

GAHC010236872023



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

Case No. : WP(C)/6221/2023

SHYAMA SINHA
S/O- LATE HARIPADA SINHA,
VILL. PATIALA, P.O.- PECHALA,
P.S.- RATABARI,P.S.- RATABARI,
DIST.- KARIMGANJ, PIN- 788710.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
EDUCATION (ELEMENTARY) DEPARTMENT,
DISPUR, GUWAHATI- 781006.

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

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
KARIMGANJ DISTRICT
KARIMGANJ
PIN- 788710.

4:THE DEPUTY INSPECTOR OF SCHOOLS
KARIMGANJ
PIN- 788710.

5:THE DEPUTY COMMISSIONER
KARIMGANJ -CUM- THE CHAIRMAN
DISTRICT LEVEL COMMITTEE
KARIMGANJ

PIN- 788710

Advocate for the Petitioner : MRS R BEGUM

Advocate for the Respondent : SC, ELEM. EDU

**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

ORDER

Date : 28-11-2023

Heard Ms. S.B. Choudhury, learned counsel for the petitioner. Also heard Mr. B. Deori, learned Junior Government Advocate for the respondent Deputy Commissioner, Karimganj and Mr. A. Phukan, learned counsel for the respondents in the Elementary Education Department of Government of Assam.

2. The father of the petitioner Haripada Singha who was an Assistant Teacher of 391 No. Patiala L.P. School in the Karimganj district died in harness on 18.08.2007 and on his death the petitioner made an application for compassionate appointment on 17.03.2008. It is stated that the said application was given its consideration in the meeting of the DLC of Karimganj district held on 09.07.2009 wherein it is provided as extracted:

“In terms of the guide lines contained in the order of the Hon’ble Gauhati High Court in WP(C)No. 3875/2005 AND 162 others and in the Govt. OM. No. ABP.357/80/137 dtd. 9.9.1983 the claims of the most needy candidates as noted below Department wise are recommended for appointment on compassionate ground after taking into account the Liabilities, Financial position, size of the family of the claimant as well as availability of posts during the relevant calendar year of submission of claim, 20 point Roster of reservation etc. and candidate whose names are not recommended stand rejected for want of post as well as on the ground that the liabilities are found lesser then that of the recommended candidates during the relevant calendar year as long period have been passed after the death/ invalid pension of Govt. employee, as such the claim have spent its force and cannot be sustained on the ground of necessity of immediate assistance to the family and it is understood that the family can be supported at force and some claims are not under the purview of the scheme.”

3. On a question being raised as to where is the depiction of the inter-se financial comparison of the respective candidates in the resolution of the DLC dated 09.07.2009, Mr. B. Deori, learned Junior Government Advocate points out to the afore-extracted paragraph and states that in the paragraph the DLC had stated that the claims of the most needy candidates as noted therein were recommended for appointment on compassionate ground after taking into account the liabilities, financial position, size of the family of the claimant as well as the availability of post during the relevant calendar year.

4. The afore-extracted portion of the resolution of the resolution committee is a requirement of the law as laid down in *Achyut Ranjan & ors vs. State of Assam & ors reported in 2006 (4) GLT 674* and *Faziron Nessa and others vs. State of Assam and others reported in 2010(4) GLT 340* of this Court but it does not reflect that the exercise that is required to have been done was also undertaken other than making a claim that it was so done. Any administrative order *de hors* a reason would be unsustainable in law. Merely a statement that what was required to be done had been done is not sufficient until and unless a more reasoned order is passed which would enable the higher authorities to examine as to whether the exercise was undertaken in the required manner under the law.

5. Having provided as such, by the resolution the names of the selected candidates were stated and the names of the rejected candidates were also stated. Such an order would not enable the Court under judicial review to examine as to whether the authorities had actually undertaken the required exercise under the law and in doing so whether the correct procedure was followed or not.

6. Mr. B. Deori, learned Junior Government Advocate also makes a

submission that the supporting reasons can subsequently be provided by the authorities. Any such subsequent reason to justify the resolution of the DLC would be impermissible under the law in view of the proposition laid down by the Hon'ble Supreme Court *in Mohinder Singh Gill and another vs. The Chief Election Commissioner reported in (1978) 1 SCC 405* wherein it is stated that the reason to justify an administrative order cannot be subsequently substituted in a form of an affidavit in course of a Court proceeding.

7. From such point of view, we are unable to accept the submission that the reason would now be substituted by the authorities by means of brining additional material or through an affidavit. We are also of the view that as the aberration of the required procedure of passing an administrative order is writ large in the order itself, we are of the view that no further would be served by issuing notice *inasmuch* as a plain reading of the order as extracted above does not reflect the reason as it requires to be made by the administrative authority while passing an administrative order. Accordingly, the rejection of the petitioner by the resolution of the DLC dated 09.07.2009 is set aside and remanded back to the DLC for a fresh consideration as per law.

Writ petition stands disposed of in the above terms.

JUDGE

Comparing Assistant