

GAHC010205922023



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

Case No. : WP(C)/5490/2023

MIJANUR RAHMAN
S/O- AKKAS ALI, VILL- BALIJAN, P.O. ROWMARIBILL, P.S. MIKIRBHETA,
DISTRICT- MORIGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM, DISPUR, GUWAHATI- 781006

2:COMMISSIONER AND SECRETARY
GOVERNMENT OF ASSAM (ELEMENTARY EDUCATION)

3:DEPUTY COMMISSIONER
MORIGAON/CHAIRMAN
DISTRICT LEVEL COMMITTEE

4:DIRECTION OF ELEMENTARY EDUCATION
KAHILIPARA
GUWAHATI- 781006

5:BLOCK ELEMENTARY EDUCATION OFFICER
MORIGAO

Advocate for the Petitioner : MR. D P CHALIHA

Advocate for the Respondent : SC, ELEM. EDU

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

O R D E R

20.09.2023

Heard Mr. DP Chaliha, learned senior counsel for the petitioner, Mr. Ganesh

Pegu, learned counsel for the respondents in the Elementary Education Department, Government of Assam and Mr. P Saikia, learned Junior Government Advocate for the Deputy Commissioner, Morigaon.

2. The mother of the petitioner Lutfa Begum, who was working as the Headmistress in the Uttar balijan LP School in the Morigaon district, died in harness on 08.02.2015 and on her death, the petitioner submitted an application for compassionate appointment on 09.03.2015. The said application was placed before the DLC of Morigaon district in its meeting of 16.08.2022 and the application stood rejected by providing that there is a shortfall of minimum balance of the years of service as per Para-1 of the notification No. ABP 50/2006 Pt/182 dated 01.06.2015.

3. Admittedly the mother of the petitioner died on 08.02.2015 whereas on the other hand, she would have been in service up to 08.02.2015. But be that as it may, by the judgment dated 30.01.2023 in WP(C) No. 1646/2021 and other writ petitions, the provision incorporated in the said Office Memorandum dated 01.06.2015 requiring the balance of service of three years had been set aside. As the provisions of the Office Memorandum which had been relied upon by the DLC to reject the application of the petitioner had been set aside, we are of the view that such rejection in the present form would be untenable.

4. It is also noticed that the mother of the petitioner died on 08.02.2015 whereas the notification relied upon is dated 01.06.2015 i.e. subsequent to the date of death. From such point of view also under the principle of law as applicable, the DLC could not have relied upon a subsequent Office Memorandum of 01.06.2015. The Office Memorandum of 01.06.2015 does not provide for any norm, but it provides for a scheme of compassionate appointment that upon a balance service of less than three years, no

compassionate appointment would be available.

5. The law in this respect has been settled by the Hon'ble Supreme Court in its judgment rendered in State of Madhya Pradesh and others –vs- Ashish Awasthi reported in (2022) 2 SCC 157, wherein it is clearly provided that in case of compassionate appointment, the scheme prevailing on the date of death would be the relevant scheme and not any other subsequent scheme which may have been adopted.

6. For both the reasons, the rejection by the DLC requires an interference and accordingly, it is set aside and the application of the petitioner be now placed again before the next available DLC of Morigaon district.

7. But however, Mr. P Saikia, learned counsel for the Deputy Commissioner, Morigaon has raised an issue that the deceased mother of the petitioner died on 08.02.2015 whereas 08.02.2015 was also her last day in office.

8. In such circumstance, an issue would arise as to whether on the said date, the mother of the petitioner was in service and whether in the circumstance the petitioner would be entitled for an appointment on compassionate ground or being the last date of her service under the law, compassionate appointment cannot be meted in favour of the petitioner. The DLC may also decide the said issue.

The writ petition is allowed as indicated above.

JUDGE

Comparing Assistant