

(2021) 09 GAU CK 0059
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 750 Of 2021

Md. Parvez Mushtaque Ahmed

APPELLANT

Vs

State Of Assam And 2 Ors

RESPONDENT

Date of Decision : 24-09-2021

Acts Referred:

Citation : (2021) 09 GAU CK 0059

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : P P Medhi

Final Decision : Partly Allowed

Judgement

1. Heard Mr. P.P. Medhi, learned counsel for the petitioner. Also heard Mr. P.N. Sarma, learned counsel for the respondents No.1, 2, 4 and 5 being the authorities under the Elementary Education Department and Mr. Girin Pegu, learned counsel for the respondents No.3.

2. The limited grievance raised in this petition is that the father of the petitioner Late Aftaaddin Ahmed was a teacher in the Harijan Buniyadi Vidyalaya L.P. School in Guwahati and died in harness on 05.08.2015. On his death, the petitioner submitted an application for compassionate appointment on 30.09.2015. But inspite of making all efforts in the office of the respondents, the petitioner had not been informed about the outcome of the said application.

3. In the circumstance, when the matter was taken up on 05.08.2021, we also required the respondents to provide the information if any on the outcome. Accordingly, today Mr. Girin Pegu, learned counsel produces a copy of the minutes of the DLC, Kamrup(M) dated 30.09.2019 which is extracted as under:-

"The proposals in respect of the following candidates have spent their force as they have been lying pending due to the death of vacancy for more than 2 years as per Govt. O.M. no. ABP.50/2006/Pt./182, dated 01.06.2015, which states that

applications which remain pending due to the want of vacancies for period of 2 years from the date of making such application, all such application will require no further consideration and must be understood to have spent their force. Hence, the following proposals are regretted.

1. Smti. Beauty Ganju
2. Sri Mriganka Hazarika
3. Smti. Manoranjan Das
4. Sri Acharjya Boro
5. Sri Manji Das
6. Sri Guddu Kumar
7. Smti. Bandana Kalita Saikia
8. Sri Ujjal Rajbongshi
9. Md. Parvez Mushtaq Ahmed
10. Sri J.B.K. Swargiary
11. Syeda Renu Ahmed
12. Sri Subhajit Konwar"

4. A reading of the reasons for rejecting the application of the petitioner makes it discernible that as already noted, the petitioner made an application for compassionate appointment on 30.09.2015 whereas, it was considered in the meeting of the DLC of Kamrup(M) on 30.09.2019 and in the meantime, two years had elapsed.

5. In *Faziron Nessa and Others -vs- State of Assam and others* reported in 2010(4) GLR 340 it has been provided by this Court that if any application for compassionate appointment could not be recommended for want of vacancy and in the meantime two years had elapsed, such application are not required to be considered any further. But the requirement of the aforesaid provision in *Faziron Nessa (Supra)* is that the said application would have to be placed before the concerned DLC before the expiry of the period of two years and the DLC would have to arrive at its conclusion that the same cannot be recommended inasmuch as, no vacancy was available at that point of time when it was considered. It cannot be understood to be a provision in *Faziron Nessa (supra)* that the authorities will keep an application for compassionate appointment pending for more than two years without considering it and at the end of two years takes a stand that it has spent its force. Apparently, the reason given in the DLC meeting of Kamrup dated 30.09.2019 appears to be that it was rejected on the ground of having spent more than two years without it being earlier considered.

6. According we interfere with the rejection of the claim of the petitioner for

compassionate appointment in the minutes of the DLC meeting of Kamrup(M) 30.09.2019 and remand the matter back for a fresh consideration against any available vacant post of the year 2015 when the application for compassionate appointment was submitted. However we provide that in the event the application of the petitioner was given an earlier consideration by the DLC of Kamrup(M) prior to its consideration on 30.09.2019, and it was rejected for want of vacancy, the minutes of the said resolution of the DLC be provided to the petitioner.

7. The petition is partly allowed. A copy of the DLC resolution dated 30.09.2019 is kept on record.