

GAHC010022212016



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

Case No. : WP(C)/4677/2016

MD. BAHARUL ISLAM
S/O. LT. ABDUL MATIN, VILL. SINGARI, P.O. SINGARI MADRASSA, DIST.
NAGAON, ASSAM, PIN-782124.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE CHIEF SECY. CUM CHAIRMAN OF THE STATE LEVEL
COMMITTEE, ASSAM, DISPUR, GHY.-06.

2:THE COMMISSIONER and SECY.
TO THE GOVT. OF ASSAM
EDUCATION SECONDARY DEPTT.
DISPUR
GHY.-06.

3:THE DIRECTOR

MADRASSA EDUCATION
ASSAM
KAHILIPARA
GHY.-19.

4:THE ASSAM MADRASSA EDU. BOARD
REP. BY ITS SECY.
KAHILIPARA
GHY.-19.

5:THE DY. COMMISSIONER

NAGAON CUM CHAIRMAN OF DIST. LEVEL COMMITTEE FOR
APPOINTMENT ON COMPASSIONATE GROUND

DIST. NAGAON
ASSAM.

6:THE INSPECTOR OF SCHOOLS

NAGAON DIST. CIRCLE
NAGAON
ASSAM

Advocate for the Petitioner : MR.S CHOUDHURY

Advocate for the Respondent : GA, ASSAMR-5

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 10-04-2023

Heard Mr. B. Rahman, learned counsel for the petitioner and Mr. P. Saikia, learned Govt. Advocate for the respondent nos.1 and 5 and Mr. U. Sarma, learned standing counsel for the Secondary Education Department appearing for the respondent nos.2, 3, 4 and 6.

2. The case of the petitioner is that his father while serving as Office Assistant at Singari Senior Madrassa under the jurisdiction of Inspector of Schools, NDC, Nagaon under the establishment of Madrassa Education, Assam had died-in-harness on 19.12.2005. Initially, the elder sister of the petitioner had applied for appointment on compassionate ground but due to her marriage her application was not considered. Accordingly, the petitioner had submitted his application for being appointed on compassionate ground which was not considered. Thereafter the petitioner had approached this Court by filing a writ petition which was registered as WP(C) 4038/2011 and this Court by an order dated 26.08.2011, while disposing of the writ petition at the motion stage,

permitted the petitioner to file a fresh representation along with a copy of the said order as well as a copy of the writ petition before the respondent authorities within 15 days and it was provided that on receipt of such representation the authorities will consider such representation for his appointment on compassionate ground within a period of 4(four) months strictly in accordance with the notification, guidelines etc issued by the State Govt. in this regard.

3. The learned counsel for the petitioner submits that to his information, the application made by the petitioner for appointment on compassionate ground was not placed before the DLC for consideration and accordingly the petitioner has approached this Court again by filing this writ petition under Article 226 of the Constitution of India whereby the petitioner has prayed for a direction upon the respondent authorities to place his case before the DLC to consider his prayer for compassionate appointment.

4. The learned Govt. Advocate has opposed the prayer on the ground that the relief sought for would not be in consonance with the office memorandum dated 09.09.1983.

5. It is submitted that pursuant to the decision of this Court in *Achyut Ranjan Das Vs. State of Assam, (2006) 4 GLT 674* and *Faziron Nessa and ors. Vs. State of Assam and ors., 2010 (4) GLT 340*, this Court had provided a limitation for consideration of the prayer for appointment on compassionate ground and it is submitted that at present as per the office memorandum for

compassionate appointment in force, the time limit prescribed is two years from the date of the death of the concerned employee. It is submitted that the application must be submitted within a period of one year and the prayer would be considered within a period of two years, depending on vacancy available during the relevant period of year of death of the concerned employee.

6. In the case of *Central Bank of India Vs. Nitin, (2022) 0 Supreme (SC) 1278, Civil Appeal No.5111/2022* decided on 03.08.2022, amongst others it was observed that compassionate appointment cannot be made in the absence of rules or regulations issued by the Govt. or a public authority, and it was provided that the request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment *de hors* the scheme and that an application for compassionate appointment being preferred without undue delay has to be considered within a reasonable period of time.

7. In view of the legal position on appointment on compassionate ground, it is clear that the compassionate appointment is an exception to the rule of equality which enables dependent family members of a deceased employee to meet over the sudden crisis caused by the death of the breadearner and therefore, consideration for compassionate appointment must strictly be made in accordance with the rules for compassionate appointment applicable in respect of the deceased.

8. In the case of Achyut Ranjan Das (*supra*), this Court has held that if

the applications of the candidates remain pending and cannot be considered due to want of vacancies for a period of two years from the date of making such applications, all such applications will require no further consideration and will be understood to have spent their force.

9. In the present case in hand, the predecessor-in-interest of the petitioner had expired in the year 2005. There is no material in this writ petition from which we can presume that there existed a vacancy during the said relevant period. Moreover, at present, the policy of compassionate appointment have changed.

10. In view of above, the Court finds that notwithstanding that this Court by order dated 26.08.2011 passed by this Court in WP(C) 4038/2011 has allowed the petitioner to file a fresh representation for appointment on compassionate ground. But from even from the said date, more than 12 years has been gone by and moreover, in view of the decision of this Court rendered in *Achyut Ranjan Das* (supra), as about 18 years from the death of father of the petitioner has gone by, the application of the petitioner would require no further consideration. Hence, the Court finds no merit in this writ petition and therefore this writ petition stands dismissed.

JUDGE

Comparing Assistant