

GAHC020000252023



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

Case No. : WP(C)/10/2023

SMTI.MHASINGUNUO
AGED ABOUT 26 YEARS,
D/O LATE RUOKUOSAKHO,
DRAWING TEACHER UNDER GOVERNMENT HIGH SCHOOL KIRUPHEMA,
KOHIMA DISTRICT, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
NAGALAND, DEPARTMENT OF SCHOOL EDUCATION, NAGALAND, KOHIMA

2:THE PRINCIPAL DIRECTOR

DEPARTMENT OF SCHOOL EDUCATION
NAGALAND
KOHIMA

3:THE DISTRICT EDUCATION OFFICER

DEPARTMENT OF SCHOOL EDUCATION

DISTRICT - KOHIMA
NAGALAND

4:THE COMMISSIONER AND SECRETARY

PERSONNEL AND ADMINISTRATIVE REFORMS DEPARTMENT
ADMINISTRATIVE REFORMS BRANC

Advocate for the Petitioner : PAKINRICHAPBO

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

22.02.2024

Heard Mr. Pakinrichapbo, learned counsel appearing on behalf of the petitioner and Ms. Sepong Chang, learned State counsel appearing on behalf of the respondent Nos. 1 to 4.

The instant writ petition has been filed by the petitioner being aggrieved by the inaction on the part of the respondent authorities in not considering the case of the petitioner for appointment in any Grade-III post against the vacancy to the post reserved for compassionate appointment, and further seeking a direction upon the respondent authorities to adhere to the conditions stipulated in the Office Memorandum (OM) dated 17.09.2015 and the Addendum dated 09.04.2019. From the materials on record, it reveals that the father of the petitioner was working as a Drawing Teacher of Government Middle School, Kiruphema, Kohima, under the Deputy Inspector of Schools, Kohima. Unfortunately he expired on 16.01.2020 while in service. Thereupon the petitioner, who is a Graduate with Sociology Honours and a Diploma in Computer, submitted an application dated 17.09.2021, to the Principal Director, School Education Department, to be appointed on compassionate grounds to the vacant post of the Drawing Teacher or a Graduate Teacher. The petitioner is aggrieved by the inaction on the part of the respondent authorities in not considering his application for being appointed on compassionate grounds and also by the actions of the respondent authorities in not adhering to the OM dated 17.09.2015 and the Addendum dated 09.04.2019. Under such circumstances the instant writ petition was filed on 01.02.2023.

2. The record reveals that an affidavit-in-opposition was filed by the State respondents on 03.05.2023 stating *inter alia* that the petitioner's case was duly considered and he was in the Waiting List. As per the said

affidavit-in-opposition it was categorically mentioned that as per the Waiting List the petitioner's name figures at Serial No. 212 (two hundred and twelve) and till date and to the filing of affidavit-in-opposition the appointment on compassionate scheme was made up to Serial No. 191 (one hundred and ninety-one). To the said affidavit-in-opposition the petitioner had submitted an affidavit-in-reply stating *inter alia* that on the basis of information received under the Right to Information Act, 2005 around 113 (one hundred and thirteen) persons were appointed against the vacant post in Grade-IV in the Department from 2020 till the time of furnishing of the information. However, no appointments have been made in Grade-III from 2020 till the time of furnishing of the information. It has been specifically averred that the respondents are not adhering to the OM dated 17.09.2015.

3. Today, when the matter is being taken up, Ms. Sepong Chang, learned State counsel appearing on behalf of the State respondents have placed before this Court an instruction dated 20.02.2024 wherein it has been mentioned that as per the Roster List for compassionate appointment as on December, 2023, the petitioner's name appears at Serial No. 71 (seventy-one).

4. This Court has heard the learned counsels appearing on behalf of the parties and have given an anxious consideration to the said submissions made.

5. From the materials on record, it reveals that the Government of Nagaland, in its Personnel & Administrative Reforms Department had issued an OM dated 17.09.2015. This OM is in relation to appointment on compassionate grounds of family members of Government employees who died in harness. From amongst the various clauses in the said OM, it is relevant to take note of that in terms with Clause (3) appointment on compassionate grounds shall be made only on a regular basis to direct recruitment posts and only if regular vacancies for that purpose which are available in the Department where the deceased Government employee was serving. In terms with Clause (4), it has been mandated that the compassionate appointment may be made to the posts falling

under the combined direct recruitment quota of Group-C & Group-D. The ceiling of compassionate appointment of 5% of the direct recruitment vacancies in Group C & Group-D posts has been done away with provided such appointments do not exceed 50% of the vacancy during a year. It is also mandated that the appointment against the posts for direct recruitment in Group-C should be in the entry grade only and further appointment against any post for direct recruitment in Group-C should be limited to those posts which are outside the purview of NPSC for recruitment. This Clause is very relevant in as much as the OM dated 17.09.2015 clearly distinguishes the consideration to be made in Group-C and Group-D posts on as much as appointment in compassionate basis to Group-C posts would only be limited in entry level posts and not in posts in Group-C which are specifically reserved for recruitment through NPSC.

6. Clause (6) categorically stipulates that the scheme would be available to family members of the family of the deceased employee provided no surviving member of the family holds any regular post in the State Government and shall be available to only one family member. Clause (8) refers to the upper age limit of applicants under the scheme which may be relaxed in exceptional cases up to a maximum of 5 (five) years in addition to existing relaxation, if any, and the lower age limit shall, however, in no case be relaxed below 18 (eighteen) years of age.

7. Pursuant to the said OM dated 17.09.2015, an Addendum dated 09.04.2019 was issued whereby Clause (11) & (12) were inserted to the OM dated 17.09.2015. Clause (11) is very pertinent for deciding the instant dispute in as much as the said clause stipulates that a compassionate appointment made to Group-C and Group-D posts under the scheme shall be strictly in order of the date of death and first preference shall always be given against those who have died earlier and who fulfills all other eligibility criteria.

8. In the backdrop of the above, this Court finds it very pertinent to take note of document which have been placed before this Court by the learned State counsel dated 20.02.2024, wherein the Roster List for

compassionate appointment as on December, 2023 have been enclosed. The said document being pertinent is kept on record and marked with the letter "X".

9. The learned State counsel has submitted that the petitioner's case is under active consideration and the petitioner's position stands at Serial No. 71 (seventy-one). This Court duly takes note of that the father of the petitioner expired on 16.01.2020 and the petitioner submitted his application on 17.09.2021. However, it is seen that the said Roster List so maintained is not in accordance with Clause (11) of the OM dated 17.09.2015 which Clause was inserted by the Addendum dated 09.04.2019. This aspect of the matter would be apparent from the fact that in respect of the person at Serial Nos. 53,54,55,56,57,58,59,62,64,66,67 and 68, the employees who died in harness and against which claims have been made seeking compassionate appointment were made after the date of death of the father of the petitioner. The said, in the opinion of this Court, is a serious infraction to Clause (11) of the said OM dated 17.09.2015 as was inserted vide the Addendum dated 09.04.2019.

10. The Roster List which have been placed before this Court, in the opinion of this Court needs to be revisited as apparently the same appears to be contrary with Clause (11) of the OM dated 17.09.2015.

11. Apart from the above, this Court also finds it relevant to observe that the OM dated 17.09.2015 categorically mandates granting appointments on compassionate basis to Group-C & Group-D posts. It is a well settled principle of law that a person claiming compassionate appointment cannot claim an appointment higher to the post held by the person who died in harness. It is also very pertinent to take note of that for the purpose of appointment to Group-C & Group-D posts requirement of the minimum qualifications would differ. Further as already observed above, Group-C and Group-D posts have been treated differently in the OM. Therefore, a question arises as to whether there can be a combined Roster List for compassionate appointment. It is the opinion of this Court that there cannot be a combined Roster List for Group-C and Group-D

posts. The respondents, therefore, is required to take effective steps in that regard. Another very significant aspect behind the above observations is that the persons applying for Group-C and Group-D for appointment on compassionate grounds may belong to the same genus but taking into account the inherent distinction and treatment given to Group-C and Group-D puts in the OM dated 17.09.2015, they cannot be classified to belong to the same species. The act on the part of the respondents to club both the claimants of Group-C and Group-D would amount to unreasonable classification thereby treating unequals equally, which would be violative of Article 14 of the Constitution.

12. In addition to the above, this Court also duly takes into account the reply to the RTI application enclosed in affidavit-in-reply which states that in Grade-III posts there has been no appointment on compassionate grounds in terms with the OM dated 17.09.2015 since 2020 whereas Grade-IV posts have been duly filled up. The said action does not appear to be in consonance with Clause 4 of the OM. The respondents are therefore required to do the needful for giving effect to the OM dated 17.09.2015.

13. Accordingly, this Court, therefore, disposes of the instant writ petition with a direction to the respondent authorities to consider the case of the petitioner in terms with the OM dated 17.09.2015 read with the Addendum dated 09.04.2019 and further rearrange/revisit the Roster List for Group-C and Group-D on the basis of the observations and directions made hereinabove.

14. With the above observations and directions, the writ petition stands disposed of.

Sd/-
JUDGE