

GAHC010134282022



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

**Case No. : WP(C)/4572/2022**

ABDUL ALIM KHAN  
SON OF LATE JASIM UDDIN KHAN,  
A RESIDENT OF VILLAGE- KACHARIGAON,  
P.O- KAMADANGA, P.S- TAMARHAT, DISTRICT- DHUBRI, ASSAM,

VERSUS

THE STATE OF ASSAM AND 3 ORS  
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE  
GOVERNMENT OF ASSAM, EDUCATION (SECONDARY) DEPARTMENT,  
DISPUR, GUWAHATI-6.

2:THE COMMISSIONER AND SECRETARY  
FINANCE DEPARTMENT  
DISPUR  
GUWAHATI-6.

3:THE DIRECTOR OF SECONDARY EDUCATION  
ASSAM KAHILIPARA  
GUWAHATI -19.

4:THE TREASURY OFFICER  
DHUBRI  
DIST.- DHUBRI  
ASSAM

**Advocate for the Petitioner : DR. B AHMED**

**Advocate for the Respondent : GA, ASSAM**

**BEFORE  
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

**ORDER**

**Date : 07.02.2024**

Heard Mr. A. U. Ahmed, learned counsel for the petitioner. Also heard Mr. N. J. Khataniar, learned standing counsel, Secondary Education department and Mr. B. Gogoi, learned standing counsel, Finance department.

2. This writ petition is filed by the petitioner praying for a direction to accord ex-post facto approval of the appointment of the petitioner in the post of Grade IV Chowkidar at Kacharigaon Senior Madrassa and to release the current and his arrear salaries.

3. The petitioner's late father was working as a Chowkidar in Kacharigaon Senior Madrassa in the district of Dhubri. He, however expired while he was in service. Pursuant to the expiry of the father of the petitioner while he was in service, petitioner approached the authorities for appointing him as Chowkidar on compassionate ground. As his application not being considered, he approached this court by filing W.P (C) No.4760/2007. Co-ordinate Bench of this Court by order dated 12.09.2007 disposed of the writ petition with the following order:-

*“12.09.2007*

*Heard Mr. AT Sarkar, learned counsel for the petitioner. Also heard Ms Baruah, learned Standing counsel, Education Deptt for the respondent Nos 1 and 2 and Mr Das, learned Standing counsel, BTC for the respondent Nos 3, 4 and 5.*

*The petitioner is before this Court seeking an appropriate direction to the respondents to consider his case for compassionate appointment following the death of his father in harness on 19.3.2006.*

*It is submitted at the Bar that the issue is covered by the judgment and order dated 3.8.2006 passed in a batch of writ petitions the lead case being WP(C) No.3875/2005 (Achyut Ranjan Das Vs State of Assam and Ors.).*

*Having regard to the issue raised and the decision of his Court as above, this petition is closed with a direction that the petitioner's case would be considered in terms of the guidelines laid down therein. No costs."*

4. Pursuant to the order passed the petitioner was appointed by the order dated 11.06.2013 issued by the Director of Madrassa Education, Government of Assam. The petitioner joined in his service on 12.06.2013 in terms of the order of his appointment. However, after the joining of the petitioner, the salary of the petitioner was not released. He represented before the authorities and from the communications between the Director of Madrassa Education and the Commissioner and Secretary, Government of Assam, Department of Education, it is seen that the post in which the petitioner was appointed received the finance (S.I.U.) department's approval on 01.03.2008 and the validity of the same expired on 31.07.2008. Thereafter, the approval as required for the finance (S.I.U.) department was not obtained in respect of this post and therefore, the salary of the petitioner would not be released.

5. It is the submission of the learned counsel for the petitioner that inspite of rendering dedicated service since his date of joining in the post of Chowkidar in Kacharigaon Senior Madrassain the district of Dhubri, the petitioner has not been granted his salary in spite of requests made before the authorities concerned.

6. The respondent No.1, Secretary to the Government of Assam, filed an affidavit in-opposition, where there is an averment that since the approval of the

finance (S.I.U.) department expired on 31.07.2008 as on date; there is no approval in the post in which the petitioner is working. That apart, the procedure prescribed for appointment on compassionate ground was not adhered to by the Director, Madrassa while issuing the order dated 11.06.2013 appointing the petitioner on compassionate ground. The Director of Secondary Education has brought it to the notice of the concerned Deputy Commissioner of the district namely, DC, Dhubri to consider the representation of the petitioner within the framework of the guidelines for appointments on compassionate ground. However, the same has not yet been carried out.

7. Learned counsels for the parties have been heard. The petitioner is working as Chowkidar in Kacharigaon Senior Madrassa in the district of Dhubri pursuant to his appointment dated 11.06.2013. This appointment was required to be done on compassionate ground as per the order dated 12.09.2007 passed in WP(C) No. 4760/2007. By the said order, there was no specific direction to appoint the petitioner. However, the writ petition was closed with a direction to the respondents to consider the case of the petitioner in terms of the guidelines laid down for compassionate appointment.

8. A perusal of the pleadings available before this Court reveals that procedure prescribed for compassionate appointment is laid down in ***Achyut Ranjan Das Vs State of Assam and Ors. in W.P (C) 3875 of 2005***, which was followed by the Government and the same guidelines were subsequently brought by way of an Office Memorandum. At present, the Office Memorandum dated 01.06.2015 is presently in force. The guidelines laid down by the judgment of this court in ***Achyut Ranjan Das (supra) in W.P (C) 3875 of 2005*** and the subsequent Office Memorandum lay down a detailed procedure as to how the applications for appointment of persons under the compassionate

appointment are required to be carried out.

9. From the pleadings available on record, it is clear that there was no specific direction by the Co-Ordinate Bench by order dated 12.09.2007 passed in WP(C) No. 4760/2007 to appoint the petitioner on compassionate ground. The direction was for consideration of the case of the petitioner for appointment on compassionate ground. Nevertheless, by order dated 11.06.2013, the then Director of Madrasa Education issued an order appointing the petitioner. This order does not reflect that the same was carried out pursuant to an exercise as per the procedure prescribed laid down in the Judgment of **Achyut Ranjan Das (Supra)**, or the Office Memorandum, which was prevalent at the relevant point in time. That apart from the inter-departmental communication, it is seen that the S.I.U approval of the finance department had also expired well prior to the petitioner being appointed and as on date the S.I.U approval is not available. It is also seen that the order of appointment issued to the petitioner dated 11.06.2013 issued by the Director, Madrasa Education, although the same is stated to be not as per the procedure prescribed, is still in force and has not been withdrawn or reviewed by the department. It is also seen that the petitioner is stated to be working in the said post of Chowkidar at Kacharigaon Senior Madrasa and which averment made in the writ petition is not disputed by the respondent authorities.

10. Under such circumstances, it is clear that although the appointment order dated 11.06.2013 was not issued as per the procedure prescribed, the fact remains that the petitioner was appointed pursuant to this order dated 11.06.2013 and he has been rendering his services since his date of joining on the said post on 12.06.2013. It is evident that the petitioner has rendered his services since his date of appointment and joining in the said post. Under such

circumstances, notwithstanding the procedure not having been followed while issuing the appointment order dated 11.06.2013, the petitioner was permitted to work and service was extracted from him by the department. The department did not take any corrective steps in this regard. Therefore, for the period he rendered services, his entitlement to the salary and wages and other financial benefits cannot be withheld or denied.

11. In terms of the Office Memorandum dated 01.06.2015, as per the procedures prescribed are laid down under clause 11 of the said Office Memorandum, which contains as many as 10 (ten) principles. Perusal of the Judgment of this Court in ***Achyut Ranjan Das (Supra)*** read with the Office Memorandum, which was prevalent at the relevant point in time, it is seen that the procedure prescribed requires the matters to be first forwarded by the administrative department to be placed before the District Level Committee, which is shared by the Deputy Commissioner of the concerned district. Upon recommendation by the DLC, the matters are placed before the SLC, which is shared by the Chief Secretary of the State. In the peculiar facts of this case, this procedure, for reasons best known to the Secondary Education department the procedure was not followed while issuing the order of appointment dated 11.06.2013, pursuant to which the petitioner joined in his service with effect from 12.06.2013. As a sequel to the procedure prescribed not being followed perhaps the S.I.U approval required for the finance department has not yet been issued in respect of the same post and as a consequence thereof, the salary of the petitioner which is found to be payable has not been released till date, inspite of the petitioner claiming to be in service. There is no dispute that the petitioner has been appointed by the authority, who is otherwise competent to issue appointment orders. No dispute is also raised by the respondents with

regard to the service rendered by the petitioner. The only reason why the petitioner has not been got his salaries is the non approval of the finance S.I.U. department. From the inter-departmental correspondence it is seen that the SIU approval was earlier issued to he said post, which however expired on 31.07.2008. As such the only hurdle in non release of the arrear salary and the current salary of the petitioner, is that the procedure prescribed under the Office Memorandum dated 1<sup>st</sup> October, 2009 was not followed by the authorities while issuing the appointment order and because of which the finance SIU approval was not granted by the finance department. As such when no dispute is raised with regard to the order passed by the authority appointing the petitioner or the period of service rendered by the petitioner, the salary payable to the petitioner cannot be denied only on the ground that the procedure prescribed was not followed at the time of appointment of the petitioner. The order of appointment as discussed above was issued in the year 11.06.2013 and the said order has not yet been re-called by the authorities, which goes to show that the authorities were well aware of the order of appointment dated 11.06.2013 issued by the Director, Madrassa appointing the petitioner and pursuant to which the petitioner was allowed to work. Denial of salary for services rendered by the petitioner, under such circumstances, is seen to be arbitrary and violative of the constitutional provisions. The principles laid down in **Achyut Ranjan Das (Supra)** are extracted below:-

*“I. All pending applications against existing and available vacancies as per the quota earmarked including the cases of the petitioners in the present cases and all others, who may not be before the court, shall be decided in accordance with the proposed directions to be laid down in the present order and also in accordance with the principles noted in the preceding paragraphs of this order. This will be*

*done within a period of 4 (four) months from today. The present direction naturally has to be considered as a one-time measure in view of the subsequent direction as laid down in the succeeding paragraphs.*

*II. The District Head of each Department will intimate the vacancies as and when such vacancies occur, to the Court Appointed District Level Committees for its scrutiny. There will be no delay in such intimation.*

*III. The District Level Committee will be constituted by the Deputy commissioner of the District and the Superintendent of Police. The deputy Commissioner himself will sit in the Committee. The district Head (s) of such departments in which vacancies are available shall be co-opted as the additional Members of the Committee.*

*IV. The District Level Committee will meet once every 2 (two) months on the last Saturday of the second month.*

*V. The District Level Committee will decide as to who amongst the eligible candidates is entitled to compassionate appointment. To the extent possible such appointments will be recommended to be made within the District. In making the recommendations for appointments, the District Level committee will take into account the financial condition of the family of the deceased and on a relative consideration of the cases will make its recommendation. There will be no selection and "seniority of the claim" will not be resorted to unless two or more eligible candidates are at par.*

*VI. To decide on the question of financial status of the family of a claimant regard will be had to the following factors as laid down in g. M. Vs. Kunti Tiwari (supra)*  
*(a) Gratuity amount received/receivable. (b) Family pension payable. (c) Provident Fund Amount received/receivable. (d) Any ex-gratia payment made or payable. (e) Proceeds of LIC Policy and other investments of the deceased. (f) Income of the family from other sources. (g) Employment of other family members. (h) Size of the family and liabilities, if any.*

*VII. The recommendations of the District Level Committee will be considered by a State Level Committee consisting of the Chief secretary and the Senior Financial Commissioner of the State. The Commissioner and Secretary of the Department (s) in which vacancies are available will be coopted as Additional Members of the State Level Committee. VII The State Level Committee will meet once every 3 (three) months.*

*IX. All vacancies available against the quota of compassionate appointment must be filled up within a period of 6 (six) months from the date of occurrence of the vacancy in accordance with the present directions.*

*X. If the applications of eligible candidates remain pending and cannot be considered due to want of vacancies for a period of 2 (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”.*

12. In this context, Office Memorandum dated 1<sup>st</sup> October, 2009 which governed the compassionate appointments made is also required to be referred to and is therefore extracted below:-

“ GOVERNMENT OF ASSAM  
DEPARTMENT OF PERSONNEL ::: PERSONNEL (B)  
DISPUR ::: GUWAHATI

No. ABP.357/80/Vol-I/314

Dated Dispur, the 1<sup>st</sup> October, 2009

OFFICE MEMORANDUM

***Subject: revised guidelines for appointment on Compassionate ground of a son, daughter of a Government Servant.***

*A revised guidelines have been issued vide O.M. NO ABP. 357/80/Vol.I/ 303 dated 2-3-2009 for appointment on compassionate ground to the son & daughter of a Government Servant who dies in harness, Para 4 of the Office Memorandum stipulates that since compassionate appointment is made in relaxation of prescribed procedure of recruitment, as such approval of Finance (SIU)*

*Department will not be necessary when there is a clear sanctioned vacancy to consider the proposal subject to the condition that the vacant post against which appointment on compassionate ground is to be made has been retained upto date/retained permanently.*

*On further consideration it has been decided to amend Para 4 of that Office Memorandum which be read as below:*

*“Since compassionate appointee cannot be differentiated with that of other fresh appointee who are recruited as per provision of rules & procedure, as such mandatory requirement of obtaining approval /appraisal of Finance (SIU) Department before making appointment on compassionate ground will be required for release of salary by the concerned Treasury Officer to avoid possible irregularities, like fraudulent drawal of salaries making irregular appointment etc.” All other conditions will remain same.*

*Sd/Rajiv Bora  
Commissioner & Secy. to the Govt. of Assam  
Personnel (B) Department”*

13. A reading of the office memorandum dated 1<sup>st</sup> October 2009 reveals that by earlier office memorandum number ABP.357/80/Vol-I/303 dated 02.03.2009 approval of Finance (SIU) department was stated to be not necessary when there is a clear sanction vacancy to consider the proposal subject to the condition that the post in which the compassionate appointment is to be made has been retained up to date/retained permanently. This position was further amended by the Office Memorandum number No. ABP.357/80/Vol-I/314 dated 1<sup>st</sup> October 2009, wherein it was declared that approval/appraisal of the Finance (SIU) department is a mandatory requirement before making appointment on compassionate ground and the same is required for release of salary by the concerned Treasury Officer to avoid possible irregularities, like fraudulent drawal of salaries, making irregular appointment, etc. The Director of Madrassa Education, while issuing the appointment order dated 11.06.2013 did not seek

the Finance (SIU) approval. However, from the order dated 11.06.2013 passed by the Director, Madrasa Education was not routed through the proper official channels for which, notwithstanding the petitioner having been appointed and having joined in the post of Chowkidar, the post to which he was appointed was not retained and a consequence thereof, his salary has not been released.

14. Under such peculiar circumstances, this court, under the powers conferred on this court under Article 226 of the Constitution of India issue a Mandamus to the respondent department, namely, the respondent No.1, Commissioner and Secretary, Assam, Education (Secondary) department, to forward the relevant papers pertaining to the appointment and the service rendered by the petitioner to be placed before the Chief Secretary of the State. The Chief Secretary of the State, in his capacity, as the Chairperson of the SLC, will treat the order dated 11.06.2013 passed by the Director, Madrasa to the recommendation from the District Authority or the DLC and will thereafter pass necessary orders as required under the Office Memorandum prevalent at the relevant point in time for compassionate appointments. This specific order is passed by the court in view of the fact that the petitioner was permitted to work by the order passed by the Director of Madrasa dated 11.06.2013, and that order as on date has not been re-called or reviewed and the petitioner was made to work without payment of any salary. Upon the matter being placed before the Chief Secretary in his capacity as the Chairperson of the SLC, the SLC will pass necessary orders regularizing the approval of the petitioner as a compassionate appointment with effect from the date of the order being passed and the matter be forwarded to the Finance Department for grant of *post- facto* approval to the post in which the petitioner has been appointed. This order shall not be treated as a Precedent as this order is passed under peculiar facts and circumstances arising

in this case before the Court.

15. This entire exercise be completed within a period of 60 (sixty) days from the date of receipt of a certified copy of this order.

16. Writ petition is accordingly disposed of in terms of the above. No order as to cost.

**JUDGE**

**Comparing Assistant**