

GAHC010008192023



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

Case No. : WP(C)/242/2023

ANUP KUMAR NATH
S/O- LT. GIRIN CHANDRA NATH, R/O- VILL- RAGHUNANDANPUR, P.O.
BOITAMARI, P.S. ABHAYAPURI, DIST.- BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(SECONDARY) DEPTT., DISPUR, GHY-06

2:THE STATE LEVEL COMMITTEE
REP. BY THE CHAIRMAN CUM THE CHIEF SECRETARY TO THE GOVT. OF
ASSAM
DISPUR
GHY-06

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

4:THE INSPECTOR OF SCHOOLS
B.D.C
BONGAIGAON
DIST.- BONGAIGAON
ASSAM

5:THE DY. COMMISSIONER-CUM-CHAIRMAN
DISTRICT LEVEL COMMITTEE
BONGAIGAON
ASSA

Advocate for the Petitioner : MR. R ALI

Advocate for the Respondent : SC, SEC. EDU.

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

O R D E R

20.09.2023

Heard Mr. R Ali, learned counsel for the petitioner, Mr. S Neogi, learned counsel for the respondents in the Secondary Education Department and Mr. P Saikia, learned counsel for the Deputy Commissioner, Bongaigaon.

2. The father of the petitioner Girin Chandra Nath who was serving as LDA in JNM Girl's High School in the Bongaigaon district, died in harness on 19.04.2013 and on his death, the petitioner submitted an application for compassionate appointment on 14.05.2013. Admittedly, the application was well within the stipulated period under which an application for compassionate appointment is to be made. In this writ petition, the petitioner assails the rejection of his application by the DLC of Bongaigaon district in the meeting of 17.07.2015. The reasoning for rejection is that the DLC referred to the provisions of the OM No. ABP 92/2012/32 dated 20.12.2012, which provided as extracted:-

“If the applications of eligible candidates remain pending and cannot be considered due to want of vacancies for a period of 2(two) years from the date of making such applications, all such applications will require no further consideration and must be understood to have spend their force.”

3. As the date of consideration by the DLC was 17.07.2015 and the date of application of the petitioner was 14.05.2013, it was understood that as two years have passed by, no further consideration is required. But on a perusal of the aforesaid provision, it is noticeable that an application need not be further

considered after two years of the date of the application, if the application was earlier rejected for want of vacancies, meaning thereby that the condition precedent of 'want of vacancy' would have to be satisfied and only upon satisfaction of the said condition precedent, an application can be rejected upon two years having passed by.

4. Mr. P Saikia, learned counsel for the Deputy Commissioner in order to satisfy that it was earlier rejected for want of vacancies has placed on record an earlier resolution of the DLC of Bongaigaon district dated 24.06.2014. We have also perused the resolution of the DLC dated 24.06.2014. By the said resolution, the date of the application of the petitioner this time was taken to be 20.06.2014, which is again in conflict with the date of application as accepted by the DLC in its meeting of 17.07.2015 which is 14.05.2013. Having taken the date of the application to be 20.06.2014, the application was rejected on the ground that it was not made within the period of one year from the date of death.

5. It is no longer a res-integra that the requirement of an application for compassionate appointment to be made within one year of the death is a directory provision rather than a mandatory provision.

6. In the instant case, it is noticed that even if the date of the application is accepted to be 20.06.2014 and not 14.05.2013, the application exceeded by two months beyond one year from the date of death. An application for compassionate appointment is to be considered on compassion with a legal requirement that there has to be an inter-se financial comparison between the various applicants as to who between them would be financially worse off. If the financial criteria being financially worse off is the core requirement to be examined, it cannot be understood that if an application is made beyond a few

days of the one year having passed by from the date of death, the family became suddenly financially well off and does not to require any further compassionate appointment. No such material is also made available by the respondents to arrive at a conclusion that upon passage of time of one year from the date of death, the family of the petitioner became financially well off not requiring any further consideration.

7. In any view of the matter, as the earlier rejection was not because of want of vacancies, but because of some other criteria, if now cannot be accepted that the clause referred above would be applicable where an application for compassionate appointment would no longer require a consideration if two years have passed by and it earlier could not be recommended for want of vacancies, inasmuch as, in the instant case the earlier application was not rejected on the ground of want of vacancies.

8. For the reasons stated above, the rejection of the DLC is set aside and the matter be now again placed before the next available DLC of Bongaigaon district for a fresh consideration as per law by taking note of the inter-se financial comparison, which is the only criteria for the purpose of compassionate appointment.

The writ petition is allowed to the extent as indicated above.

JUDGE

Comparing Assistant