

GAHC010266012023



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

Case No. : WP(C)/6838/2023

RAKIBUL ISLAM
S/O- LATE AYNAL HOQUE,
R/O- GUNIALGURI
P.O.- GUNIALGURI,
P.S.- KALGACHIA,
DISTRICT- BARPETA, ASSAM,
PIN- 781319.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
ELEMENTARY EDUCATION DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 19.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER

BARPETA.

4:THE BLOCK ELEMENTARY EDUCATION OFFICER
RUPSHI BLOCK
KALGACHIA.

5:THE DEPUTY COMMISSIONER CUM CHAIRMAN
DISTRICT LEVEL COMMITTEE
BARPETA

Advocate for the Petitioner : MRS K DEVI

Advocate for the Respondent : SC, ELEM. EDU

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

ORDER

Date : 29-11-2023

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

2. The father of the petitioner Aynal Hoque who was the Head Teacher of 1127 No. Bogulmari L.P. School died in harness on 07.11.2006 and on his death, the mother of the petitioner submitted an application for compassionate appointment on 01.02.2007. But the said application did not result in any favourable consideration in favour of the mother. Subsequently, the petitioner who was a minor at the time of death, made an application on 25.07.2016 upon attaining majority. The application of the petitioner dated 25.07.2016 was considered by the DLC of Barepta district in its meeting held on 01.10.2021 and it stood rejected by providing that the application was not submitted within the prescribed period of one year from the date of death.

3. Admittedly, when the petitioner was a minor at the time of death and further when it is stated that the mother of the petitioner had made an application within one year of death but the said application did not result in a favourable order, it is not a situation where the application of the petitioner is to be rejected for having not submitted within the period of one year from the

death *inasmuch* as in the circumstance the petitioner could not have submitted such application as he was a minor at that relevant point of time.

4. The aforesaid situation has been settled by the Hon'ble Supreme Court in its judgment in *Syed Khadim Hussain vs. State of Bihar and others reported in (2006) 9 SCC 195* and the proposition had been laid down where the mother made an application for compassionate appointment within the time but no favourable consideration was made and subsequently, the son upon attaining majority made an application at a later date, such applications are not barred by any time limitation.

5. In view of the above, the proposition of law laid down by the Hon'ble Supreme Court in its judgment in *Syed Khadim Hussain vs. State of Bihar and others reported in (2006) 9 SCC 195*, the rejection in the minutes of the DLC dated 01.10.2021 rejecting the application of the petitioner on the ground of having not been submitted within one year of death is set aside and remanded back to the DLC of Barpeta district for a fresh consideration by taking note of the proposition laid down in Hon'ble Supreme Court in its judgment in *Syed Khadim Hussain vs. State of Bihar and others reported in (2006) 9 SCC 195*.

6. Mr. B. Deori, learned Junior Government Advocate further raises an issue that the application of the mother was in fact for an appointment in favour of the minor son when he attains majority which is not permissible under the law.

7. We are in agreement that it is not permissible under the law to make an application on behalf of a minor son for appointment after he attains majority but at the same time, compassionate appointment is offered to remove the financial burden that the family of a deceased employee may have faced upon his sudden death. Merely because the son was a minor at the time of death and

the son later happened to grow up to become a major made an application to claim compassionate appointment itself does not depict a factual situation that the family of the deceased was very well off during the intervening period so as to arrive at a situation where the benefits of compassionate appointment is not available any further.

8. In the instant case also nothing is noticed that the authorities had made a factual evaluation about the financial condition of the family of the petitioner and arrive at any satisfaction that they were financially well off during the intervening period so as to disenable the petitioner for a compassionate appointment. It is submitted that the mother and the elder sister of the petitioner could have also appeared but there is no material available that they are duly qualified for a compassionate appointment so as to entertain such submission.

Writ petition stands disposed of in the above terms.

JUDGE

Comparing Assistant