

GAHC010051462022



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

Case No. : WP(C)/2780/2022

JYOTI PRASAD CHANGMAI
S/O- LATE NARA NATH CHANGMAI, R/O- VILL.- MOINAPARA, P.O. AND P.S.
GHILAMARA, DIST. LAKHIMPUR, ASSAM, PIN- 787053.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, ELEMENTARY EDUCATION DEPARTMENT,
JANATA BHAWAN, DISPUR, GUWAHATI-05, ASSAM

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

3:THE DEPUTY COMMISSIONER
LAKHIMPUR
ASSAM

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
LAKHIMPUR
DIST. NORTH LAKHIMPUR
ASSA

Advocate for the Petitioner : DR. B N GOGOI

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

02.02.2023

Heard Dr. B N Gogoi, learned counsel for the petitioner and Mr. P N Sarma, learned Standing counsel, Department of School (Elementary) Education, Assam for the respondent Nos. 1, 2 & 4. Also heard Ms. D Das Barman, learned Government Advocate, Assam for the respondent No. 3.

It is stated by the petitioner that his father, Naranath Changmai, an Assistant Teacher at Moinapara Lower Primary School, District–Lakhimpur died in harness on 09.04.2002 and that he applied for his compassionate appointment as an Assistant Teacher in Lower Primary School within the stipulated time in terms of the Office Memorandum No. ABP50/2006/Pt/182 dated 01.06.2015 of the State Government in the Personnel (B) Department.

It is also stated by the petitioner that he is a Graduate and fulfills the requisite eligibility for appointment to the post of Assistant Teacher in Upper Primary/ Lower Primary schools of the district concerned.

As the case of the petitioner for his compassionate appointment has not been considered, he approached the authorities concerned. During such approach, he came to know that the Additional Deputy Commissioner, Lakhimpur by communication No. LPE.5/2022/2 dated 07.03.2022 informed all the Heads of the Departments including the District Elementary Education Officer, Lakhimpur, North-Lakhimpur informing that the meeting of the District Level Committee for the purpose of appointment on compassionate ground shall be held after the U.L.B (Urban Local Bodies) Election, 2022 and by the said letter the Additional Deputy Commissioner, Lakhimpur requested the District Elementary Education Officer (DEEO), Lakhimpur to submit the pending proposals prior to 01.04.2017, if any, along with vacancy positions of Grade III and Grade IV to him within the stipulated time.

By filing an additional affidavit on 21.12.2022, the petitioner brought to the notice of the Court that the DEEO, Lakhimpur by its communication dated 10.10.2022

requested the Deputy Inspector of Schools, Lakhimpur, North-Lakhimpur as well as the Block Elementary Education Officer (BEEO), Lakhimpur to submit the status of application of the petitioner by 11.10.2022 as it received a letter from the Government Advocate, Gauhati High Court, making certain queries with regard to the present petition of the petitioner.

On receipt of the same, the Deputy Inspector of Schools, Dhakuakhana by its communication No. DIS/DHK/LP/288 dated 12.10.2022 informed the DEEO, Lakhimpur that he received an original application for compassionate appointment from the petitioner, son of late Naranath Changmai, expired teacher of Moinapara L.P. School, who expired on 09.04.2002 and forwarded the said application to the DEEO, Lakhimpur for consideration of compassionate appointment of the petitioner as Primary School Teacher.

Petitioner submitted his application before the DEEO, Lakhimpur as well as the Deputy Inspector of Schools, Dhakuakhana on 10.10.2022 seeking appointment on compassionate ground.

Petitioner submitted that since his application for compassionate appointment on 10.10.2022 is pending for consideration, the authorities concerned should consider his case.

In this regard, the petitioner has placed the decisions of this Court in the cases of *Achyut Ranjan Das & Ors -Vs- State of Assam and Ors*; reported in 2006 (4) GLT 674, *Faziron Nessa and Ors. -Vs- State of Assam and Ors*; reported in 2010 (4) GLT 340, *Ajit Pator & Ors. -Vs- State of Assam and Ors*; reported in 2009 (3) GLT 306 and other relevant Office Memorandum of the State Government regarding compassionate appointment.

The entire case of the petitioner evolves on the particular letter of the Additional Deputy Commissioner, Lakhimpur dated 07.03.2022, noted above, by which the said authority directed the DEEO, Lakhimpur to submit all the proposals that are pending for consideration for compassionate appointment prior to 01.04.2017 as a meeting of the District Level Committee for compassionate appointment was scheduled

immediately after the U.L.B Election, 2022.

Though the petitioner stated that he submitted his application for his compassionate appointment under the Die-in-Harness Scheme after the death of his father, who expired on 09.04.2002, but he failed to state as to when he filed his application for his compassionate appointment after the death of his father and submitted that he has filed his application on 10.10.2022 after the said letter of the Additional Deputy Commissioner, Lakhimpur dated 07.03.2022.

The petitioner also relied on a decision passed by a co-ordinate Bench of this Court on 22.08.2022 in WP(C) No. 4355/2022, (*Hementa Kr. Chetia –Vs- The State of Assam & Ors.*)

But the said decision is not applicable in the present case, as in the case of the petitioner of WP(C) No. 4355/2022, the District Level Committee for compassionate appointment of Lakhimpur district in its meeting held on 17.03.2022 recommended the case of the said petitioner for the post of Lower Primary Teacher, but steps were not taken to place the case of the said petitioner before the State Level Committee for compassionate appointment.

It is also not the case of the petitioner that his application filed prior to 10.10.2022 before the authority concerned for his compassionate appointment was never placed before the District Level Committee for compassionate appointment, District–Lakhimpur.

The Court in the case of *Faziron Nessa* (Supra) have fixed the time limit for filing application for compassionate appointment by the dependent of an Government Employee who dies in harness i.e., one year from the date of death of the said Government Employee. Said time limit to file application for compassionate appointment is also specified in the Office Memorandum dated 01.06.2015, noted above.

In the case in hand, the petitioner have failed to place before the Court regarding filing of his said application for compassionate appointment within the said time limit fixed by the Court with regard to consideration of compassionate

appointment under the Die-in-Harness Scheme after the death of his father on 09.04.2002, almost twenty years ago.

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 can not 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.

Accordingly, this writ petition being devoid of merits stands dismissed.

JUDGE

Comparing Assistant