

GAHC010227982022



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

Case No. : WP(C)/7175/2022

SMT. RUBI GOSWAMI
W/O. LT. MUNINDRA SARMA, VILL. AND P.O. MAZIRGAON, DIST. KAMRUP
(M), ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
SECONDARY EDUCATION DEPTT., DISPUR, GUWAHATI-781006.

2:THE COMMISSIONER AND SECY.
TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPTT.
DISPUR
GUWAHATI-781006.

3:THE DIRECTOR

SECONDARY EDUCATION DEPTT

ASSAM
KAHILIPARA
GUWAHATI-19.

4:THE STATE LEVEL COMMITTEE

REP. BY ITS CHAIRMAN THE CHIEF SECRETARY
ASSAM
DISPUR
GUWAHATI-06.

5:THE DISTRICT LEVEL COMMITTEE

REP. BY ITS CHAIRMAN THE DEPUTY COMMISSIONER
KAMRUP
AMINGAON
GUWAHATI-31.

6:THE INSPECTOR OF SCHOOLS

KAMRUP DISTRICT CIRCLE
AMINGAON
GUWAHATI-31

Advocate for the Petitioner : MR P SARMA

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

28.04.2023

Heard Mr. P Sarma, learned counsel for the petitioner and Mr. SMT Chistie, learned Standing counsel, Department of School Education, Assam for the respondent Nos. 1, 2 , 3 & 6. Also heard Mr. P Saikia, learned Government Advocate, Assam for the respondent Nos. 4 & 5 as well as Mr. D Upamanyu, learned Standing counsel, Health and Family Welfare Department.

2. Pursuant to the order dated 10.04.2023, on specific instruction of the authorities of the Gauhati Medical College and Hospital, Guwahati as well as the State Government in the Department of Health Services, Mr. Upamanyu, Standing counsel placed before the Court that the Death Certificate of the deceased husband of the petitioner is genuine.

3. To that extent, Mr. Upamanyu has placed a copy of the communication of the Registrar (Birth & Death), Gauhati Medical College and Hospital dated 27.04.2023 as well as the Counter Foil bearing No. 0076939 pertaining to the Death Certificate issued in the name of the late husband of the petitioner.

4. The case of the petitioner is that her husband, an Assistant Teacher of Jambari Anchalik High School, Bamunigaon in the district of Kamrup died in harness on 18.12.2016, leaving behind the petitioner i.e., widow of the deceased, two minor children and his over aged parents. After the death of her husband, the entire family is facing acute financial hardship.

5. The petitioner is a Master Degree holder in Assamese and applied for her compassionate appointment under the Die-in-Harness Scheme of the State.

6. Though her case was considered and recommended by the District Level Committee (DLC) for compassionate appointment, District-Kamrup in its meeting held on 06.06.2017 for the post of Assistant Teacher under the Office of the Inspector of Schools, Kamrup, but the State Level Committee (SLC) for compassionate appointment in its meeting held on 04.01.2021 rejected her case being over aged as well as under-qualified for the post of Assistant Teacher finding that at the time of her application for compassionate appointment, the petitioner was 40 years 3 months 24 days instead of 40 years for General category.

7. The husband of the petitioner, Assistant Teacher of Jambari Anchalik High School, Bamunigaon in the district of Kamrup, a Government employee expired on 18.12.2016.

8. The provisions of the Office Memorandum No. ABP 50/2006/Pt/182 dated 01.06.2015 issued by the Department of Personnel (B), Government of Assam is applicable regarding consideration of the case of the petitioner for her compassionate appointment under the Die-in-Harness Scheme of the State.

9. Clause-16 of the said O.M. stipulates as follows:

“The upper age limit could be relaxed wherever found to be necessary as per the existing Government policy. The lower age limit shall, however, in no case be relaxed below 18 years. Age eligibility shall be determined with reference to the date of application and not the date of appointment. The State Level Committee shall be competent to grant relaxation of upper age limit for making such appointment as per existing Government policy.”

10. Clause-9 of the said O.M. specifically provides the provisions on the basis of

which the need for immediate financial assistance is required by a family on the death of a Government employee who dies in harness.

11. Clause-10 of the said O.M. clearly stipulates that compassionate appointment shall be made only to the Grade-III/Grade-IV posts against the vacancies under Direct Recruitment quota.

12. Clause-6 of the said O.M. provides regarding the financial status of a family of a claimant.

13. Clause-14 (a) of the said O.M. also stipulates as follows-

“Compassionate appointments can be made up to a maximum of 5% of the total strength of a cadre/man in position in the cadre at the time of recruitment in any Grade III, not above the level of Junior Administrative Assistant (direct recruitment), or Grade IV (direct recruitment) posts. While calculating this maximum limit of 5% of post, the following method shall be adopted:.....”

14. Clause-15 of the said O.M. provides as follows-

“If sufficient vacancies are not available in any particular office to accommodate the persons in the waiting list for compassionate appointment, it is open to the administrative Department/Office to take up the matter with other Departments/Offices of the Government to provide at an early appointment on compassionate grounds to those in the waiting list.”

15. Considering the provisions laid down in the Office Memorandum No. ABP 50/2006/Pt/182 dated 01.06.2015, noted above, the impugned decision of the State Level Committee for compassionate appointment rejecting the case of the petitioner for her compassionate appointment in terms of the said O.M. in its meeting held on 04.01.2021 on the ground of over age and under-qualification for the post of Assistant Teacher is hereby set aside and quashed.

16. The Secretary to the Government of Assam in the Department of School Education shall place the case of the petitioner before the next meeting of the SLC for compassionate appointment afresh for her compassionate appointment, considering her eligibility in any Grade-III post being a Master Degree holder in Assamese, relaxing her over age at the time of her application for compassionate appointment in terms of

Clause-16 of the said O.M. dated 01.06.2015, noted above, as applicable.

17. Petitioner shall submit a certified copy of this order along with a copy of this writ petition including the Annexures appended thereto, before the Secretary to the Government of Assam in the Department of School Education providing her Address, Mobile Number, E-mail Address etc. forthwith, obtaining necessary acknowledgment from the said authority in that regard.

18. After its decision, the State Level Committee for compassionate appointment shall intimate the petitioner regarding her claim for appointment on compassionate ground.

19. With the above observation and direction, this writ petition stands disposed of.

JUDGE

Comparing Assistant