

GAHC010208702023



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

Case No. : WP(C)/5458/2023

RAJESH SINHA
S/O LT. RAJMOHAN SINHA, VILL- SEWTI PART-III, P.O.-BHUBANESWAR
NAGAR, DIST-CACHAR, ASSAM, PIN-788817

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
ELEMENTARY EDUCATION DEPARTMENT, DISPUR, GHY-6

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

3:THE DISTRICT COMMISSIONER
CACHAR
P.O. AND DIST-CACHAR
ASSAM
PIN-788030

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
CACHAR
SILCHAR
P.O. AND DIST-CACHAR
SILCHAR
ASSAM
PIN-78803

Advocate for the Petitioner : MR. N HOSSAIN

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

20.09.2023

Heard Mr. N Hossain, learned counsel for the petitioner. Also heard Ms. S Chutia, learned counsel for the Elementary Education Department, Government of Assam and Mr. P Saikia, learned Junior Government Advocate for the Deputy Commissioner, Cachar.

2. The father of the petitioner Late Rajmohan Sinha who was serving as a Head Teacher in the Mohanpur Sibbari L.P.School in the Cachar district died in harness on 13.01.2017 and on his death, the petitioner submitted an application for compassionate appointment on 19.05.2017. The said application of the petitioner was placed before the DLC of Cachar district in its meeting dated 02.02.2022. In respect of the application of the petitioner, the following order was passed as extracted:

“Rajesh Sinha, S/o –Lt. Rajmohan Sinha submitted his application for the post of AT, LPS but it is seen from his documents that his aggregate percentage is less than the requirement. Hence the application could not be considered. However, the DLC decided to consider the name of the applicant in Grade-IV post if vacancy available. The Committee had gone through the statement submitted by the office concerned in which it is seen that there is no post available in Grade-IV post. Hence the DLC could not

consider in Grade-IV also. Therefore, the application has been rejected."

3. A reading of the aforesaid order makes it discernible that initially the petitioner was considered for the post of teacher in a LP School, but he could not be so recommended as the marks obtained by him in the qualifying examination was found to be less than what is required for a teacher and, thereupon a consideration was made against a post of Grade IV, but as no vacancy was found in the Education Department, no recommendation had been made and accordingly the application of the petitioner stood rejected. The law of compassionate appointment requires a consideration of an application against any vacant post that may be available for which the person concerned is qualified for and it is not confined that the consideration has to be against the post in which the deceased had earlier worked.

4. In the circumstance, under the law the petitioner is entitled to a consideration against any post for which he is qualified for, where it is stated that the petitioner has the qualification of Higher Secondary. Further if he was considered against a post of Grade IV in the Education Department and no vacancy could be found, Clause 15 of the OM dated 01.06.2015 also requires an endeavour to be made by the Education Department to find out as to whether any vacant post is available in any other administrative department of the concerned district. It appears that the required endeavour had not been made in the case of the petitioner.

5. In view of the above, the matter stands remanded back to the DLC of Cachar district to firstly consider the application of the petitioner against any

available vacant post for which he may be duly qualified for and secondly, if the petitioner was considered for a Grade IV post, but no vacancy was available in the Education Department, the required exercise under Clause 15 of the OM dated 01.06.2015 be undertaken to find out as to whether any vacancy is available in any other administrative department of the concerned district and if it is found that such vacancy exists, appropriate consideration be made for doing the needful to be placed before the next available DLC of Cachar district.

6. Writ petition stands disposed of in the above terms.

JUDGE

Comparing Assistant