

GAHC010110412024



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

Case No. : WP(C)/2901/2024

HIMADRI SARKAR
D/O- HARIDAS SARKAR (FATHER) AND USHA RANI MAJUMDAR
(MOTHER), VILL.- S.M. ROAD, NAGAON TOWN, P.O. NAGAON, PS SADAR,
DIST. NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EDUCATION (ELEMENTARY) DEPARTMENT, DISPUR, GHY-6.

2:THE DIRECTOR ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY-19.

3:THE DEPUTY INSPECTOR OF SCHOOLS
NAGAON DISTRICT
NAGAON
ASSAM

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
NAGAON
ASSAM

5:THE DISTRICT LEVEL COMMITTEE
REP. BY THE MEMBER SECRETARY
DLC
NAGAON

6:THE DEPUTY COMMISSIONER
NAGAON
ASSA

Advocate for the Petitioner : S AHMED, MR M RAHMAN

Advocate for the Respondent : GA, ASSAM, SC, ELEM. EDU

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

30-09-2024

Heard Mr. S. Ahmed, learned counsel for the petitioner and Mr. B. Kaushik, learned Standing Counsel, Department of School (Elementary) Education, Assam for the respondent Nos. 1, 2, 3, 4 and 5. Also heard Ms. D. Das Barman, learned Government Advocate, Assam for the respondent No.6.

2) Petitioner's father, Subject Teacher of Sanskrit in Laharighat Higher Secondary School, Morigaon District expired on 18.04.2004 due to cancer. Her mother, Assistant Teacher at No.2 Amulapatty N. B. Vidyalaya, District – Nagaon died in harness on 06.11.2013.

3) Petitioner, a Master's Degree holder in Assamese from Gauhati University in the year 2011, B. Ed. Degree holder in the year 2015 and a qualified State Level Eligibility Test (SLET) and Central Teacher Eligibility Test (CTET) candidate applied for her compassionate appointment under the 'Die-in-Harness' Scheme of the State. But as the State respondents did not consider her case for her compassionate appointment,

she earlier approached this Court by preferring a writ petition, being WP(C) No. 4371/2016. The Court by its order dated 31.07.2019, while disposing of said WP(C) No. 4371/2016 of the petitioner, observed as follows:---

“6. It may be noted that this Court has held in Tralilokya Nath vs. State of Assam & Ors., 2016 (5) GLT 310, that the limitation period provided for applying in dies-in-harness scheme cannot be treated to be mandatory in nature but merely directory. In other words, merely because there has been some delay in applying for die-in-harness scheme, it should not be rejected solely on the ground of delay in filing the application.

7. Accordingly, this Court is also of the view that even if the petitioner had submitted her application on 26.07.2015, that ought not be the sole ground for rejecting the application of the petitioner.

Accordingly, the present petition is disposed of directing the respondent authorities to place the matter before the concerned DLC again to consider the application of the petitioner on merit and which shall not be rejected merely on the ground of delay of submission of the application.”

4) The petitioner submitted that as per her information the District Level Committee (DLC) for compassionate appointment, under the 'Die-in-Harness' Scheme for the Nagaon District is scheduled shortly and if her case for compassionate appointment is not considered, she will be left out from such opportunity.

5) Hence, this writ petition by the petitioner for a direction to the respondents herein to appoint her on compassionate appointment to the post of her mother or any other suitable post as per the policy.

6) Learned counsel appearing for the State respondents submitted that the District Level Committee, Nagaon considered the case of the petitioner earlier on 20.02.2016; 26.09.2016; 15.05.2017; 13.11.2017; 12.04.2018 and 25.07.2018 but her case could not be considered due to want of vacancy and time lapse. Thereafter, pursuant to the order of the Court dated 31.07.2019, passed in WP(C) No. 4371/2016, the DLC, Nagaon for compassionate appointment in its meeting held on 09.08.2019 after considering the matter, rejected her case for compassionate appointment as on earlier occasions, her name could not be recommended due to want of vacancy and time

lapse, since the period of 2 (two) years from the date of making the application by her was already over. Such decision was taken by the DLC, Nagaon in terms of Principle 10 of Paragraph-11 of the Office Memorandum under No. ABP.50/2006/Pt./182 dated 01.06.2015, though there was vacancy at that point of time in the concerned Department.

7) The Office Memorandum under No. ABP.50/2006/Pt./182 dated 01.06.2015 of the State Government in the Department of Personnel, Personal (B) relates to compassionate appointment under the Die-in-Harness Scheme.

8) Clause 11 of the said OM dated 01.06.2015 provides that – *The District Level Committee constituted under the order of WP(C) No. 3875/2005 shall continue to function in the manner as directed by the High Court and will take action strictly as per the direction and principles laid down in the order . The principles as laid down at para 7 of the said High Court order have been quoted in the said OM dated 01.06.2015 at para-11.*

9) Principle 10 in terms of the said judgment dated 03.08.2006 passed in said WP(C) No. 3875/2005 provides that – *If the applications of eligible candidates remain pending and cannot be considered due to want of vacancy for a period of 2 (two) years from the date of making such applications will require no further consideration and must be understood to have spent their force.*

10) After the said DLC meeting held on 09.08.2019, the case of the petitioner was again placed before the DLC, Nagaon, pursuant to the order of the Court dated 31.07.2019, noted above and the DLC, Nagaon for compassionate appointment for the same reasons, noted above, rejected the case of the petitioner, since the DLC, in its earlier meetings held on 20.02.2016; 26.09.2016; 15.05.2017; 13.11.2017; 12.04.2018 and 25.07.2018 disposed of her case.

11) The DLC, Nagaon again in its meeting held on 14.02.2022 considered the case of the petitioner for her compassionate appointment pursuant to the order of the

Court dated 31.07.2019, passed in said WP(C) No. 4371/2016, noted above clarifying that her case was examined by the DLC, Nagaon in its meetings held on 20.02.2016; 26.09.2016; 15.05.2017; 13.11.2017; 12.04.2018 and 25.07.2018 but her case could not be recommended due to want of vacancy and time lapse.

12) Considering the above the DLC, Nagaon in its meeting held on 14.02.2022 clarified that the case of the petitioner cannot be considered for such reasons for her compassionate appointment under the Die-in-Harness Scheme of the State.

13) Mr. B. Kaushik, learned Standing Counsel, Department of School (Elementary) Education, Assam has placed copy of the judgment passed by the Hon'ble Supreme Court in the case of *State of West Bengal Vs. Debabrata Tiwari and Ors.* reported in *2023 SCC Online SC 219*, wherein, their Lordships after considering various decisions of the Hon'ble Supreme Court specifically provided that – *applications for compassionate appointment are to be considered in the light of the policy holding the field on the date on which the application is filed. Moreover, the appointments under the Scheme of compassionate basis must follow the stipulations made in the policy. Further, the Hon'ble Supreme Court in the case of Debabrata Tiwari (Supra) have held that it would be of no redeeming purpose to direct that the applications for appointment on compassionate grounds to be considered and decided several years after it was filed.*

14) In the case is hand, the petitioner applied for her compassionate appointment though on 27.02.2014, after the death of her mother on 06.11.2013, but the said application, as been reflected in the earlier order dated 31.07.2019, passed in WP(C) No. 4371/2016, could not be found and thereafter, the petitioner again filed her application for compassionate appointment on 26.07.2015, it is seen that the DLC, Nagaon for compassionate appointment on last 9 (nine) occasions, i.e., from 20.02.2016 to 14.02.2022 considered the case of the petitioner for her compassionate appointment, but could not consider her case for compassionate appointment due to

want of vacancy and thereafter, lapse of time following the Principle 10 of Clause 11 of the said OM dated 01.06.2015, noted above.

15) For the reasons above, this writ petition being devoid of any merit stands dismissed.

JUDGE

Comparing Assistant