

GAHC010058092023



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

Case No. : WP(C)/1520/2023

JOHIRUL ISLAM LASKAR
S/O- LATE NAZRUL ISLAM LASKAR,
VILLAGE- GHAGRAPAR PT-I,
PO.- SALCHAPRA, DIST.- CACHAR,
ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
ELEMENTARY EDUCATION DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE STATE LEVEL COMMITTEE (SLC)
TO BE REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF
ASSAM

DISPUR
GUWAHATI-6.

3:THE DISTRICT LEVEL COMMITTEE (DLC)
CACHAR
REPRESENTED BY ITS CHAIRMAN CUM DEPUTY COMMISSIONER

CACHAR
SILCHAR
DIST.- CACHAR

ASSAM.

4:THE DIRECTOR OF ELEMENTARY EDUCATION DEPARTMENT

ASSAM
KAHILIPARA
GAUHATI- 19.

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
CACHAR
P.O.- SILCHAR
DIST.- CACHAR
ASSAM.

6:THE DEPUTY INSPECTOR OF SCHOOLS
CACHAR
P.O.- SILCHAR
DIST.- CACHAR
ASSAM

Advocate for the Petitioner : MR. A M BARBHUIYA

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
ORDER

31.08.2023

Heard Mr. AM Barbhuiyan, learned counsel for the petitioner. Also heard Mr. P Saikia, learned counsel for the respondents No.2 and 3 respectively being the State Level Committee through the Chief Secretary and District Level Committee through the Deputy Commissioner Cachar as well as Mr. Ganesh Pegu, learned counsel for the respondents No.1, 4, 5 and 6 being the authorities under the Elementary Education Department, Government of Assam.

2. The father of the petitioner Nazrul Islam Laskar who was working as an Assamese language teacher at Gaghrapar MV School, Cachar died in harness on

10.06.1998 and on his death, the mother of the petitioner Musstt. Fatima Bibi submitted an application on 15.02.1999 seeking liberty from the authorities to make an application for compassionate appointment when her son, the petitioner, would attain his majority. Upon attaining majority, the petitioner submitted an application on 02.06.2007. When the said application was not given a consideration for compassionate appointment, WP(C)No.1639/2022 was instituted wherein a final consideration was given by the order dated 07.03.2022 by taking note of the proposition of law laid down in *NC Santosh Vs. State of Karnataka and Others* reported in (2020) 7 SCC 617 which provided that norms prevailing on the date of consideration of the application would be the relevant aspect for compassionate appointment. Be that as it may, what is noticed is that when the facts of the case was noted that the deceased employee died on 10.06.1998, the mother made an application dated 15.02.1999 seeking liberty from the authorities to make an application for compassionate appointment when her son would attain his majority and the son has submitted an application upon attaining majority on 02.06.2007. No objection was raised by the respondent authorities that the application subsequently submitted upon attaining majority would be untenable in law. In the circumstance, the matter was directed to be placed before the DLC of Cachar for its consideration. The DLC in its meeting dated 10.05.2022 considered the application of the petitioner made on 02.06.2007 and was of the view that the required qualification for the petitioner would be higher secondary or its equivalent and accordingly, recommended the petitioner for compassionate appointment against the available vacant post. When the recommendation of the DLC was placed before the SLC in its meeting of 26.08.2022, it stood rejected by providing that as the candidate applied beyond one year of the death of the employee concerned, the

same is rejected in terms of OM dated 01.06.2015.

3. Mr. P Saikia, learned counsel for the respondents in the SLC clarifies that the relevant provisions relied upon by the SLC of the OM Dated 01.06.2015 is that an application for compassionate appointment is required to be made within a period of one year from the date of death of the employee concerned. As already noted above, in the earlier writ petition being WP(C)No.1639/2022, although the facts were clearly noted by the Court, no such objection was made by the respondents that the application does not require a consideration as in terms of the OM dated 01.06.2015, the application has to be made within a period of one year from the date of death of the employee. The said order having attained its finality, we are of the view that the SLC in a subsequent proceeding cannot take the said view and now reject *inasmuch as*, it would be barred by the principles of *res judicata*. Accordingly the rejection by the SLC in its meeting of 26.08.2022 of the case of the petitioner on the ground that the application was made after one year of the death of the deceased is set aside. The matter stands remanded back to the SLC to consider the recommendation made by the DLC dated 10.05.2022 in favour of the petitioner on its own merit and matter be placed before the next available meeting of the SLC.

4. Writ petition stands disposed of accordingly.

JUDGE

Comparing Assistant