

GAHC010061272023



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

Case No. : WP(C)/1639/2023

ZAKARIA AMANULLA CHOUDHURY
S/O- LATE KAMAL UDDIN CHOUDHURY,
VILLAGE AND P.O.-TANTOO, P.S.- LALA,
DIST- HAILAKANDI, ASSAM, PIN- 788163.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER SECRETARY TO THE
GOVERNMENT OF ASSAM,
EDUCATION (ELEMENTARY) DEPARTMENT, ASSAM,
DISPUR, GUWAHATI- 781006.

2:THE DIRECTOR OF ASSAM
ELEMENTARY EDUCATION DEPARTMENT
ASSAM
KAHILIPARA
GUWAHATI- 781019.

3:THE DEPUTY COMMISSIONER AND CHAIRMAN
DISTRICT LEVEL COMMITTEE (DLC)
HAILAKANDI
P.O. AND DIST.- HAILAKANDI
ASSAM

PIN- 788151.

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER (D.E.E.O.)
P.O. AND DISTRICT- HAILAKANDI
ASSAM

PIN- 788151

Advocate for the Petitioner : MR. A H ALAMGIR

Advocate for the Respondent : SC, ELEM. EDU

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

ORDER

24.03.2023

Heard Mr. A H Alamgir, learned counsel for the petitioner and Mr. G Pegu, learned Standing counsel, Department of School (Elementary) Education, Assam for the respondent No. 1, 2 & 4. Also heard Mr. P Saikia, learned Government Advocate, Assam for the respondent No. 3.

2. Father of the petitioner, Kamal Uddin Choudhury, an Assistant Language Teacher of Tantoo M.E. School in the District of Hailakandi died in harness on 30.06.2012.

3. The petitioner, being the eldest son and Higher Secondary passed on 20.09.2012 submitted an application for his compassionate appointment before the District Elementary Education Officer (DEEO), Hailakandi through the Headmaster of said Tantoo M.E. School.

4. The Headmaster of Tantoo M.E. School, Hailakandi on 20.09.2012 itself forwarded the application of the petitioner to the DEEO, Hailakandi for his appointment on compassionate ground.

5. By an Order under No. HPE.1/2021 dated 11.10.2021, the Deputy Commissioner cum Chairman of the District Level Committee (DLC) for compassionate appointment, District-Hailakandi apprised that the case of the petitioner was earlier considered by the DLC, Hailakandi and was rejected on 13.06.2013 finding him to be under-qualified in the category of Assistant Teacher of Lower Primary School.

6. Later, the case of the petitioner was again placed before the DLC, Hailakandi on 05.10.2021 and on that date, the said DLC came to the conclusion that the application of the petitioner is not fit for recommendation to the State Level Committee for compassionate appointment under the Die-in-Harness Scheme.

- 7.** Being aggrieved, the petitioner has preferred this writ petition.
- 8.** The Office Memorandum (OM) No. ABP.50/2006/Pt/182 dated 01.06.2015 of the State Government in the Personnel (B) Department, at Clause 10 provides that *compassionate appointment shall be made only to the Grade-III/Grade-IV posts against the vacancies under the Direct Recruitment quota.*
- 9.** Further, Clause 15 of the said O.M. dated 01.06.2015 provides that *if sufficient vacancies are not available in any particular office to accommodate the persons in the waiting list for compassionate appointment, it is open to the Administrative Department/Office to take up the matter with other Departments/Offices of the Government to provide at an early appointment on compassionate grounds to those in the waiting list.*
- 10.** Moreover, this Court have settled the law regarding compassionate appointment that if vacancies in Grade-III are not available, then the concerned candidate seeking appointment on compassionate ground can be considered for the post of Grade-IV in the event of unavailability of any such vacancies in Grade-III as per the educational qualification of the concerned incumbent, which however is not to be relaxed in terms of the concerned Service Rules.
- 11.** In the order dated 11.10.2021 of the Deputy Commissioner cum Chairman of the District Level Committee (DLC) for compassionate appointment, District–Hailakandi, it is not reflected as to why the case of the petitioner was rejected for compassionate appointment without considering his appointment on compassionate ground in any other Administrative Departments in Grade-III/Grade-IV vacancies.
- 12.** In view of the above, the Order dated 11.10.2021 of the Deputy Commissioner cum Chairman of the District Level Committee (DLC) for compassionate appointment, District–Hailakandi being not tenable in law is set aside and quashed, directing the District Elementary Education Officer, Hailakandi to place the case of the petitioner again before the District Level Committee for compassionate appointment, District–Hailakandi in its next meeting and to consider the case of the petitioner in the light of the O.M. dated 01.06.2015, noted above and the relevant Rules/Orders in force, pertaining to compassionate appointment. The said DLC, Hailakandi shall intimate the petitioner about

the outcome of its decision.

13. Petitioner shall submit a representation before the District Elementary Education Officer (DEEO), Hailakandi along with a certified copy of this order, a copy of this writ petition including the Annexures appended thereto forthwith, obtaining necessary acknowledgment from the said authority in that regard.

14. With the above observation and direction, this writ petition stands disposed of.

JUDGE

Comparing Assistant