

GAHC010213812023



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

Case No. : WP(C)/5608/2023

ABDUL KASHIM BARBHUIYA
S/O- LATE MOINUL HAQUE BARBHUIYA,
R/O- VILLAGE AND P.O- NIMAICHANDPUR PART I,
P.S- LALA, DIST- HAILAKANDI, ASSAM, PIN-788168

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, DEPARTMENT OF SCHOOL EDUCATION, DISPUR, GHY-06.

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

3:THE STATE LEVEL COMMITTEE FOR COMPASSIONATE APPOINTMENT
REP . BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GHY-06.

4:THE DISTRICT LEVEL COMMITTEE FOR COMPASSIONATE
APPOINTMENT
REP. BY THE DEPUTY COMMISSIONER
HAILAKANDI
DIST- HAILAKANDI
ASSAM
PIN-788151

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
HAILAKANDI P.O. AND P.S.-HAILAKANDI

DIST- HAILAKANDI
ASSAM
PIN-78815

Advocate for the Petitioner : MR. S B LASKAR

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

Date : 11.10.2023

Heard Mr. S.B. Laskar, learned counsel for the petitioner and Mr. S.M.T. Chistie, learned counsel for the respondents No. 1, 2 and 5, being the authorities in the Elementary Education Department. Also heard Mr. G. Pegu, learned counsel for the respondents No. 3 and 4, being the Chief Secretary to the Government of Assam and the Deputy Commissioner, Hailakandi, respectively.

2. The father of the petitioner Moinul Haque Barbhuiya who was an Assistant Teacher of Nityanandapur M.V. School in the Hailakandi district, died in harness on 10.10.2003 and on his death, the mother of the petitioner submitted an application for compassionate appointment on 22.10.2003. It is stated that the application of the mother of the petitioner was not given due consideration by the authorities. At the time of death of the deceased employee, the petitioner was a minor and upon attaining majority, the petitioner submitted an application for compassionate appointment dated 17.01.2007. The application of the petitioner was earlier rejected by the DLC of Hailakandi district in its meeting dated 31.12.2018 on the ground that the application was filed after a period of three years. Accordingly, by the order of this Court dated 04.10.2019 in WP(C)

No. 4766/2019, the matter was remanded back to the DLC of Hailakandi district for a fresh consideration by providing that the DLC may not reject the application of the petitioner merely on the ground that he was a minor at the time of filing his application.

3. When the matter was placed again before the DLC of Hailakandi district, the DLC in its meeting dated 05.10.2021 recommended the petitioner against a Grade-III post. Thereafter, the SLC in its meeting dated 22.01.2022 considered the application, but it stood rejected by providing the reason as quoted below:

“Rejected on the ground that the candidate applied after one year from date of death of the deceased.”

4. A reading of the reasoning of the SLC makes it discernible that instead of rejecting the application of the petitioner on the ground that the petitioner was a minor at the time of filing the application, this time the SLC became wiser and deemed it appropriate to reject it on the ground that it was filed after a period of one year from the death of the deceased employee.

5. The SLC is put to strict notice not to indulge in such acts when the Court had passed a judicial order that the application is to be considered without taking the aspect that at the time of death the petitioner was a minor. The adjudication is that the application of the petitioner is to be considered on its own merit as per law and not again reject on a similar ground by stating that this time the application was rejected because it was made after one year from the death of the deceased employee.

6. Accordingly, the rejection by the SLC in its meeting dated 22.01.2022 is set aside and the matter is remanded back to the SLC for a fresh consideration in its next available meeting, as per law, taking note of the law laid down by the Hon'ble Supreme in the case of *Syed Khadim Hussain Vs. State of Bihar and Ors., reported in (2006) 9 SCC 195*, wherein the Hon'ble Supreme Court had

approved a situation where an applicant was a minor at the time of death of the deceased employee and in the circumstance, the application for compassionate appointment was made by the mother of the applicant which was not given its due consideration and after attaining majority the applicant submits another application, which according to the Hon'ble Supreme Court would have to be considered on its own merit and not to be rejected on the ground that there was a delay in submission of the application.

Writ petition stands disposed of as indicated above.

JUDGE

Comparing Assistant