

GAHC010148442023



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

Case No. : WA/319/2023

RAJIB ROY
S/O LATE MOTILAL ROY, VILL.- GOALAGHAT, P.S.- SRIGOURI, P.S.-
BADARPUR, DIST.-KARIMGANJ, ASSAM, PIN-788806.

VERSUS

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

2:THE DIRECTOR
ELEMENTARY EDUCATION
KAHILIPARA
GUWAHATI- 19.

3:THE DEPUTY COMMISSIONER
KARIMGANJ
CUM CHAIRMAN
DISTRICT LEVEL COMMITTEE FOR COMPASSIONATE APPOINTMENT
DIST-KARIMGANJ
PIN- 788710.

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
KARIMGANJ
DIST-KARIMGANJ
ASSAM
PIN- 788710.

5:THE DEPUTY INSPECTOR OF SCHOOLS
KARIMGANJ
P.O. AND DIST-KARIMGANJ
ASSAM

PIN- 788710.

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
BADARPUR
P.O.-BADARPUR
DIST-KARIMGANJ
ASSAM
PIN- 788710

Advocate for the Petitioner : MR. I ALAM

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGMENT & ORDER

Date : 21-08-2023

(S.P. Khaund, J)

1. Heard Mr. I. Alam, learned counsel for the appellant. Also heard Ms. R.B. Bora, learned Govt. Advocate for respondent No. 3 and Mr. S. Chutia, learned Standing Counsel, Elementary Education.

2. This writ appeal is preferred against the order dated 05.06.2023 passed by the learned Single Judge in connection with WP(C) No. 2126/2023. The appellant is Rajib Roy and the respondents are the State of Assam; the Director, Elementary Education; the Deputy Commissioner; the District Elementary Officer; the Deputy Inspector of Schools and the Block Elementary Officer and are arrayed as Respondent Nos. 1, 2, 3, 4, 5 and 6 respectively.

3. The brief facts of the case is that the appellant is the son of Late Motilal

Roy who was working as an Assistant Teacher of Umarpur M.E. School, under Block Elementary Education Officer, Badarpur Block of Karimganj district. The appellant's father died in harness on 25.11.1992. The appellant was only 3 years old when his father passed away and so he was unable to approach the respondent authority for compassionate appointment. However, his mother Smt. Asha Rani Roy submitted her application before the District Elementary Education Officer, Karimganj on 18.10.1999 for appointment on compassionate ground as a widow of the deceased employee. On 31.07.1999 another application was submitted through proper channel and on proper format as per government guidelines prevailing at that time, but the application submitted by the appellant's mother was never considered. It is submitted that as the appellant's father was the sole bread winner of the family, the appellant had to endure difficulties after his father's demise. Meanwhile, the appellant cleared his Higher Secondary Examination in the year 2010 but could not pursue further studies due to financial hardship. The appellant completed his D.El.Ed in the year 2019 from the National School of Open Schooling and is at present eligible for the post of Teacher in ME School. The appellant also belongs to the Scheduled Caste category.

4. On attaining majority, the appellant submitted an application before the respondent No. 6 for appointment on compassionate ground in the year 2011

through respondent No. 7 (BEE0), Badarpur which was duly acknowledged on 20.08.2011 and forwarded to the respondent No. 6 vide Memo No. 159 dated 20.06.2011. The appellant's application was placed before the District Level Committee on 28.06.2013 but the District Level Committee rejected the application on the ground of late submission. Thereafter on 21.11.2022 the appellant submitted another application

before the Deputy Commissioner (DC in short), Karimganj. The DC is also the Chairman of the District Level Committee (DLC in short). The appellant also appended the decision of this Court in WP(C) No. 2991/2022 along with his application. The appellant was expecting that his case would have been considered by the DLC but to his dismay, his application was rejected in the meeting held on 06.02.2023, on the same ground of late submission of application. The appellant was not even informed about the decision of the DLC and he again approached the authority by filing a petition for compassionate appointment. The representations before the respondent authority were made by the appellant on compassionate ground as the appellant has no source of income to maintain his family.

5. The appellant had prayed before the learned Single Judge to set aside and quash the decision of the DLC dated 06.02.2023. The appellant had also prayed

for a direction to the respondent authority for consideration of his case in the next DLC meeting. It has been admitted by the appellant that his mother submitted her application for compassionate appointment on 18.09.1994 in accordance with the OM of 1983, which had no prescribed time limit for application under compassionate appointment.

6. The learned Single Judge directed the appellant to furnish information of the status of the application of his mother submitted before the DLC, vide order dated 15.05.2023 in WP(C) No. 2126/2023. It was held by the learned Single Judge that the father of the appellant expired on 25.11.1992 and his mother made an application on 18.10.1994, for compassionate appointment and due to non-consideration of the case of his mother, the appellant submitted his application on 20.06.2011, after a delay of 19 years without any explanation. The writ petition of the appellant was dismissed vide order dated 05.06.2023.

7. It has been contended by the learned counsel for the appellant that the impugned order dated 16.03.2022, suffers from *prima facie* illegality, inasmuch as, the learned Single Judge failed to consider the fact that when the appellant's father passed away, he was a minor. His mother's prayer for appointment on compassionate ground was rejected. On coming of age, the appellant finally submitted the aforementioned application for appointment. It has been fervently

submitted that when the appellant's mother submitted the application in accordance with the OM of 1983, no time limit for such application was prescribed. Subsequently, the OM of 2009 came into force and the appellant attained majority and submitted his application for compassionate appointment on 20.06.2011, without any delay from the date of the appellant attaining his majority, i.e., on 15.08.2010. It is submitted that the learned Single Judge did not consider the ratio of the Judgment and Order dated 04.01.2023, passed in WP(C) No. 1/2023. It is also submitted on behalf of the appellant that while deciding the issue, it was not appreciated that the DLC had rejected the application for late submission, without assigning any reasons and without considering the fact that the appellant was a minor at the time of his father's death. The order was passed arbitrarily in gross violation of Article 14 and Article 16 of the Constitution of India.

8. The learned counsel for the respondents laid stress in his argument that the appellant had filed his application for appointment on compassionate ground after an inexplicable delay of 19 years. The DLC had correctly rejected the application on the ground that the appellant had attained majority in the year 2007 as his date of birth is 15.08.1989. It was decided by the DLC to reject the application on the ground of late submission of the application. The appellant had earlier applied for appointment on compassionate ground on 09.01.2014.

Vide order dated 06.02.2023, the DLC had observed that after duly considering the earlier application dated 09.01.2014, the earlier order dated 23.12.2014 was passed. The DLC also held that the earlier order was passed after due consideration and the subsequent application of the appellant was also rejected vide order dated 06.02.2023. It is also submitted that vide OM No. ABP.357/80/VOL-I/303, dated Dispur the 2nd March, 2009 (Annexure-11), the Department can appoint only one person on compassionate appointment against 5% quota upto 20 vacancies in a year. The scheme is to give immediate relief to the distressed family.

9. The applications for appointment under the scheme in the prescribed format should be submitted within a period of 3 months from the date of death of the person, to the respective office/Departments under which the person dies in harness.

10. The 5% of the vacancies in Class-III and Class-IV posts occurring in a year must be reserved for appointment on compassionate ground. The ceiling of 5% of direct recruitment vacancies for making compassionate appointment should not be exceeded.

11. After hearing the learned counsel for the parties and also on consideration of the materials on record, it is clear that after the death of the appellant's

father, his mother made an application for appointment on compassionate ground on 18.10.1994. However, the application was rejected, but the appellant's mother did not agitate at any point of time against the rejection of her application. Thereafter, the appellant on attaining majority, made an application on 20.06.2011, after a delay of 19 years. The appellant has stated that he was only 3 years at the time of his father's death and so, he could not submit any application at that time. It is also submitted by the appellant that there was no period of limitation prescribed in the OM of 1983, which was amended and notified on 02.03.2009. The period of limitation vide Notification No. ABP.357/80/Vol-I/303 is three months. No application was filed by the appellant within 3 months. The appellant has submitted that as he was a minor at that time, he could not file any such application for appointment on compassionate ground. The prayer of the appellant appears to be too farfetched. It is submitted that as soon as he attained majority, within one year, he filed an application for appointment on compassionate ground. By no stretch of imagination, the limitation can be stretched to such an extent. Already 19 years have passed and the appellant is now a major. He has survived all odds that came his way. After a period of 19 years the appellant's endeavour to stretch the period of limitation and link with the rejection of his mother's application for appointment on compassionate ground is unjustifiable. Moreover

when his mother's application was rejected the same was not subjected to challenge before any forum. Then, the appellant went a step ahead and tried to link this rejection order with the date when he attained majority. The appellant's submissions relating to the delay in submitting his application for appointment on compassionate ground is totally untenable and cannot be accepted.

12. There appears to be no justified ground to interfere with the impugned Judgment and order dated 05.06.2023, passed in WP(C) No. 2126/2023, impugned by the appellant.

13. This appeal is devoid of merits and is hereby dismissed.

14. No order as to cost.

JUDGE

CHIEF JUSTICE

Comparing Assistant