

GAHC010277362023



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

Case No. : WP(C)/7174/2023

HANIF ALI MONDAL
S/O- LATE HALIMA KHATUN,
VILLAGE- RIVER BLOCK-5,
P.O- PODMER ALGA,
DIST- DHUBRI, ASSAM, PIN-783339

VERSUS

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

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI- 781019.

3:THE DISTRICT COMMISSIONER
P.O AND DIST- DHUBRI
ASSAM
PIN-783301

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER

P.O- DHUBRI
DISTRICT- DHUBRI
ASSAM. PIN- 783301

5:THE BLOCK ELEMENTARY EDUCATION OFFICER

GAURIPUR

P.O- GAURIPUR

DIST- DHUBRI
ASSAM
PIN-78330

Advocate for the Petitioner : MR. N HOSSAIN

Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

13.12.2023

Heard Mr. N. Hossain, learned counsel for the petitioner. Also heard Mr. G. Pegu, learned Standing Counsel, Elementary Education Department for the respondent Nos.1, 2, 4 and 5 and Mr. B. Deuri, learned Government Advocate, Assam, appearing for the respondent No.3.

2. The case of the petitioner is that his mother late Halima Khatun died-in-harness on 08.01.2017 while she was serving as an Assistant Teacher of Podmer Alga MEM School (provincialised) under the administrative jurisdiction of the District Elementary Education Officer, Dhubri. The petitioner pursuant to death of his mother submitted an application on 08.09.2017 for appointment on compassionate ground. However, the said application is yet to be considered by the jurisdictional District Level Scrutiny Committee (DLSC). The petitioner further contends that on enquiry made, he was given to understand that as his mother, at the time of her death, did not have the balance of minimum three years of service left, his case could not be considered in terms of the provisions made in this connection in the Office Memorandum dated 01.06.2015.

3. The sole ground for non-consideration of the petitioner's application for compassionate appointment is that in terms of the office memorandum dated

01.06.2015, more particularly Clause 1, the deceased mother of the petitioner, at the time of her death, did not have a balance of minimum three years of service left and, therefore, the case of the petitioner was rejected.

4. The offending Clause 1 of the office memorandum dated 01.06.2015 is quoted hereinbelow:-

“(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.”

5. 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) 1646/2021. A co-ordinate Bench of this Court, vide judgment and order dated 31.01.2023, in the case of *Bhaskar Konwar -Vs- State of Assam and others*, 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.”

6. 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)* and the

ground on which the petitioner's case was refused to be considered on merits by the jurisdictional DLC no longer exists.

7. Accordingly, it is directed that the case of the petitioner for appointment on compassionate ground shall now be given its due consideration.

8. The District Elementary Education Officer, Dhubri (respondent No.4) shall forthwith place the application of the petitioner dated 08.09.2017 before the DLSC, Dhubri for its further consideration. The DLSC, Dhubri, thereafter, shall consider 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 DLSC 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 said exercise be carried out in the next DLSC meeting, which follows after a certified copy of this order is served upon the respondent Nos.3 and 4.

9. The petitioner shall submit a certified copy of this order along with a representation before the respondent Nos.3 and 4, who, in turn, on receipt of the same, shall act strictly in accordance with the directions as set forth above.

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

JUDGE

Comparing Assistant