

GAHC010227832022



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

Case No. : WP(C)/7260/2022

MS. PUROBI GHOSH
D/O. LT. MINA RANI GHOSH, VILL. DONKHULOI GAON, P.S. JORHAT, DIST.
JORHAT.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
EDUCATION (ELEMENTARY) DEPTT., DISPUR, GUWAHATI-781006.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-781019.

3:THE CHAIRMAN

DISTRICT LEVEL COMMITTEE (DLC)
JORHAT CUM DEPUTY COMMISSIONER
JORHAT
ASSAM
785001.

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER

JORHAT
ASSAM
785001

Advocate for the Petitioner : MR. P RAHMAN

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO**

ORDER

Date : 18-10-2023

Heard Mr. P Rahman, learned counsel for the petitioner and Mr. B Deori, learned Junior Government Advocate for the State. Considering the issue involved, the writ petition is disposed of at the motion stage. On 11.05.2023 Court passed the following order:-

“Heard Mr. P Rahman, learned counsel for the petitioner. Also heard Mr. D D Barman, learned Additional Senior Government Advocate, Assam.

Mr. Rahman submits that copy of the minute of the District Level Committee has been received recently and therefore, he seeks for a short dat to bring it on record by way of filing an additional affidavit.

It is submitted that the DLC has rejected the application seeking compassionate appointment of the petitioner on the ground that the deceased mother of the petitioner did not satisfy the condition mentioned in Clause-1 of the O.M dated 01.06.2015, wherein Clause-1 provides that a person would be eligible to make an application for compassionate appointment provided the deceased government servant had a balance of minimum 3 (three) years of service at the time of death and the petitioner’s mother had less than 3 years of service.

Since this Court by the Judgment and order dated 30.01.2023 passed in WP(C) No. 1646/2021 and other connected writ petitions has already interfered with the said Clause in the said notification, learned counsel for the petitioner submits that he would like to bring the minutes of the DLC on record by way of an additional affidavit, so that appropriate order can be passed.

List the matter after 1 (one) week."

Mr. P Rahman, learned counsel submits that an additional affidavit, since then, was filed on 25.05.2023 and by referring to Annexure-A of the additional affidavit. The learned counsel submits that the proposal for appointment of the petitioner on compassionate basis was rejected by the DLC in its meeting held on 28.07.2017, on the ground that the mother of the petitioner had less than 3 years of service left when she expired. The learned counsel, however, submits that the debarring clause in O.M dated 01.06.2015 at Claus(1) has been held to be unconstitutional and interfered with by a Co-ordinate Bench of this Court vide common Judgment & Order dated 30.01.2023, wherein one of the case was *WP(C) No. 1646 of 2021 (BhaskarKonwar vs. State of Assam & Ors.)*. Such being the position, the learned counsel for the petitioner submits that the DLC may be directed to re-consider the case of the petitioner in the light of the aforesaid judgment.

To this submission, Mr. B Deori, learned Junior Government Advocate submits that an appeal has been preferred against the common Judgment & Order dated 30.01.2023 before the writ appellate Court i.e., W.A No. 287/2023 and therefore, the

outcome of the appeal may be awaited. However, the learned State counsel submits that there is no stay order. Therefore, in absence of the same, this Court does not find any bar to dispose of this writ petition in terms of the common Judgment & Order dated 30.01.2023.

Accordingly, the writ petition is disposed of to the direction to the respondent No. 3, committee which is headed by the Deputy Commissioner, Jorhat to re-consider the case of the petitioner for compassionate appointment by ignoring the fact that her mother Late Mina Rani Ghosh had less than 3 years of service left as stipulated in Clause (1) of O.M dated 01.06.20215, which otherwise has already been set aside. Such consideration should be done in the next available sitting of the DLC and the outcome of the decision of the DLC should be communication to the petitioner. Petitioner shall submit a certified copy of this order to the Deputy Commissioner, Jorhat for doing the needful.

Writ petition stands disposed of.

JUDGE

Comparing Assistant