

GAHC010124112021



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

Case No. : WP(C)/4471/2021

ASHARJYA BORO
S/O LATE NABIN RAM BORO
RESIDENT OF VILLAGE THAKURKUCHI, PS PRAGJYOTISHPUR, DIST
KAMRUP(M) ASSAM, 781050

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, ELEMENTARY EDUCATION DEPARTMENT, DISPUR GUWAHATI
781006

2:THE DIRECTOR OF ELEMENTARY EDUCATION
KAHILIPARA GUWAHATI 781019

3:THE DEPUTY INSPECTOR OF SCHOOLS
PRAGJYOTISHPUR
KAMRUP GUWAHATI 781050

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
KAMRUP (M) GUWAHATI 781001

5:THE DEPUTY COMMISSIONER
KAMRUP(M) GUWAHATI 78100

Advocate for the Petitioner : MR. B K DAS
Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

01-02-2023

Heard Mr. P. Das, 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 and 4. Also heard Ms. D. Das Barman, learned Government Advocate, Assam for the respondent Nos. 3 and 5.

Father of the petitioner, Nabin Ram Boro @ Nabin Boro, regular Teacher in Thakurkuchi L.P. School, a provincialised School of the State, died-in-harness on 13.06.2013 leaving behind his widow, mother of the petitioner and one daughter and one son, i.e., the petitioner herein.

The petitioner, being eligible applied for his compassionate appointment on 05.11.2013 before the District Elementary Education Officer (DEEO), Kamrup (Metro) for a Grade-IV post under the Die-in-Harness Scheme of the State, which was accordingly, forwarded by the DEEO, Kamrup (Metro) on 22.05.2018 to the District Level Committee for compassionate appointment, Kamrup (Metro) District. The said DLC for compassionate appointment, Kamrup (Metro) on 22.05.2018 could not finalise the case of the petitioner for his compassionate appointment as re-verification of relevant papers/documents relating to the financial condition etc., of the petitioner were required for examination and as such, the said DLC, Kamrup (Metro) in its said meeting on 22.05.2018 resolved to finalise the case of the petitioner for his compassionate appointment shortly subject to submission of the required documents/papers by the Department in the Elementary Education of the District concerned.

Petitioner contended that though he submitted all the relevant documents/papers before the authority concerned in December, 2019, but till date, the said DLC, Kamrup (Metro) is yet to take decision on the same and to forward his case further before the

State Level Committee for necessary consideration.

Pursuant to the orders passed earlier in this proceeding on 16.12.2022 and 25.01.2023, Ms. D. Das Barman, learned Government Advocate, Assam has placed the copy of the minutes of the DLC for compassionate appointment, Kamrup (Metro) dated 30.09.2019 whereby the case of the petitioner for his compassionate appointment in a Grade-IV post under the Die-in-Harness Scheme was rejected by the said DLC, on the ground that the case of the petitioner was pending due to dearth of vacancy for more than 2 years following the Office Memorandum No. ABP.50/2006/Pt/182 dated 01.06.2015 of the State Government wherein it is categorically stated that – *applications which remained pending due to want of vacancies for a period of 2 years from the date of making such applications, such applications will require no further consideration and must be understood to have spent their force.*

However, from the perusal of the first decision of the DLC, Kamrup (Metro) dated 22.05.2018, as already noted above, it can be seen that the case of the petitioner could not be finalized as re-verification of relevant papers/documents relating to his financial condition etc., was required, where the DLC, Kamrup (Metro) decided that his case would be finalised subject to submission of those documents by the department concerned.

It is seen that at no point of time, the case of the petitioner for his compassionate appointment was earlier deferred by the DLC, Kamrup (Metro) for non-availability of vacancy.

Though the Deputy Commissioner, Kamrup (Metro) as well as the DEEO, Kamrup (Metro) submitted written information, however, they did not apprise the Court as to when the petitioner was communicated about the rejection of his application for his compassionate appointment in terms of the minutes of the DLC, Kamrup (Metro) dated 30.09.2019.

For the reasons above, the Court found that the decision of the DLC for compassionate appointment Kamrup (Metro) dated 30.09.2019 rejecting the case of the petitioner is arbitrary and illegal, therefore, it is set aside and quashed.

Accordingly, after hearing the learned counsels for the parties and considering the entire aspect of the matter, the DEEO, Kamrup (Metro) is directed to place the case of the petitioner forthwith before the DLC for compassionate appointment, Kamrup (Metro) in its next meeting for reconsideration of the case of the petitioner for his compassionate appointment.

The respondent authorities in the DLC for compassionate appointment, Kamrup (Metro) as per the relevant Office Memorandum/ Notifications regarding compassionate appointment and in terms of the decisions of this Court in the case of *Achyut Ranjan Das and others Vs. State of Assam and others*, reported in 2006 (4) GLT 674, as well as in the case of *Faziron Nessa Vs. State of Assam and Ors.* reported in 2010 (4) GLT 340 shall consider the case of the petitioner for his appointment on compassionate ground under the Die-in-Harness Scheme in any Grade-IV post and shall take a decision in terms of the said observations and shall communicate its decision to the petitioner.

Petitioner shall submit a certified copy of this order before the District Elementary Education Officer, Kamrup (Metro) forthwith obtaining necessary acknowledgment from the said authority in that regard and the DEEO, Kamrup (Metro) in turn shall place the case of the petitioner in the next meeting of the DLC, for compassionate appointment, Kamrup (Metro), as directed above.

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

JUDGE

Comparing Assistant