested right for appointment on compassionate grounds. This is why some of the decisions which we have tabulated above appear to have interpreted the applicability of revised Schemes differently, leading to conflict of opinion. Though there is a conflict as to whether the Scheme in force on the date of death of the employee would apply or the Scheme in force on the date of consideration of the application of appointment on compassionate grounds would apply, there is certainly no conflict about the underlying concern reflected in the above decisions.

Wherever the modified Schemes diluted the existing benefits, this Court applied those benefits, but wherever the modified Scheme granted larger benefits, the old Scheme was made applicable."

9. Taking into account the above proposition of law and the petitioners having been appointed vide the various orders enclosed as Annexure C, C(1) and C(2), it would show that the petitioners have been appointed in the year 2009. Rule 2(A) of the Assam Services (Pension) Rules, 1969 clearly mandates that those persons who have been appointed w.e.f. 01.02.2005 would not be entitled to benefits under the Assam Services (Pension) Rules, 1969. In that view of the matter, this Court is of the opinion that no writ can be issued in the instant proceedings and accordingly the instant writ petition being devoid of any merits stands dismissed.

JUDGE

Comparing Assistant