

GAHC010053732023



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

Case No. : WP(C)/1455/2023

ARIF ULLA DEWAN @ ARIF ULLAH DEWAN
SON OF LATE ABDUL JALIL DEWAN,
VILLAGE- KOKILA NAYAPARA,
P.O.- KOKILA BAZAR,
PS- ABHAYAPURI,
DISTRICT- BONGAIGAON (ASSAM),
PIN- 783392.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM,
CUM CHAIRMAN, STATE LEVEL SELECTION COMMITTEE ON
COMPASSIONATE APPOINTMENT,
DISPUR, GUWAHATI-6.

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (B) DEPARTMENT
ASSAM
DISPUR
GUWAHATI-6.

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF SCHOOL EDUCATION
ASSAM
DISPUR
GUWAHATI-6.

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

5:THE CHAIRMAN
DISTRICT LEVEL SELECTION COMMITTEE ON COMPASSIONATE
GROUND CUM DEPUTY COMMISSIONER

BONGAIGAON
DIST.- BONGAIGAON (ASSAM)

PIN- 783390.

6:THE DISTRICT ELEMENTARY EDUCATION OFFICER
BONGAIGAON
DIST.- BONGAIGAON
ASSAM

PIN- 783390

Advocate for the Petitioner : MR. K R PATGIRI

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

17.03.2023

Heard Mr. K R Patgiri, learned counsel for the petitioner and Mr. G Bokalia, learned Government Advocate, Assam for the respondent Nos. 1, 2 & 5. Also heard Ms. S Das, learned Standing counsel, Department of School (Elementary) Education, Assam for the respondent Nos. 3, 4 & 6.

2. It is stated that the father of the petitioner, Abdul Jalil Dewan was serving as Assistant Teacher (Arabic) in Sati Jaymoti Kokila Girls M.E. School, Kokila in the district of Bongaigaon, who died in harness on 27.07.2016 leaving behind his widow i.e., the mother of the petitioner, five daughters and three sons including him.

3. The petitioner is a graduate and on 19.09.2016 after the death of this father he applied for his compassionate appointment as a Teacher in any M.E. school as per the Government scheme.

4. The District Level Committee (DLC) for compassionate appointment, Bongaigaon in

its meeting held on 27.12.2016 after considering the case of the petitioner rejected his case for compassionate appointment, as the said DLC found that the petitioner does not have the requisite eligibility of B.Ed. Degree, mandatory for Upper Primary Teacher and following the provisions specified in the Office Memorandum (OM) No. ABP50/2006/Pt/182 dated 01.06.2015 of the State Government in the Personnel (B) Department, wherein at Clause 17 it is specifically provided that "*educational qualifications as prescribed by the concerned Service Rules shall however not be relaxed.*"

5. Being aggrieved, the petitioner preferred a writ petition being WP(C) No. 1675/2017 that was disposed of on 22.03.2017, whereby the Court found that the DLC, Bongaigaon had not shut the door for the petitioner as it had observed that his case would be considered again if he could produce B.Ed. Degree certificate within a period of two years.

6. Since the petitioner accepted any post for which he was qualified as on 2017, for appointment on compassionate ground, the Court by order dated 22.03.2017 passed in WP(C) No. 1675/2017 directed the respondents therein to place the case of the petitioner before the DLC, Bongaigaon for necessary consideration within a period of 4 months from the date of the said order.

7. Pursuant to the said order of the Court dated 22.03.2017 passed in WP(C) No. 1675/2017, noted above, the case of the petitioner was again placed before the DLC, Bongaigaon on 19.02.2020 and the said DLC could not recommend the name of the petitioner due to non-availability of vacancy as per norms and accordingly rejected the same.

8. Subsequent to that, the case of the petitioner was again placed before the DLC, Bongaigaon on 21.09.2021 and this time, the case of the petitioner was rejected, as his case on earlier occasion on 19.02.2020 was rejected by the DLC, Bongaigaon due to non-availability of vacancy.

9. Now, the petitioner has preferred this writ petition on 14.03.2023 by correcting the details, praying amongst others, for a direction to the respondent authorities of the DLC, Bongaigaon to set aside and quash the minutes dated 19.02.2020 and 21.09.2021 with regard to the petitioner, noted above, and to direct it to consider his case afresh for

appointment on compassionate ground to any other vacant post of Grade-III/Grade-IV available in the concerned department or any other department as per Clause 15 of the said Office Memorandum dated 01.06.2015.

10. While considering the case of the petitioner, as noted above, the DLC, Bongaigaon on 27.12.2016 directed the petitioner to have his B.Ed. Degree so as to consider his case again after 2 years, but the petitioner approached this Court by preferring a writ petition in 2017, pursuant to which the case of the petitioner was again considered by the DLC, Bongaigaon on 19.02.2020 and thereafter, the case of the petitioner was again placed before the DLC, Bongaigaon on 21.09.2021.

11. From perusal of the Office Memorandum dated 01.06.2015, noted above, it can be seen that at Clause 5 of the said O.M. it is specifically provided that– *"compassionate appointment is not a matter of right and it will be subject to fulfillment of all the conditions, including the availability of vacancy, laid down for such appointments under the scheme."*

12. Clause 24 (b) & (c) of the said O.M. dated 01.06.2015 provides that– *"in respect of cases received after the Judgment dated 03.08.2006 i.e., Judgment passed in the case of Achyut Ranjan Das & Ors -Vs.- State of Assam and Ors; reported in 2006 (4) GLT 674, if applications are pending for a period of two years from the date of making an application but could not be considered for want of vacancies, all such applications will require no further consideration and must be understood that they have spent their force "*. The said O.M. dated 01.06.2015 further provides that the cases of compassionate appointment shall be considered on need basis upon comparative assessment of various applications and not by application of the test of seniority of claims unless two or more eligible candidates are at par, where it may so happen that a claim later in point of time is more deserving than a claim prior in point of time.

13. In the case in hand, the father of the petitioner expired on 27.07.2016.

14. 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.

15. Considering the above, the provisions of said O.M. dated 01.06.2015 and the law settled by the Hon'ble Apex Court, the Court is of the view that the decisions of the DLC, Bongaigaon dated 19.02.2020 and 21.09.2021 with regard to rejection of claim of the petitioner for his compassionate appointment does not call for any interference by this Court in exercise of the power conferred under Article 226 of the Constitution of India.

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

JUDGE

Comparing Assistant