GAHC010167852020

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

Case No. : WP(C)/4995/2020

RAHUL UDDAY HUSSAIN
S/O- LT. CHIRAJ ALI, VILL- MANAH KUCHI, P.O. BARAMBOI, DIST.- KAMRUP (R), ASSAM, PIN- 781104

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, SECONDARY EDUCATION DEPTT., DISPUR, GHY-06

2:THE DIRECTOR OF SECONDARY EDUCATION

3:THE JOINT SECY. TO THE GOVT. OF ASSAM

4:THE INSPECTOR OF SCHOOLS

5:THE DY. COMMISSIONER

6:THE PRINCIPA

Advocate for the Petitioner : MD. B HUSSAIN

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

Date : 02-12-2020

Heard Mr. B Hussain, learned counsel for the petitioner. Also heard Mr. R Mazumdar, learned counsel for the Secondary Education Department as well as Mr. SR Barua, learned counsel for the respondent No.5.

2. Considering the nature of the order to be passed, notice on the respondent No.6 is deemed not required.

3. The father of the petitioner, who was working as a Chowkidar(Grade IV) in Baramboi Higher Secondary School Kamrup died in harness on 13.02.2017. On his death, the petitioner submitted his application for compassionate appointment on 01.03.2017. From the communication dated 01.09.2017 from the Deputy Commissioner Kamrup, Amingaon addressed to the Commissioner and Secretary to the Government of Assam in the Secondary Education Department, it is discernible that the Deputy Commissioner who is also the Chairman of the DLC Kamrup was of the view that since no vacant post was indicated at the district level by the concerned department, therefore, the SLC may take a decision as per Clause 15 of the Office Memorandum dated 01.06.2015. From the communication of 01.09.2017, it is discernible that the application of the petitioner was perhaps given a consideration, but as no vacancies were found, therefore, the Deputy Commissioner opined that it is for the SLC to find out a suitable vacancy under Clause 15 of the Office Memorandum dated 01.06.2015. Clause 15 of the Office Memorandum dated 01.06.2015 provides that in the event a vacancy is not available in the department in which the deceased had worked and against which the recommendation was sought to be made, the authorities are required to look into the aspect as to whether vacancies are available in any other department. We do not understand as to why the matter has to be sent to the SLC for making such a determination. The DLC on its own can undertake the exercise and find out the vacancy position provided by the various departments as to whether any suitable vacancy is available in any other department and if vacancy does exist to give a consideration to the claim of the petitioner.

4. From the said point of view, we remand the matter back to be placed before the next available DLC of Kamrup district.

5. The DLC would examine that if vacancies are not available in the department, where the deceased had worked they may look into the aspect as to in which other department vacancy may be available and upon identifying the vacancy position and if any such vacancy does exist, the claim of the petitioner be considered as per law.

6. Writ petition stands disposed of in the above terms.

JUDGE

Comparing Assistant