

GAHC010044302022



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

Case No. : WP(C)/1692/2022

AYESHA BEGUM LASKAR
D/O- LT. FAKAR UDDIN LASKAR, VILL- CHIPORSANGAN, PART-III, PO-
CHIPORSANGAN, PS- ALGAPUR, DIST- HAILAKANDI, ASSAM, PIN- 788801

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, ELEMENTARY EDUCATION DEPARTMENT, DISPUR,
GUWAHATI-6.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE STATE LEVEL COMMITTEE(SLC) FOR COMPASSIONATE
APPOINTMENT
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GHY-06

4:THE DISTRICT LEVEL COMMITTEE(DLC)

HAILAKANDI FOR COMPASSIONATE APPOINTMENT
REPRESENTED BY THE DEPUTY COMMISSIONER
HAILAKANDI
DIST- HAILAKANDI
ASSAM
PIN- 788151

5:THE DIRECTOR OF ELEMENTARY EDUCATION OFFICER

HAILAKANDI
DIST- HAILAKANDI
ASSAM
PIN- 78815

Advocate for the Petitioner : MR. S B LASKAR

Advocate for the Respondent : SC, ELEM. EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

09/02/2023

Heard Mr. F Z Mazumder, learned counsel for the petitioner. Also heard Mr. P N Sarma, learned Standing counsel, Department of School (Elementary) Education for the respondent Nos. 1, 2 & 5 and Mr. G Pegu, learned Government Advocate, Assam for the respondent Nos. 3 & 4.

2. Father of the petitioner, Fakar Uddin Laskar, an Assistant Teacher of 147 No. Baiyar Par Moktab Lower Primary School, a provincialised Elementary School of the State, under Hailakandi Education Block in the District-Hailakandi, died-in-harness on 24.05.2006, leaving behind his widow, i.e., mother of the petitioner, four minor daughters including the petitioner and one minor son. Petitioner is the 2nd daughter of said Fakar Uddin Laskar, born on 01.01.1990 and she was a minor aged about 16 years 5 months at the time of death of her father on 24.05.2006.

3. It is stated by the petitioner that on 24.07.2006, she applied for compassionate appointment to the post of Grade-III (Assistant Teacher) of Lower Primary School against available vacancy of 5% quota earmarked for compassionate appointment under Die-in-Harness Scheme. She also stated that she passed Higher Secondary Final Examination in the year 2009 conducted by the Assam Higher Secondary Education Council with 33.6% marks. As such, she again appeared in the Intermediate Certificate Examination (10+2) in the year 2017 under Jharkhand State Open School, which she passed with 68.16% marks in 2017 itself. Therefore, she claimed that as she became a major on 01.01.2008, she is eligible for appointment to the post of Grade-III (Assistant Teacher) in Lower Primary School at the time of consideration of her case by the District Level Committee for

compassionate appointment.

4. The District Elementary Education Officer, Hailakandi submitted the proposal of the petitioner before the District Level Committee (DLC) for compassionate appointment, District-Hailakandi for consideration of her case by the said DLC for her appointment on compassionate ground. However, the said DLC examined the application of the petitioner as per the guidelines issued by the State Government in the Personnel (B) Department vide Office Memorandum No. ABP.50/2006/Pt/182 dated 01.06.2015 that relates to the appointment on compassionate ground of dependent of Government servant in the State of Assam including who dies in harness.

5. After considering her application for compassionate appointment, the DLC, Hailakandi in its meeting held on 05.10.2021 following the provisions of said O.M. dated 01.06.2015 rejected her claim for appointment on compassionate ground considering it as not fit for recommendation to the State Level Committee for compassionate appointment (SLC) on the ground that she was under age being only 16 years 6 months 18 days at the time of submission of her application for compassionate appointment.

6. Petitioner submitted that following the law laid down by the Hon'ble Apex Court, this Court have passed judgments earlier where such application of the minor/dependent of a deceased Government employee were directed to be considered by the authorities concerned for appointment on compassionate ground. In that regard, petitioner has placed copies of the judgment dated 29.01.2018 passed in WP(C) No. 364/2018 (*Safiqul Islam Vs. State of Assam and 6 Ors.* reported in (2018) 3 GLR 627) and order dated 13.05.2022 passed in WP(C) No. 479/2022 (*Jakaria Imran Choudhury Vs. State of Assam and 4 Ors.*).

7. The petitioner has also placed reliance on the judgment of the Hon'ble Apex Court in the cases of *N.C. Santhosh Vs. State of Karnataka and Ors.* reported in (2020) 7 SCC 617 and also *Syed Khadim Hussain Vs. State of Bihar and Others* reported in (2006) 9 SCC 195 stating that in the said case of Syed Khadim Hussain (supra), where the petitioner submitted his application for compassionate appointment while he was a minor and his such claim for appointment on compassionate ground was rejected when he attained majority was found to be improper by the Hon'ble Apex Court.

8. Mr. Pegu, learned Government Advocate, Assam by placing an Office Memorandum No. AEE-388/2011/24 dated 16.05.2012 of the State Government in the Elementary Education Department

placed before the Court that with regard to the compassionate appointment prior to 23.08.2010, the minimum qualification required for both Lower Primary and Upper Primary Schools was 10+2 Higher Secondary passed or its equivalent as laid down in the Assam Elementary (Provincialisation) Rules, 1977 as amended in 2005 that was before the issuance of the requisite qualification and norms as prescribed and laid down by the NCTE through its Notification in terms of the RTE Act, 2009 which was prospective in nature.

9. Said O.M. dated 16.05.2012 specifies that with regard to the cases prior to 23.08.2010, any such appointee on compassionate ground shall have to acquire requisite qualification in terms of the RTE Act, 2009 and the Rules framed there under within a period of 5 years, failing which the consequences laid down in the scheme shall follow.

10. Said O.M. dated 16.05.2012 also laid down the cases for compassionate appointment on or after 23.08.2010 up to 31.03.2015 and under the same regarding appointment in Class-I to Class-V on compassionate ground, requirement prescribed was Senior Secondary (10+2) or its equivalent with at least 50% marks or Graduate (irrespective of marks) and for Class-VI to Class-VIII candidates seeking appointment on compassionate ground has to be a Graduate. However, with regard to the reserved category of candidates, relaxation of 5% in qualifying marks was granted.

11. From the rejection order of the application of the petitioner for her compassionate appointment annexed to this petition as Annexure-3, it is seen that the DLC for compassionate appointment, Hailakandi on 05.10.2021 on examining the application of the petitioner in terms of the decision of this Court in the case of *Achyut Ranjan Das Vs. State of Assam and Ors.* reported in *2006(4) GLT 674* and as per the O.M. No. ABP.50/206/Pt/182 dated 01.06.2015 of the Personnel (B) Department of the State rejected the claim of the petitioner.

12. In the said O.M. dated 01.06.2015, it is specifically provided that the beneficiaries of the scheme for compassionate appointment have to be otherwise eligible and suitable for appointment.

13. The said O.M. dated 01.06.2015 also specifies that the educational qualification as prescribed by the concerned service Rules shall however not be relaxed. Further, the O.M. dated 01.06.2015 provided that every eligible dependent amongst others seeking appointment under the said O.M. shall make an application for appointment on compassionate grounds in the prescribed form with all enclosures within 1 year from the date of death or acceptance of retirement of the Government employee with consent letter of the retired employee.

14. On perusal of the provisions of the Assam Elementary Education (Provincialisation) Rules, 1977, it is seen that w.e.f. 10.11.2005, the minimum educational qualification of a person to be eligible for appointment as a teacher in Elementary School was Higher Secondary or any other examination of equivalent standard having 45% marks in any of the qualifying examination for General categories and minimum 40% marks for reserved categories for a post of Assistant Teacher in Lower Primary and Upper Primary Schools.

15. However, the amended provisions of minimum qualification for person to be eligible for appointment as a teacher in Elementary School was again amended w.e.f. 25.10.2012, which was again after the Right to Education Act, 2009 came into force.

16. Assuming the petitioner submitted her application on 24.07.2006 for compassionate appointment to the post of Grade-III (Assistant Teacher) of Lower Primary School against available vacancy of 5% quota earmarked for compassionate appointment as stated by her in this writ petition, she having 33.6% marks in her Higher Secondary Examination was not eligible for compassionate appointment at that point of time. Petitioner on her own stated that she in the year 2017 passed the Intermediate Certificate Examination (10+2) under Jharkhand State Open School with 68.16% marks and as such, she became eligible for appointment to the post of Grade-III (Assistant Teacher) in Elementary Schools of the State after November, 2017.

17. It is well settled that there cannot be a reservation of vacancy with regard to compassionate appointment till such time an incumbent or applicant becomes a major after certain period or acquires the requisite eligibility after sometime unless there are some specific provisions in the Rules, Guidelines, Office Memorandum etc. for compassionate appointment under the die-in-harness scheme since appointment under compassionate ground is not a matter of right.

18. The petitioner submitted that since her application was of 24.07.2006, therefore, as per the provisions of the law laid down in the case of *N.C. Santhosh* (supra), the respondent authorities committed illegality in rejecting her case for compassionate appointment under the die-in-harness scheme of the State.

19. In the case of *N.C. Santhosh* (supra), a three Judges Bench of the Hon'ble Apex Court laid down that dependent of Government employee, in absence of any vested right accruing on the death of Government employee, can only demand consideration of his/her application but is disentitled to seek consideration in accordance with norms as applicable on the day of death of the deceased

employee.

20. In the case of *N.C. Santhosh* (supra) at para 19, the Hon'ble Apex Court have held as follow:-

“19.Applying the law governing compassionate appointment culled out from the above cited judgments, our opinion on the point at issue is that the norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependent of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is, however, disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee.”

21. Considering the said decision of the Hon'ble Apex Court laid down in the case of *N.C. Santhosh* (supra) that *the norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment*, it can be seen that the concerned O.M. dated 01.06.2015 of the State Government in the Personnel (B) Department of the State regarding compassionate appointment under the Die-in-Harness Scheme was applicable on 05.10.2021, when the DLC for compassionate appointment, Hailakandi considered the case of the petitioner for her appointment on compassionate ground, which clearly stipulates that every eligible dependent seeking appointment under the said O.M. shall have to make an application for appointment on compassionate ground in the prescribed form with all enclosures within 1 (one) year from the date of death or acceptance. Apparently, the petitioner at the time of filing of application on 24.07.2006 for her compassionate appointment on the death of her father, who died in harness on 24.05.2006, was a minor of about 16 years 7 months and was not eligible to apply for any such public post/Government employment.

22. It is well settled that — the Compassionate Appointment is given as an immediate measure only to get over the death of the bread earner at that point of time and there cannot be any vested right on such appointment except that such consideration can only be done as per prevailing policy. After passage of long time, the sense of immediacy gets lost. The very *raison d'être* for giving compassionate appointment or compassionate benefit is lost once the immediacy has died down. Once the long time passed by, the compassionate element stands extinguished. A family who could survive for long years would not be entitled to any compassionate benefit since compassionate benefit is not a largesse nor it is a rule in the employment.

23. The Hon'ble Supreme Court have also held that appointment on compassionate ground under the Die-in-Harness Scheme is not a matter of right and there cannot be any rule to take advantage of any such scheme of compassionate appointment under the Die-in-Harness Scheme after several years.

24. Considering the above, this Court is of the view that the impugned decision of the District Level Committee for Compassionate Appointment of Hailakandi District dated 05.10.2021 communicated by the Deputy Commissioner & Chairman District Level Committee, Hailakandi vide order No. HPE.1/2021 dated 11.10.2021 does not call for any interference in exercise of the power under Article 226 of the Constitution of India.

25. Accordingly, this writ petition, being devoid of merit, stands dismissed.

JUDGE

Comparing Assistant