

(2021) 09 GAU CK 0055

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4911 Of 2021

Chandan Boruah

APPELLANT

Vs

State Of Assam And 3 Ors

RESPONDENT

Date of Decision : 27-09-2021

Acts Referred:

Citation : (2021) 09 GAU CK 0055

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : N Haque

Final Decision : Disposed Of

Judgement

1. Heard Mr. N. Hoque, learned counsel for the petitioner. Also heard Mr. Girin Pegu, learned counsel for the respondents No.1 & 3 being the SLC and DLC and Mr. A. Phukan, learned counsel for the respondents No.2 and 4 being the authorities under the Elementary Education Department.

2. The mother of the petitioner Basanti Boruah who was an Assistant Teacher in the Biya Koruwa L.P. School in the Golaghat district died in harness on 12/03/2015. On her death, the petitioner submitted an application for compassionate appointment on 20.09.2016. The said application was placed before the DLC of Golaghat district and by the minutes dated 17.10.2017, the petitioner was recommended for the post of Assistant Teacher in an upper primary school. When the recommendation of the DLC was placed before the SLC in its meeting held on 28.12.2020, the claim of the petitioner stood rejected on the ground of non-availability of NCTE norms as well as that the petitioner does not come under the purview of Office Memorandum No.AEE.377/2016/23 dated 02.06.2017 . Although the petitioner was recommended for the post of Assistant Teacher in an upper primary school, it is apparent that the SLC had rejected him as because he does not have the required educational qualification for the post of Assistant Teacher in an upper primary school as provided by the NCTE. As

regards the ground of rejection of the claim of the petitioner for not having the NCTE norms, Mr. N. Hoque, learned counsel for the petitioner refers to the Office Memorandum dated 16.05.2012 of the Commissioner & Secretary to the Govt. of Assam in the Elementary Education Department.

3. As per the said Office Memorandum, the minimum qualification required for appointment as Assistant Teacher in Elementary school on compassionate ground was provided which is extracted as below:-

"Accordingly, Government of Assam is pleased to adopt the following norms in respect of minimum qualifications required for appointment on compassionate ground as an Assistant Teacher in the elementary schools-

1. Candidate for appointment on compassionate ground need not appear in Teachers Eligibility Test (TET)

2. Cases prior to 23rd of August, 2010.

Minimum qualification required for both LP and UP is Higher Secondary or its equivalent as laid down in the Assam Elementary (Provincialisation) Rules, 1977 as amended in 2005 before the notification of the NCTE norms as the qualification laid down in the RTE Act, 2009, has come into force prospectively. However, such appointee shall have to acquire requisite qualification in terms of the RTE Act, 2009 and Rules framed there under, within a period of 5(five) years, failing which the consequence laid down in the scheme shall follow.

3. Cases on or after 23rd August, 2010 [upto 31/3/2015]. i) Class I to Class V

a) Senior Secondary or its equivalent with at least 50 percent marks. Or

b) Graduate (irrespective of marks) ii) Class VI to Class VII: Graduate

Note. However, Government will have a fresh look at the norms once the period of relaxation for i.e. upto 31/03/2015, professional qualification given by Govt. of India vide Notification No.F.No.1-17/2010-EE-4 Dated 26/08/2011 and (ii) F.No. 1-17/2010-EE-4 Dated 10/10/2011 in respect of Assam is over."

4. A reading of the provision of the Office Memorandum dated 16.05.2012 would go to show that after 23.08.2010, the required qualification for appointment on compassionate ground as an Assistant Teacher in a lower primary would be senior secondary or it is equivalent with 50% marks or graduate, irrespective of the marks that may be obtained.

5. The petitioner was recommended as an Assistant Teacher in an upper primary school, meaning thereby in a school having class VI to VIII. The required qualification as per the Office Memorandum dated 16.05.2012 for Assistant Teacher in a school between Class- VI to VIII is provided to be graduate.

6. Be that as it may, the Office Memorandum also provides that if a given candidate for appointment on compassionate ground as Assistant Teacher does not have the requisite qualification, such appointee shall have to acquire the

requisite qualification in terms of the RTE Act, 2009 and the Rules framed thereunder within a period of five years, failing which the consequences laid down in the scheme shall follow. The said provision in the Office Memorandum itself is an indication that although a given person may not have the requisite qualification in terms of the R.T.E, Act, 2009 and the Rules framed thereunder, still such candidate would be given the appointment on compassionate ground but with condition that the requisite qualification would have to be acquired within a period of five years and if not, the consequences of the scheme would follow.

7. It is the claim of the petitioner that in the instant case, the petitioner is a graduate by qualification and therefore, he would come within the purview of the requisite qualification provided in the Office Memorandum dated 16.05.2012. In the alternative even if the petitioner does not come within its purview, there is a provision for appointment on the condition that the required qualification is acquired within a period of five years. Accordingly, it is the contention of the petitioner that while rejecting his claim for appointment as Assistant Teacher on compassionate ground, the SLC in its meeting of 28.12.2020 has not taken the provisions of the Office Memorandum dated 16.05.2012.

8. On the limited ground, we interfere with the rejection by the SLC dated 28.12.2020 rejecting the recommendation made in favour of the petitioner by the DLC and remand the matter back for a fresh consideration by taking note of the provisions of the Office Memorandum dated 16.05.2012. The SLC would be at its liberty to pass any reasoned by taking note of the provision of the Office Memorandum dated 16.05.2012 either accepting or rejecting the recommendation of the petitioner made by the DLC by passing a reasoned order.

9. The matter accordingly be placed before the next available SLC.

Writ petition is accordingly disposed of.