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**(2016) 09 GAU CK 0057**  
**In the Gauhati High Court**  
**Case No : Writ Petition (C) No. 4980 of 2015**

Hafijur Rahman

APPELLANT

Vs

State of Assam

RESPONDENT

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**Date of Decision :** 19-09-2016

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2016) 6 GauLJ 524 : (2016) 6 GauLR 749 : (2016) 5 GauLT 453

**Hon'ble Judges :** Ujjal Bhuyan, J.

**Bench :** Single Bench

**Advocate :** Mr. M. Bhagabati, G.A. Assam, Mr. K.K. Dutta and Mr. L.N. Dihingia, Advocates, for the Respondent; Mr. A. Choudhury S.C., Secondary Education, Md. S. Islam and Ms. M. Konch, Advocates, for the Petitioner

**Final Decision :** Dismissed

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## Judgement

Ujjal Bhuyan, J. - Heard Mr. A Choudhury, learned counsel for the petitioner and Mr. KK Dutta, learned Standing Counsel, Secondary Education Department, Govt. of Assam. Also heard Mr. LN Dihingia, learned State Counsel, Assam.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks a direction to the respondents to consider his case for compassionate ground.

3. Case of the petitioner is that he has passed Higher Secondary examination and has also obtained diploma in Type Writing, both in English and Assamese.

4. Petitioner's father, Lt. Ibrahim Ali was a Grade-IV employee of Tarabari High School in the district of Nagaon. He died-in-harness on 01.06.2014 leaving behind his family without any source of livelihood. In such circumstances, petitioner submitted an application on 05.08.2014 before the competent authority seeking appointment on compassionate ground in a Grade-IV post. Case of the petitioner was placed before the District Level Committee (DLC), Nagaon on 09.01.2015. DLC recommended three candidates for such

appointment. Ultimately, recommendation of the DLC was placed before the State Level Committee (SLC) in its meeting held on 07.04.2015. SLC rejected the claim of the petitioner on the ground of non-availability of post.

5. Aggrieved, present writ petition has been filed.

6. It appears that in the year 2014, there were total 18 vacancies in Grade-IV in Nagaon district. As per scheme of compassionate appointment prepared by the State Govt., 5% of the total vacancies are earmarked for compassionate appointment. 5% of 18 vacancies roughly comes to one vacancy. SLC considered the rival claims of the three claimants including the petitioner, who were recommended by the DLC and thereafter, found that one Motiur Rahman had a better claim to compassionate appointment and, accordingly, recommended him for appointment on compassionate ground.

7. On 08.08.2016, the following order was passed by this Court: -

"Petitioner's claim to compassionate appointment was considered but rejected by the State Level Committee (SLC) on account of lack of vacancies. Be it stated that as on 09.01.2015, when the District Level Committee (DLC) had examined the claim of the petitioner, there were total of 18 (eighteen) vacancies in Grade-IV. District Level Committee (DLC) recommended altogether 3 (three) including the petitioner. State Level Committee (SLC), however, took the view that only 1 (one) vacancy was available to be filled up on compassionate appointment and, therefore, recommendation of 3 (three) by the District Level Committee (DLC) was not justified. After considering the relative claim of the claimants, State Level Committee recommended Matiur Rahman for appointment on compassionate ground.

Question for consideration is whether availability of subsequent vacancy would entitle the claimant to seek further consideration, his claim being considered and rejected on account of lack of vacancies once. Another issue is whether such consideration would continue upto the outer limit of 2 (two) years as per the decision in Achyut Ranjan Das v. State of Assam; reported in 2006 (4) GLT 674."

8. Learned counsel for the petitioner has referred to the affidavit filed by the petitioner on 07.04.2016 and submits that as per information furnished to the petitioner by the office of the Inspector of Schools, Nagaon District Circle on 15.03.2016 under the Right to Information Act, 2005, there were 18 vacancies in Grade-IV in the provincialised schools under Nagaon district in the year 2014 and 12 vacancies in the year 2015. He, therefore, submits that a total of 30 vacancies were available and, therefore, 5% of 30 vacancies would work out to 1.5% vacancy. If it is rounded off to two, then petitioner's claim can be considered afresh by the SLC.

9. Opposing such submissions of learned counsel for the petitioner, Mr. Dutta, learned Standing Counsel submits from the affidavit filed on behalf of Secondary Education Department that the cutoff date for consideration was 09.01.2015

when the DLC had made the recommendation. There were 18 vacancies in Grade-IV in the year 2014, but DLC recommended three candidates, namely, Motiur Rahman, Hafizur Rahman (petitioner) and Abhinab Kakoty. SLC in its meeting held on 07.04.2015 confined consideration to one post having regard to the 5% quota and on relative assessment, found Motiur Rahman to be more deserving and accordingly, recommended him for compassionate appointment. DLC had met on 09.01.2015; vacancies which occurred in the year 2015 could not have been taken into consideration. Likewise, when the SLC met on 07.04.2015, it could not have taken into consideration vacancies which would have occurred in the year 2015, since 2015 was yet to expire. Moreover, even if the contention of the petitioner is accepted and 12 vacancies occurring in the year 2015 are taken into consideration, there would be only one additional vacancy to be considered for compassionate appointment. Petitioner is not the only claimant left out by the SLC; there was another candidate recommended by the DLC, who is not before the Court. Moreover, the number of claimants to compassionate appointment for the year 2015 is also not available; they cannot be excluded from consideration against the vacancies occurring in the year 2015.

10. Reverting back to the issues framed in the order dated 08.08.2016, it is quite evident that availability of vacancies subsequent to the consideration of the claim would not entitle a claimant to renew further consideration of his claim. The decision rendered in Achyut Ranjan Das v. State of Assam, reported in 2006 (4) GLT 674 that if on account of lack of vacancies, a claim to compassionate appointment cannot be considered within two years, the same would be deemed to have been rejected, cannot be extended and interpreted in a manner to mean continuation of consideration for a period of two years even though the claim to compassionate appointment has been rejected once. There cannot be endless considerations or consideration upon consideration. Once a claim is considered and rejected, further consideration would be ruled out. Of course this closure would not cover cases of reconsideration following judicial intervention.

11. That being the position, Court is not inclined to issue the direction as sought for by the petitioner.

12. Writ petition is dismissed. No costs.