

GAHC010240842023



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

Case No. : WP(C)/6404/2023

PRODIP KUMAR ROY
S/O LATE SANTOSH KUMAR ROY, R/O VILL-DEBOTTAR HASDAHA, PART-V,
P.O.-DEBOTTAR HASDAHA, DIST-DHUBRI (ASSAM)

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM,
DISPUR, GUWAHATI-6, ASSAM

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
EDUCATION (ELEMENTARY) DEPARTMENT
DISPUR
GUWAHATI-6
ASSAM

3:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19
ASSAM

4:THE DEPUTY COMMISSIONER
DHUBRI
DIST-DHUBRI
ASSAM
PIN-783301

5:THE DISTRICT LEVEL SELECTION COMMITTEE (DLC)
DHUBRI
REPRESENTED BY ITS CHAIRMAN
DIST-DHUBRI

ASSAM
PIN-783301

6:THE DISTRICT ELEMENTARY EDUCATION OFFICER (DEEO)
DHUBRI
P.O. AND DIST-DHUBRI
ASSAM
PIN-783301

7:THE DEPUTY INSPECTOR OF SCHOOLS
DHUBRI
P.O. AND DIST-DHUBRI
ASSAM
PIN-78330

Advocate for the Petitioner : MR. S K ROY

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 17.11.2023

Heard Mr. S.K. Roy, learned counsel for the petitioner. Also heard Mrs. D.D. Barman, learned Addl. Senior Govt. advocate appearing for the State.

2) By filing this writ petition under Article 226 of the Constitution of India, the petitioner is praying for setting aside and quashing the minutes of the meeting dated 20.06.2018 of the District Level Committee on Compassionate Ground, Dhubri (DLC for short) in respect of the petitioner and for directing the respondent authorities to consider and/ or recommend the

petitioner's case for compassionate appointment.

3) The father of the petitioner, who was an Assistant Teacher (Headmaster) in 2357 No. Uttar Debottar Hasdaha Nama Sudrapara LP School, died in harness on 14.08.2005. The petitioner applied for compassionate appointment on 21.10.2005. On 18.09.2013, the petitioner had approached this Court by filing petition which was registered and numbered as WP(C) 5634/2013. This Court by order dated 15.09.2017 accepted the contention of the learned counsel for the petitioner that in terms of judgment in *Ajit Pator Vs. State of Assam, 2009 (3) GLT 306* that all old pending applications must be considered as a onetime measure and the authorities should not reject the application only because the application has remained unattended since long and allowed the writ petition by directing the respondent authorities to ensure that the petitioner's claim for compassionate appointment is considered on merit by the DLC by placing it in the next meeting. The application of the petitioner was placed in the DLC meeting dated 20.06.2018, but the DLC has rejected the claim of the petitioner on the ground that he was under qualified as per Government OM no. AEE.388/2011/24 dated 16.05.2012 and also that two years validity period of application is already over.

4) The learned counsel for the petitioner has submitted that the case of the petitioner was rejected on the ground that two years' validity period of application was over, which is not in accordance with the directions contained in the order dated 15.09.2017 passed in WP(C) 5634/2013. It was also submitted that if the petitioner was under qualified for the post of Assistant Teacher, his candidature could have been considered for a Grade-IV post. Moreover, it was submitted that in the year 2005, when the petitioner had

applied for appointment on compassionate ground, an HS passed candidate could have been appointed as Assistant Teacher and accordingly, it is submitted that the law which was in force at the time of applying should have been considered for the petitioner. In support of the said contention, the learned counsel for the petitioner has placed reliance on the case of *Secretary to the Govt. Department of Education (Primary) and Ors. Vs. Bheemesh @ Bheemappa*.

5) Moreover, it was submitted that as on 20.06.2018, the date when the DLC meeting was held, the OM dated 01.06.2015 was in force, which required that if the petitioner could be appointed in the post of Assistant Teacher, his candidature could have been considered for appointment in any Grade-IV post. In support of his contention, the learned counsel for the petitioner has placed reliance on the case of *State of M.P. & Ors. Vs. Amit Shrivastava, (2020) 10 SCC 496*.

6) Per contra, the learned Addl. Senior Govt. advocate has submitted that this Court in the case of *Achyut Ranjan Das Vs. State of Assam & Ors., 2006 (4) GLT 674*, which is still holding the field has submitted that under sub para (X) of para 7 thereof it was held to the effect that if the applications of eligible candidates remain pending and cannot be considered due to want of vacancies for a period of two years from the date of making such applications, all such applications will require no further consideration and must be understood to have spent their force. It is submitted that the said direction of this Court has been incorporated in the Government OM dated 01.06.2015 as Principle X. Hence, it was submitted that in the present case, the petitioner had applied for compassionate appointment in the year 2005 and by now about 18

years has gone by, the urgent need to give succor to the family of the deceased Government employee is lost. It was further submitted that the petitioner has belatedly assailed the DLC meeting held on 20.06.2018 and therefore, the petitioner has become disentitled to any relief in the present case in hand.

7) Pursuant to order dated 15.09.2017 passed by this Court in WP(C) 5634/2013, the case of the petitioner was once again taken up by the DLC and the application of the petitioner was rejected by the impugned DLC minutes dated 20.06.2018 on two grounds, firstly, that the petitioner was under qualified as per Government OM dated 16.05.2012 and secondly, on the ground that two years' validity period of application was already over. In this case this Court had directed the matter to be placed before the DLC for reconsidering the application on merit. Therefore, the rejection of the application on the ground that the application was made two years ago may not be otherwise sustainable.

8) Nonetheless, from the minutes of DLC meeting held on 20.06.2018, it has been noted in the minutes in respect of the petitioner that the proposal of the petitioner was placed in earlier DLC held on 23.02.2007, 31.10.2008 and 15.09.2017. Therefore, the record of WP(C) 5634/2013 was called for perusal. On a perusal of the records of the said WP(C) 5634/2013 as well as this present writ petition, it appears that the petitioner has not made any statement that his application was placed in the earlier DLC held on 23.02.2007, 31.10.2008 and 15.09.2017, and rejected, but the said decision of the said three DLC minutes are not under challenge.

9) In the present case, the petitioner has annexed the minutes of DLC on Compassionate Appointment held on 20.06.2018. The relevant part of the minutes concerning the petitioner is quoted below:

“In case of Sl. No. 4 in WP(C) 3634/2013 (Prodip Kr. Roy Vs. The State of Assam, his proposal was placed in earlier DLC held on 23.02.2007 & 31.10.2007 & 15.09.2017. The DLC examined his proposal and found that he is under qualified as per Govt. O.M. No. AEE.388/2011/24 dated 16.05.2012 and also 2(two) years validity period of application is already over.”

10) It is seen that in paragraph 7 of this writ petition, the petitioner has referred to statement made in paragraph 6 of the affidavit-in-opposition filed by District Elementary Officer, Dhubri in WP(C) 5634/2013 that the case of the petitioner was placed before the DLC in its meeting held on 15.11.2013, which was rejected on the ground that the validity period of two years was already over. The said DLC decision dated 15.11.2013 was not challenged by the petitioner. Moreover, the petitioner has not assailed the successive rejection of his candidature vide DLC held on 23.02.2007, 31.10.2008 and 15.09.2017, which is mentioned in the DLC minutes dated 20.06.2018. As the minutes of the 4(four) DLC held on 23.02.2007, 31.10.2008, 15.11.2013 and 15.09.2017 are not under challenge, the challenge to the impugned minutes dated 20.06.2018, in the considered opinion of this Court, does not entitle the petitioner to the relief of fresh consideration of his application in the next DLC, because those decisions have attained finality.

11) The petitioner has filed this writ petition on 18.10.2023 to assail the DLC minutes dated 20.06.2018, which is more than five years of the decision being taken. Although, no period of limitation is prescribed to approach this Court under Article 226 of the Constitution of India, but the belated challenge to the DLC minutes dated 20.06.2018, in the considered opinion of this Court ought not to be accepted, but rejected on the ground of delay. The Division Bench of this Court in the case of *Ismoth Tufa Laskar Vs. State of*

Assam & Ors., WA No. 333/2013 decided on 18.09.2023 and reported in (2023) 0 Supreme (Gau) 1054, had refused issuing direction for appointment after a long gap of ten years. Paragraph 15 of the said judgment is quoted below:

“15. In the instant case too, it is apparent that the appellant slumbered over her rights. Initially, she dropped her application on 18.12.2013 and, thereafter, she approached the authorities on 12.08.2015 and finally, her letter to the DC was received on 02.08.2021. The appellant then submitted her representation on 23.11.2022, after she learnt about the resolution adopted by the DLC on 05.08.2017. The appellant and her siblings had survived all odds over the period of time. The object of compassionate appointment is to give succour to the family to tide over penury that has befallen upon the dependants on account of the premature demise of the sole earning member. It would not be justified in directing appointment for the appellant after a long gap of ten years. Compassionate appointment is provided immediately to redeem the family in distress. It has been clarified by Hon’ble the supreme Court in Umesh Kumar Nagpal vs. State of Haryana, (1994) 4 SCC 138, that compassionate appointment is not a vested right which can be exercised at any time, after the death of a Government Servant.”

12) In the present case in hand, the application of the petitioner for compassionate appointment is projected to have been submitted on 21.10.2005 and therefore, this writ petition filed on 18.03.2023 is after a lapse of about 18 years.

13) In light of the discussion above, the cases cited by the learned counsel for the petitioner would not help the petitioner in any way.

14) Resultantly, this writ petition stands dismissed at the motion state without issuance of the notice on the respondents.

15) There shall be no order as to cost.

JUDGE

Comparing Assistant