

GAHC010228382023



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

Case No. : WP(C)/6098/2023

AAQIB HUSSAIN MAZUMDER
S/O- LATE JALAL AHMED MAZUMDER, VILLAGE- SAIDPUR PART-IV, P.O.
SAIDPUR MUKAN, P.S.- SILCHAR, DISTRICT- CACHAR, ASSAM.

VERSUS

1: THE STATE OF ASSAM AND 4 ORS TO BE REPRESENTED BY THE
COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
SECONDARY EDUCATION DEPARTMENT, DISPUR, GUWAHATI-6.

2: THE STATE LEVEL COMMITTEE REPRESENTED BY THE CHIEF
SECRETARY TO THE GOVT. OF ASSAM DISPUR GUWAHATI-6.

3: THE DIRECTOR OF SECONDARY EDUCATION DEPARTMENT
ASSAM KAHILIPARA GAUHATI -19.

4: THE DISTRICT LEVEL COMMITTEE HAILAKANDI (FOR
COMPASSIONATE APPOINTMENT) REPRESENTED BY ITS CHAIRMAN/
DEPUTY COMMISSIONER CACHAR P.O. P.S. SILCHAR DISTRICT- CACHAR
ASSAM.

5: THE INSPECTOR OF SCHOOLS
CDC CACHAR P.O. P.S. SILCHAR DISTRICT- CACHAR ASSAM

Advocate for the Petitioner : MR. A M BARBHUIYA

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 21-12-2023

Heard Mr. A.M. Barbhuiya, learned counsel for the petitioner. Also
heard Mr. U. Sharma, learned standing counsel, Education (Secondary)

Department, appearing for the respondent Nos.1, 3 & 5 and Mr. B. Deori, learned Junior Government Advocate, Assam, appearing for the respondent Nos. 2 & 4.

The petitioner by way of instituting the present proceeding has assailed the decision arrived at by the District Level Committee (DLC), Hailakandi in its meeting held on 10.01.2017, wherein the application of the petitioner for appointment on compassionate ground was rejected on the ground that the deceased Government servant, i.e. the father of the petitioner, at the time of his death did not have residual service of 3(three) years left.

The father of the petitioner Late Jalal Ahmed Mazumdar while working as Senior Assistant in S.B. Bidyamandir High School, Silchar died in harness on 13.05.2015. The petitioner thereafter submitted his application praying for appointment on compassionate ground. The said application of the petitioner was placed for consideration before the jurisdictional District Level Committee in its meeting held on 10.01.2017 and therein the same came to be rejected with the following findings:-

“Serial No.3 Aaqib Hussain Mazumdar, S/o Late Jalal Ahmed Mazumdar could not be recommended due to minimum balance of service is less than 3 years as per Govt. Policy vide O.M. No.ABP.50/2006/Pt/182 dated 01.06.2015. Hence rejected.”

Accordingly, the present writ petition has been instituted by the petitioner.

The sole ground for non-consideration of the application for compassionate appointment is that in terms of the Office Memorandum dated 01.06.2015, more particularly Clause 1, the deceased father of the petitioner, at the time of his death, did not have a balance of minimum 3(three) years of service left and, therefore, the case of the petitioner was rejected.

The offending Clause 1 of the Office Memorandum dated 01.06.2015 is quoted herein below:-

“(1) Only one dependent family member of a Government servant appointed on regular basis - excluding one working on daily wage or casual or apprentice or ad-hoc or contract or re-employment basis - who die in harness or become incapacitated due to accidents suffered while on duty and is eligible to opt for invalid pension under relevant provision of Service Rule/Pension Code and/or who is missing is eligible for making application for compassionate appointment provided in each case the Government servant has balance of minimum of 3 years of service.”

The said provision of Clause 1 of the Office Memorandum dated 01.06.2015 was challenged before this Court in a series of writ petitions, one of which is WP(C) No.1646/2021. A co-ordinate Bench of this Court, vide judgment & order dated 31.01.2023, in the case of ***Bhaskar Konwar -Vs- State of Assam & Ors.***, by concluding that the prescriptions made in Clause 1 of the Office Memorandum dated 01.06.2015 is in violation of Article 14 of the Constitution of India struck down the said Clause 1 of the Office Memorandum dated 01.06.2015 and concluded as follows:-

“19. In view of the above, therefore this Court answers the Issue No.1 to the effect that the Clause-1 of the Office Memorandum dated 01.06.2015 whereby the dependent family members of Government official who die in harness having less than minimum 3 of years of service being not eligible as per the said Office Memorandum is unconstitutional, being violative of Article 14 and accordingly struck down to the said extent.”

The provision of Clause 1 of the Office Memorandum dated 01.06.2015 having been interfered with by this Court in the case of ***Bhaskar Konwar*** (supra), the ground on which the petitioner's case was refused to be considered on merits by the jurisdictional District Level Committee no longer exists. Accordingly, the conclusions of the jurisdictional District Level Committee arrived at in its meeting held on 10.01.2017 in relation to the application of the

petitioner for compassionate appointment is interfered with. The District Level Committee, Hailakandi, is now required to reconsider the case of the petitioner without taking recourse to Clause 1 of the Office Memorandum dated 01.06.2015. However, it is made clear that the District Level Committee while considering the case of the petitioner shall duly take note of the object behind the scheme for compassionate appointment and the other provision of the Office Memorandum dated 01.06.2015. The District Level Committee while considering the application of the petitioner shall also consider the decision of the Hon'ble Apex Court rendered in the case of ***State of West Bengal -Vs- Debabrata Tiwari & Ors.***, reported in ***(2023) SCC Online SC 219***.

The said exercise be carried out in the next meeting of the District Level Committee, which follows after a certified copy of this order is served upon the respondent No.5 as well as upon the Chairman of the District Level Committee, Hailakandi, i.e. the respondent No.4. The petitioner shall submit a certified copy of this order along with a representation before the respondent Nos.5 & 4, who, in turn, on receipt of the same, shall act strictly in accordance with the directions as set forth herein above.

With the above observation, this writ petition is accordingly stands disposed of

JUDGE

Comparing Assistant