GAHC010118792020

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

Case No. : WP(C)/3500/2020

ASHRAFUL ALOM
S/O LT. ABUL HUSSAIN, VILL. TILLA BAZAR, P.S. AND DIST. KARIMGANJ, ASSAM, PIN-788710

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM, EDUCATION (ELEMENTARY), DEPTT. DISPUR, GUWAHATI-781006

2:THE DIRECTOR
ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-781019
DIST. KAMRUP
ASSAM

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
KARIMGANJ
ASSAM
PIN-788710

4:THE BLOCK ELEMENTARY EDUCATION OFFICER
NORTH KARIMGANJ BLOCK
KARIMGANJ
ASSAM
PIN-788710

5:THE DEPUTY INSPECTOR OF SCHOOLS
KARIMGANJ DISTRICT CIRCLE
KARIMGANJ

DIST. KARIMGANJ
ASSAM
PIN-788710

6:THE DEPUTY COMMISSIONER CUM THE CHAIRMAN
DISTRICT LEVEL COMMITTEE
KARIMGANJ
ASSAM
PIN-7881

Advocate for the Petitioner : MRS R BEGUM

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

O R D E R

09.12.2020

Heard Ms. SB Choudhury, learned counsel for the petitioner. Also heard Mr. B Deori, learned counsel for the respondent No. 6 and Mr. PK Bora, learned counsel for the respondentsNo.1, 2, 3, 4 and 5.

2. The father of the petitioner, who was serving as a Assistant Teacher of Chandsrikona ME School in the Karimganj district died in harness on 27.11.2014. On his death, the petitioner submitted an application for compassionate appointment on 07.01.2015. The application of the petitioner was within the prescribed time limit of one year. Before the application of the petitioner could be placed before the concerned DLC, the respondents in the Personnel (B) Department of the Government of Assam had issued the Office Memorandum dated 01.06.2015 wherein Clause 1 provides that a person would be eligible to make an application for compassionate appointment provided the deceased government servant had a balance of minimum 3(three) years of service at the time of death. When the claim of the petitioner was placed before the DLC of Karimganj district in its meeting of 16.06.2020, the same stood rejected by taking recourse to Clause 1 of the OM dated01.06.2015 that at the time of his death, the deceased did not have a balance of

3(three) years of service. The issue as to whether the provisions of Clause 1 of the OM dated 01.06.2015 would be prospective or retrospective was decided by this Court in the judgment Court dated 20.12.2017 in WP(C)No.1514/2017 (Ahid Ahmed Majumdar Vs. State of Assam & Ors.) wherein in paragraphs 12 it has been held as extracted below:

> *"12. It is to be noted here-in that at the time of the death of the petitioner's father, Circular dated 20.12.2012 was holding the field whereunder, the dependent of the deceased government servant had the time of one year with effect from the death of the bread earner to submit the application seeking compassionate appointment. Petitioner' father died on 21.05.2015. Therefore, under the circular dated 20.12.2012, the petitioner was entitled to submit his application seeking compassionate appointment till 20.05.2016. The government Circular laying down the eligibility norms for submission of application for compassionate appointment, in the opinion of this court, vests a limited right on the applicant's to apply for the same, which in this case was available to the writ petitioner till 20.12.2012. As such, the mere fact that the petitioner did not submit his application on a particular date cannot be a ground for the authorities to disqualify him on any criteria that was not inexistence on the date on which the petitioner had acquired the eligibility to apply for such appointment under the scheme."*

3. In the matter before the Court in WP(C)No. 1514/2017, the person concerned died on21.05.2015 and therefore, the petitioner therein had time up to 20.05.2016 to make his application. As the person concerned had died prior to 01.06.2015, it was held that at the time of the death of the person concerned, the circular dated 20.12.2014 was holding the field which did not provide for an embargo that a minimum of three years of balance service would be required. Accordingly, in paragraph 14 of the said judgment it was held as under:

> *"14. In the case in hand, as noted above, a right had vested upon the petitioner to apply under the scheme on the date of death of his father and such right to apply was available to him until20.05.2016.On the date of death of petitioner's father that was the policy of the Government. Therefore, as long as the application is submitted within the time prescribed by the existing policy decision of the Government, the same cannot be rejected on the basis of a subsequent policy decision which was not in*

existence on the date on which the petitioner had acquired his eligibility to apply. In other words, the petitioner could not have been divested of an accrued right to apply for compassionate appointment on the basis of the existing Government Circular by placing reliance upon a eligibility criteria which was not in existence on the date on which he had acquired the eligibility. It is therefore, held that the OM dated 01.06.2015 will only have a prospective application so as to cover those cases where the Government servant h ad died after the issuance of the OM and the same cannot have a retrospective application so as to divest a considerate of his already acquired right under the existing circular holding the field on the date on which the government servant had died."

4. In paragraph 14 of the said judgment, it was held that although subsequently, a policy decision may have been taken to put in an embargo of three years of balance service, a right which had arisen in favour of the person prior to the coming into effect of the OM dated 01.06.2015 cannot be frustrated as because of the subsequent policy decision putting an embargo of three years of balance service.

5. In the other writ petition, we have taken note of that the OM was dated 01.06.2015 whereas the deceased died on 21.05.2015 and the application for compassionate appointment was made after coming into effect of the OM dated 01.06.2015. In such situation also, it was held by this Court that the policy decision cannot be relied upon to reject the claim of a person where the death had occurred prior to 01.06.2015.

6. In the instant case, the facts are much better placed inasmuch as, the person concerned died on 27.11.2014 and the application for compassionate appointment was made on 07.01.2015 which was much prior to the OM dated 01.06.2015 coming into effect.

7. The respondents have also filed their affidavits in opposition taking a contrary stand. But as the issue has already been decided by this Court in WP(C) No.1514/2017, this writ petition is also disposed of in the same manner.

8. In view of the above, by following the proposition laid down in WP(C) No.1514/2017 the rejection of the claim for compassionate appointment of the petitioner by the DLC of Karimganj district dated 16.06.2020 is set aside.

9. The matter now stands remanded back to the DLC of Karimganj district for a fresh consideration of the claim of the petitioner by taking into consideration the law as indicated above.

10. It is taken note of that the claim of the petitioner was considered by the DLC on three earlier occasions. Without expressing any view on the matter of having been considered by the DLC on three earlier occasions, we stand by our order requiring the DLC to consider the case of the petitioner without taking recourse to Clause 1 of the OM dated 01.06.2015. The claim of the petitioner shall now be placed by the DLC of Karimganj district in its next sitting to be taken up on merit without resorting to Clause 1 of the OM dated 01.06.2015. Although it was considered by the DLC on three earlier occasions, we have gone through such orders, but have not arrived at any such previous order of the DLC where the claim of the petitioner was considered on its own merit.

11. Writ petition stands allowed in the above terms.

JUDGE

Comparing Assistant