

GAHC010119492023



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

Case No. : WA/196/2023

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

1: 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

For the Appellant : Mr. K.R. Patgiri, Advocate.

For the Respondents : Mr. N.J. Khataniar, Standing Counsel, Education (Elementary) Department.
: Mrs. R.B. Bora, Junior Government Advocate, Assam.

- B E F O R E -
HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE MITALI THAKURIA

07.06.2023

[Sandeep Mehta, C.J.]

The instant writ appeal is directed against the judgment & final order dated 17.03.2023 passed by the learned Single Judge dismissing WP(C) No.1455/2023 filed by the petitioner seeking to assail the minutes of the meeting dated 19.02.2020 and 21.09.2021 held by the District Level Committee (DLC), Bongaigaon and to direct the respondents to consider his case for appointment on compassionate ground to any vacant post of Grade-III/Grade-IV available in the concerned Department or any other Department as per Clause 15 of the Office Memorandum dated 01.06.2015.

Brief facts essential for disposal of the writ appeal are noted hereinbelow.

The petitioner's father Abdul Jalil Dewan was serving as an Assistant Teacher (Arabic) in Sati Jaymoti Kokila Girls M.E. School in the district of Bongaigaon. He died in harness on 27.07.2016 leaving behind his widow, five daughters and three sons, including the appellant herein. The appellant/petitioner being a qualified graduate, filed an application dated 19.09.2016 seeking compassionate appointment as a teacher in any M.E. School as per the Government Scheme. The DLC for compassionate appointment, Bongaigaon considered and rejected the case of the appellant/petitioner in the meeting held on 27.12.2016 observing that he did not have the requisite eligibility of B.Ed. Degree so as to qualify him for upper primary teacher.

The appellant/petitioner preferred WP(C) No.1675/2017 being aggrieved of the above rejection order, which was disposed of vide order dated 22.03.2017 with the observation that the DLC, Bongaigaon had not shut the

door for the appellant/petitioner by making an observation that his case would be considered again if he could produce the B.Ed. Degree Certificate within a period of 2(two) years. Further observation was made that as the appellant/petitioner was ready to accept any post for appointment on compassionate ground to which he was qualified in the year 2017, the respondents were directed to place the case of the petitioner before the DLC, Bongaigaon.

The case of the appellant/petitioner was again considered by the DLC but could not be recommended as there was no vacancy available as per norms. Hence, by order dated 19.02.2020, further reiterated on 21.09.2021, the petitioner's prayer for compassionate appointment was rejected.

Being aggrieved, the appellant/petitioner filed the captioned writ petition being WP(C) No.1455/2023 seeking a direction to set aside the aforesaid 2(two) minutes dated 19.02.2020 and 21.09.2021 and to direct the respondents to consider his case afresh for appointment on compassionate ground in any other vacant post of Grade-III/ Grade-IV as per Clause 15 of the Office Memorandum dated 01.06.2015.

The learned Single Bench held that Clause 24(b) & (c) of the Office Memorandum dated 01.06.2015 clearly stipulates that if the application for compassionate appointment was pending for a period of 2(two) years from the date of making an application but could not be considered for want of vacancies, the same would not require any further consideration and must be understood that they have spent their force. Accordingly, the writ petition came to be rejected by the order dated 17.03.2023, which is challenged in this writ appeal.

Mr. K.R. Patgiri, learned counsel for the appellant/petitioner vehemently and fervently contended that as there was a positive direction of this Court vide

order dated 22.03.2017 passed in WP(C) No.1675/2017 to consider the case of the appellant/petitioner against any available post, the respondents were not justified in rejecting the case of the appellant/petitioner for compassionate appointment. He thus, urged that the impugned minutes deserve to be set aside and a direction be issued to the respondents to re-consider the case of the appellant/petitioner for compassionate appointment.

Per contra, Mrs. R.B. Bora, learned Junior Government Advocate, Assam and Mr. N.J. Khataniar, learned standing counsel, Education (Elementary) Department appearing for the respondents pointed out that the appellant/petitioner knowing very well that he did not have the qualification for being appointed as a teacher, filed the application for being considered on the said post. The application was rightly rejected because the appellant/petitioner did not have the qualification for the said post. Subsequent to the direction given by the Writ Court, the case of the appellant/petitioner was considered afresh and vide the minutes dated 19.02.2020 and 21.09.2021, was again rejected on the ground that there was lack of available vacancy as per norms fixed by the Personnel (B) Department vide Office Memorandum dated 01.06.2015.

Having heard and considered the submissions advanced by the learned counsel representing the parties, we find that the appellant/petitioner's father expired in the year 2016. The first application for compassionate appointment was filed for the post of teacher to which the appellant/petitioner did not qualify and hence, was rightly rejected. The Writ Court vide order dated 22.03.2017 passed in WP(C) No.1675/2017 took a lenient view and directed the respondents to re-consider the case of the appellant/petitioner for any other available post of Grade-III/Grade-IV. However, the DLC upon fresh consideration, did not find any vacancy and hence, the application was rejected

and rightly so in our opinion.

Law is well settled that compassionate appointment is not a matter of right and is only provided to the family of an employee dying in harness as a measure to tide over penury and financial distress brought upon on account of passing away of the sole bread earner of the family. However, the appellant/petitioner after the death of his father, consciously choose to apply for the post of teacher without having the requisite qualification. As per the Office Memorandum dated 01.06.2015, the applications for compassionate appointment pending for 2(two) years would be deemed to have spent their force and hence, the direction given by the learned Single Judge in WP(C) No.1675/2017 could not have sustained the appellant/petitioner's claim for compassionate appointment beyond 2(two) years.

As a consequence, we are of the firm view that the learned Single Judge was absolutely justified in rejecting the writ petition filed by the appellant/petitioner and denying him the relief of compassionate appointment pursuant to the death of his father. The impugned order dated 17.03.2023 passed in WP(C) No.1455/2023 does not suffer from any infirmity warranting interference. Hence, the writ appeal fails and is dismissed as being devoid of merit. No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant