

GAHC010210062023



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

Case No. : WP(C)/5463/2023

MAJAHARUL ISLAM
S/O- LATE ABDUL MAZID, R/O-VILLAGE NO. 3 BORGHULI,
P.O.- BORGHUL SAPMARI, P.S.- UJUWANI, DISTRICT- NAGAON, ASSAM.

VERSUS

1: THE STATE OF ASSAM AND 4 ORS. REPRESENTED BY THE
COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM,
EDUCATION DEPARTMENT (ELEMENTARY), DISPUR, GUWAHATI-6.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM KAHILIPARA GUWAHATI-19.

3:THE CHIEF SECRETARY-CUM-CHAIRMAN STATE LEVEL COMMITTEE
(SLC) FOR COMPASSIONATE APPOINTMENT ASSAM DISPUR GUWAHATI-6.

4:THE DEPUTY COMMISSIONER-CUM-CHAIRMAN DISTRICT LEVEL
COMMITTEE (DLC) NAGAON DIST.- NAGAON ASSAM. PIN- 782001.

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
NAGAON ASSAM PIN- 782001

Advocate for the Petitioner : MR. M S ALAM

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 15-12-2023

Heard Mr. M.S. Alam, learned counsel for the petitioner. Also heard Mr.

B. Talukdar, learned standing counsel, Education (Elementary) Department, representing the respondent Nos.1, 2, & 5 and Mr. P. Saikia, learned Government Advocate, representing the respondent Nos.3 & 4.

The petitioner by way of instituting the present proceeding has assailed the decisions arrived at in his case by the District Level Committee, Nagaon in its meeting dated 30.09.2022 recommending the case of the petitioner for appointment on compassionate ground against a post for which admittedly he does not possess the requisite qualification. The petitioner has also assailed the decision of the State Level Committee, which rejected the case of the petitioner on the ground of lack of educational qualification to hold the post against which his case for compassionate appointment was recommended.

The father of the petitioner, namely, Abdul Mazid, while working as a Headmaster of No.4 Bhorbandha MKB L.P. School died-in-harness on 02.02.2015. The petitioner on 24.07.2015 preferred an application before the District Authorities of the Elementary Education Department praying for consideration of his case for appointment on compassionate ground. The case of the petitioner was considered by the District Level Committee in its meeting held on 15.05.2017, however, the case of the petitioner was rejected on the ground of lack of vacancy. The case of the petitioner was again considered by the District Level Committee in its meeting held on 13.11.2017, wherein also the petitioner's case was rejected on the ground of non-availability of vacancy.

Being aggrieved, the petitioner instituted WP(C) No.3381/2022 before this Court and this Court, vide order dated 25.05.2022, disposed of the said writ petition with a direction that the case of the petitioner be considered under the provisions of Clause 15 of the Office Memorandum dated 01.06.2015, i.e. to consider his case against any available vacancy in any other Department to

which the petitioner may be qualified. In terms of the order passed by this Court, the District Level Committee in its meeting held on 30.09.2022 took up the case of the petitioner for a fresh consideration and recommended his case for appointment on compassionate ground against a vacancy available in the post of Assistant Teacher of L.P. School. The said recommendation of the District Level Committee was thereafter placed before the State Level Committee in its meeting held on 02.03.2023. The State Level Committee rejected the case of the petitioner on the ground that he did not possess the requisite educational qualification for being appointed as an Assistant Teacher of L.P. School.

The said decisions of the District Level Committee as well as that of the State Level Committee dated 02.03.2022 is under challenge in the present proceeding.

I have considered the submissions advanced by the learned counsel appearing for the parties and have also perused the materials available on record.

The case of the petitioner in pursuance to the directions passed by this Court vide order dated 25.05.2022 in WP(C) No.3381/2022 received consideration of the District Level Committee in its meeting held on 30.09.2022. However, without considering the educational qualification of the petitioner, the District Level Committee, in its said meeting proceeded to recommend the case of the petitioner for the post of Assistant Teacher (Grade-III) in Lower Primary School under the District Elementary Education Officer, Nagaon. The said recommendation, on the face of it, was not sustainable inasmuch as the petitioner did not possess the minimum requisite eligibility criteria for appointment as an Assistant Teacher of L.P. School. The said proposal on being placed before the State Level Committee in its meeting held on 02.03.2023,

naturally came to be rejected on the ground of the petitioner not possessing the requisite educational qualification. The State Level Committee was justified in coming to the conclusion that the petitioner's case was not required to be recommended inasmuch as he did not possess the requisite educational qualification to hold the post of Assistant Teacher in L.P. School.

It is settled law that a person desirous of appointment on compassionate ground cannot seek such appointment against a specific post and the appointment, upon consideration of the parameters involved, is to be effected against a post commensurating to the educational qualifications of the person. The District Level Committee in its meeting held on 30.09.2022, while recommending the case of the petitioner for appointment as an Assistant Teacher of L.P. School, miserably failed to examine as to whether the petitioner had the requisite educational qualification for being appointed as an Assistant Teacher of any L.P. School. The failure on the part of the District Level Committee to carry out the said examination goes to the root of the matter and renders the said recommendation *void ab-initio*. The subsequent rejection of the said recommendation by the State Level Committee in view of the ground of lack of educational qualification on the part of the petitioner is correct and no fault in this connection can be attributed to the State Level Committee for rejecting the case of the petitioner.

Considering the matter in its entirety, I am of the opinion that ends of justice demands that the case of the petitioner for compassionate appointment is now required to be re-considered by the jurisdictional District Level Committee against a post commensurating his educational qualification, which in the present case, can only be against an available Grade-IV vacant post. Accordingly, the District Elementary Education Officer, Nagaon, Assam is

required to again place the case of the petitioner before the jurisdictional District Level Committee with a proposal for having his case considered against a Grade-IV vacancy. The District Elementary Education Officer shall submit the necessary proposal in this connection to the District Level Committee within a period of 15(fifteen) days from the date of receipt of a certified copy of this order from the petitioner. The District Level Committee shall, upon receipt of the proposal from the District Elementary Education Officer, Nagaon, proceed to consider the case of the petitioner against any Grade-IV vacant post available in the Department and/or in the event of absence of any post in the Department, shall carry out the exercise as mandated under Clause 15 of the Office Memorandum dated 01.06.2015 and examine as to whether the petitioner, due to lack of vacancy in the Department wherein his deceased father had served, can be recommended against the vacancies available in any other Department in Grade-IV category, which commensurates to the educational qualification possessed by the petitioner. The said examination shall be made in the next meeting of the jurisdictional District Level Committee to be held after the proposal with regard to the case of compassionate appointment of the petitioner is submitted by the District Elementary Education Officer, Nagaon. Further processing of the matter of the petitioner for appointment on compassionate ground shall depend on the decision that would be arrived at in the matter by the jurisdictional District Level Committee. The District Elementary Education Officer, Nagaon shall forthwith communicate to the petitioner the decision(s) that would be arrived at by the jurisdictional District Level Committee in pursuance to the directions contained hereinabove.

The petitioner is permitted to submit a certified copy of this order to the District Elementary Education Officer, Nagaon.

In view of the above observations and directions, this writ petition stands disposed of. However, there will be no order as to cost.

JUDGE

Comparing Assistant