
(2018) 05 GAU CK 0121
In the Gauhati High Court
Case No : WP(C) 3017 of 2017

Amarjyoti Borgohain

APPELLANT

Vs

State Of Assam And 2 Ors

RESPONDENT

Date of Decision : 21-05-2018

Acts Referred:

Citation : (2018) 05 GAU CK 0121

Hon'ble Judges : ACHINTYA MALLA BUJOR BARUA, J

Bench : Single Bench

Advocate : P Gohain

Final Decision : Disposed Off

Judgement

1. Heard Ms. D. Borgohain, learned counsel for the petitioner, Mr. N. Sarma, learned Standing Counsel for Elementary Education Department as well

as Mr. K. Nayak, learned counsel for the DLC being the respondent No.3.

2. The father of the petitioner, who was working as an Assistant Teacher of Madhya Hollongapar MV School in the Jorhat district, died in harness on

03.12.2013. On his death, the mother of the petitioner, being the wife of the deceased, had submitted an application for compassionate appointment.

The claim for compassionate appointment of the mother was rejected by the DLC in its meeting held on 01.08.2014 on the ground that she is not

genuinely qualified. On a query to the learned counsel appearing for the DLC as to what it meant by not genuinely qualified, it is stated that the mother

of the petitioner did not have the required 50% of marks in the qualifying examination.

3. Be that as it may, the petitioner who was a minor at the time of death, made an application for compassionate appointment on 14.09.2015. The said

application of the petitioner was rejected by the DLC in its meeting held on 17.11.2015 on the ground that he is not recommended due to late

submission of the application. Thereafter, the DLC had given a further consideration to the claim of the petitioner in the meeting held on 21.09.2016

and this time, it was rejected on the ground that the case was earlier rejected.

4. The Supreme Court in *Syed Khadim Hussain vs- State of Bihar and others*, reported in (2006) 9 SCC 195 while considering the rejection of the

authorities for compassionate appointment, where the mother had earlier applied, had taken the view that the minor son, who could not have applied

earlier, also has a right to be given a due consideration. In the said matter before the Supreme Court, there was a delay of as many as 11 years of the

son submitting the application and in the said circumstance also, the Supreme Court was of the view that in the peculiar facts of that case, the

respondents be directed to consider the application of the son.

5. The factual circumstance in the matter before the Supreme Court and in the present case are also similar to the extent that the mother of the

petitioner had made an application within a period of one year, but that was rejected on the ground that she does not have 50% of marks in qualifying

examination.

6. In the view of this Court, even the said rejection was improper and incorrect inasmuch as, if the mother of the petitioner did not have 50%

qualifying marks for the post of Assistant Teacher, the authorities on their own ought to have considered the said application for any other posts, to

which the mother of the petitioner may have been qualified for.

7. Be that as it may, the death of the father of the petitioner had taken place on 03.12.2013 and the mother had made the application on 26.12.2013,

which was rejected on 01.08.2014. The petitioner had submitted his application for compassionate appointment on 14.09.2015. So from that point of

view, the petitioner had submitted his application after nine months of expiry of one year from the date of death of his father.

8. The time limit laid down by this Court in paragraph-4 of *Faziron Nessa and others vs- State of Assam and others*, reported in 2010 (4) GLT

340, whereby the time limit of three months for submission of an application for compassionate appointment was extended to twelve months, would

necessarily have to be looked from the point of view of the facts and

circumstances prevailing in each case. The said prescription of one year would have to be looked from the point of view that the compassionate appointment is given in order to enable the family to overcome the immediate financial hardship that may be caused on the death of the sole bread winner. Therefore, it was to be construed that in the event, the family can manage its affairs for a period of one year, it is to be understood that the element of financial hardship does not exist any longer. But the existence of the element of hardship would be a factual determination and merely because the family may have existed for a period of one year, that by itself cannot be construed that the financial hardship that it may have faced was already over.

9. Secondly, in the facts of the present case that the application for compassionate appointment of the mother, which was filed in time, was rejected in

an improper manner by not giving the appropriate consideration as required under the law and the very fact that the petitioner submitted his application

within a close proximity of time i.e. within a period of one year nine months from the death of the deceased, this Court is of the view that the claim of

the petitioner ought to have been given a consideration on its own merit rather than rejecting it on a technical ground on there being a delay in

submitting the application.

10. Considering both the aspect of the matter and also considering the view expressed by the Supreme Court in Syed Khadim Hussain (supra), it is

directed that the claim of the petitioner for compassionate appointment made on 14.09.2015 be again placed before the DLC of Jorhat district for a

fresh consideration as per its own merit as required under the law.

11. Accordingly, it is ordered that the application of the petitioner be placed before the next available DLC of Jorhat district. In terms of the above, the

writ petition stands disposed of.