

GAHC010216532023



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

Case No. : WP(C)/5663/2023

DALI DEVI
W/O- LATE MUNINDRA SARMAH,
R/O- VILLAGE BORKA,
P.O- PUB BORKA,
P.S- KAMALPUR, DIST- KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, DEPARTMENT OF
SCHOOL EDUCATION
DISPUR, GUWAHATI- 781006.

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM

KAHILIPARA
GUWAHATI- 781019.

3:THE INSPECTOR OF SCHOOLS
KAMRUP DISTRICT CIRCLE
KAMRUP
ASSAM

4:THE DEPUTY COMMISSIONER
KAMRUP (M)
AMINGAON
CUM
CHAIRMAN
OF THE DISTRICT LEVEL COMMITTEE
DIST- KAMRUP
PIN-781031

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
KAMRUP (R)
ASSA

Advocate for the Petitioner : MR. S HAZARIKA

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

Date : 27.09.2023

Heard Mr. S. Hazarika, learned counsel for the petitioner and Mr. G. Pegu, learned counsel for the respondents No. 1, 2, 3 and 5, being the authorities in the Elementary Education Department. Also heard Mr. P. Saikia, learned Junior Government Advocate for the respondent No. 4, being the Deputy Commissioner, Kamrup.

2. The husband of the petitioner Munindra Sarmah who was serving as a Head Teacher of Septi L.P. School in the Kamrup district, died in harness on 14.11.2001 and on his death, the petitioner submitted an application for compassionate appointment on 05.02.2002. The said application of the petitioner was considered by the DLC of Kamrup district in its meeting of 25.10.2021 and rejected the same by providing as extracted below:

“As the date of the deceased is on 14.11.2001, the DLC also examined the matter as per OM No.ABP. 357/80/137. Dt. 09/09/1983, but could not recommended as per point no.7 wherein it is mentioned that- “While considering an appointment under the scheme the appointing authorities will keep it in mind that the concept of compassionate appointment is limited to the need for immediate assistance. If several years have passed after the death of the Govt. Servant it would appear on the face of it that the family has managed to support itself with all these years and has some means of subsistence”.”

3. A reading of the reasoning of the DLC makes it discernible that the DLC having taken note that the deceased died on 14.11.2001, deemed it appropriate

that the claim of the petitioner would be covered by the O.M. No. ABP. 357/80/137 dated 09.09.1983 and therefore, rejected it by relying upon certain provisions in the said O.M. dated 09.09.1983.

4. But the law in this respect had been settled by the Hon'ble Supreme Court in the case of *N.C. Santosh Vs. State of Karnataka and Ors., reported in (2020) 7 SCC 617*, wherein in paragraph 35 thereof it had been provided that the norms prevailing on the date of consideration shall govern the field and as on 25.10.2021 when the application was considered, the norms provided by the O.M. dated 09.09.1983 was not in force.

5. In view of the above, we remand the matter back to the DLC of Kamrup district for a fresh consideration under the law by taking note of the norms prevailing on the date of consideration. However, the petitioner also has to file an explanation before the DLC as to the financial status of her family from the date of death of her husband i.e. 14.11.2001 up to the present when it would be considered, meaning thereby, that under what circumstance and in what manner the family of the petitioner survived the aforesaid 23 (twenty three) years.

6. Whatever reasoning is given by the petitioner shall be taken note for making an inter-se financial comparison. The application of the petitioner be placed before the next available DLC of Kamrup district.

Writ petition stands disposed of as indicated above.

JUDGE

Comparing Assistant