

GAHC010269782023



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

Case No. : WP(C)/6909/2023

BIJOY KR BODOLOI
SON OF - LATE CHAMIN CH. BORDOLOI,
RESIDENT OF - BHAKATGAON,
POST OFFICE- MOLANKATA,
DISTRICT- NAGAON, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
EDUCATION (ELEMENTARY) DEPARTMENT,
DISPUR, GUWAHATI-06.

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

3:THE DEPUTY COMMISSIONER-CUM-CHAIRMAN OF DISTRICT LEVEL
COMMITTEE FOR COMPASSIONATE APPOINTMENT

NAGAON
DISTRICT- NAGAON

ASSAM.

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
NAGAON
DISTRICT- NAGAON
ASSAM

Advocate for the Petitioner : MR. B K GOGOI

Advocate for the Respondent : SC, ELEM. EDU

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

ORDER

01.12.2023

Heard Mr. BK Gogoi, learned counsel for the petitioner. Also heard Mr. B Deuri, learned Junior Government Advocate for the Deputy Commissioner, Nagaon and Mr. Ganesh Pegu, learned counsel for the respondents in the Elementary Education Department, Government of Assam.

2. The father of the petitioner, Chamin Ch. Bordoloi, who was working as a Grade-IV employee in the Bhakatgaon Manipurtup ME School, in the Nagaon district died in harness on 07.02.2001 and on his death, the petitioner submitted an application for compassionate appointment.

3. It is also taken note that upon the death of the father of the petitioner, the Managing Committee of the Bhakatgaon Manipurtup ME School by the Resolution No.5 dated 28.12.2002, the petitioner was appointed as a Grade-IV employee in the school concerned and allowed him to work till 30.06.2010. But the said appointment was construed by the authorities to be an appointment on honorary basis in a provincialised school which may be impermissible under the law. Thereafter, the authorities placed a proposal for appointment of the petitioner on compassionate ground and accordingly, the matter was placed

before the DLC of Nagaon district in its meeting of 14.02.2022. The DLC rejected the claim of the petitioner by providing that a period of two years since making of the application is over, and, therefore, it has spent its force and further there is no vacancy in the department against 5% quota available for compassionate appointment. Firstly, we are of the view that when the petitioner was appointed in the year 2002 it ought to have been a regular appointment on compassionate ground and ought not to have been an honorary appointment in violation of the Rules, *inasmuch as*, no honorary appointment can be made by the School Managing Committee in a provincialised school. That is the first illegality in the approach of the respondents which is noticed that had been meted to the petitioner. Secondly, after making the petitioner to work up to 2010, the authorities were of the view that now the petitioner should be considered for compassionate appointment and accordingly some prior application was placed before the DLC, which again considered the application in the year 2022 i.e. almost after a lapse of 12 years. Following the aforesaid procedure, ultimately the DLC rejects the application of the petitioner on a technical ground that the application had spent its force as two years had elapsed and there is no vacancy available under 5% quota reserved for compassionate appointment. After 20 years of a required due consideration by the authorities, it cannot be expected that vacancies would still exist, therefore, the reasoning itself is an arbitrary reasoning by the DLC. Further, the principle of spending force after two years is on the premises that the application was earlier placed before the DLC, but rejected for want of vacancy. In the instant case, there is no material available to show that it was earlier placed and rejected. From such point of view, even the principle of spending force after two years is inapplicable.

4. Considering the matter in its entirety, the matter stands remanded back to the DLC of Nagaon district for a fresh consideration as per law. If vacancies are not available in the department where the deceased employee had earlier worked, the respondents in the Education Department to also explore the possibilities as to whether vacancies are available in any other department and after undertaking the complete exercise, a reasoned order be passed and accordingly the claim of the petitioner be placed before the next available DLC of Nagaon district.

5. The respondents should also take note that it is the conduct of the some authorities under the respondents that the petitioner had to face the present fate which has already been elaborately noted above and while taking the decision, the aforesaid aspect be also kept in mind.

6. Writ petition stands disposed of in the above terms.

JUDGE

Comparing Assistant