

GAHC010025352024



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

Case No. : WA/93/2024

AHMED IBRAHIM MAZARBHUIYA
S/O- LATE NAZMUL IBRAHIM MAZARBHUIYA, R/O- HAILAKANDI TOWN,
WARD-11, P.O.- R.P. ROAD, P.S. AND DIST.- HAILAKANDI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, SCHOOL EDUCATION DEPARTMENT, DISPUR,
GUWAHATI- 6.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 19.

3:THE DISTRICT LEVEL COMMITTEE FOR COMPASSIONATE
APPOINTMENT (DLC)
HAILAKANDI
REPRESENTED BY ITS CHAIRMAN CUM DEPUTY COMMISSIONER
HAILAKANDI
P.O. P.S. AND DIST.- HAILAKANDI
ASSAM.

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
HAILAKANDI
P.O. P.S. AND DIST.- HAILAKANDI
ASSAM

- BEFORE -

**HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**

For the appellant : Shri M. H. Laskar, Advocate.

For the respondent(s) : Ms. K. Das, SC, Education
Department for respondent nos. 1, 2 & 4.
: Shri R. K. Borah, GA for respondent No.3.

Date of Hearing : 18.03.2024

Date of Judgment : 18.03.2024

JUDGMENT & ORDER

[Sanjay Kumar Medhi, J]

This intra Court appeal has been preferred in respect of a judgment dated 09.01.2024 passed by the learned Single Judge in WP(C)/ 7349 of 2023. By the aforesaid judgment, the writ petition of the appellant which was with regard to a claim for appointment on compassionate ground has been dismissed.

2. The projected case of the appellant before the learned Single Judge in a nutshell is that his father Nazmul Haque Mazarbhuiya who was serving as a Superintendent, Hailakandi Town Madrassa had died-in-harness on 21.08.2012. He left behind his wife and three minor children including the appellant. On such eventuality, the mother of the appellant had submitted an application on 08.11.2012 for appointment on

compassionate ground which according to the appellant was not considered. After the appellant had attained the age of majority, he had submitted an application in the year 2019 which was however rejected by the District Level Committee in its meeting dated 05.10.2021 on the ground that the appellant was under age at the time of submission of the application. The aforesaid rejection was unsuccessfully challenged by the appellant before learned Single Judge and accordingly the present appeal has been preferred.

3. We have heard Shri M. H. Laskar, learned counsel for the appellant. We have also heard Ms. K. Das, learned Standing Counsel, Education Department and Shri R. K. Borah, learned State Counsel appearing for the respondent no. 3.

4. The learned counsel for the appellant has submitted that though initially, the mother of the appellant had applied for appointment on compassionate ground just after the expiry of the father of the appellant, such appointment was wrongfully denied to her. It is submitted that the mother of the appellant being *purdahnishin* lady could not pursue the matter before any Court of law. Accordingly, on attaining majority, the appellant had applied for the said post. It is submitted that the minutes of the meeting dated 05.10.2021 of the District Level Committee by which the candidature of the appellant was rejected is not sustainable as the relevant factors have not been taken into consideration and the learned Single Judge had failed to appreciate the aforesaid aspect of the matter. The learned counsel has also contended that the learned Single Judge disregarded the judgment of coordinate bench in a similar case.

5. *Per contra*, both the learned Standing Counsel for the Education Department and the learned State Counsel have supported the views of the learned Single Judge in the judgment dated 09.01.2024 and has prayed for dismissing the appeal.

6. The rival contentions of the learned counsel for the parties have been duly considered.

7. We have carefully perused the judgment dated 09.01.2024 of the learned Single Judge and the reasons cited for rejection of the writ petition. The learned Single Judge has come to a conclusion that though an application was initially contended to be submitted by the mother of the appellant, there is nothing on record to show that the same was pursued as there is no order of rejection of such application. The learned Single Judge has also relied upon the principles laid down on the subject of compassionate appointment by the Hon'ble Supreme Court in the case of ***State of West Bengal Vs Debabrata Tiwari*** reported in **(2023) SCC Online SC 219**.

8. The facts on record make it clear that the death of the father of the appellant was on 21.08.2012 and the initial application was claimed to be made by the mother of the appellant which admittedly was not pursued. The appellant claims that after seven years, he had applied for appointment on compassionate ground on attaining the age of majority. The application annexed to the petition however does not bear any date of such application and even in the proforma, the date has been kept blank. Be that as it may, law is well settled on the field of appointment on the compassionate ground and even in a case where an applicant was a minor at the time of death of the government servant, there is no requirement in law to wait for such consideration till such applicant attains majority. Further, in the instant case the period in between is also substantial which is about seven years.

9. The very objective of appointment of compassionate ground which is an exception to the general method of recruitment is to give immediate succor to a family which has lost its sole breadwinner who was a government servant and such objective

would not survive after a gap of seven years.

10. The Hon'ble supreme Court in the case of ***Sanjay Kumar Vs State of Bihar*** reported in **(2000) 7 SCC 192** has laid down as follows:-

“3. We are unable to agree with the submissions of the learned Senior Counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the breadearner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education v. Pushpendra Kumar. It is also significant to notice that on the date when the first application was made by the petitioner on 2-6-1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there are some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief.”

11. Though it was tried to be contended that an earlier decision of this Court was not taken into consideration by the learned Single Judge, in our opinion it is the law laid down by the Hon'ble Supreme Court which fits into the facts of the case would be applicable. The reliance of the learned counsel upon the case of ***Syed Khadim Hussain Vs State of Bihar*** reported in **(2006) 9 SCC 195** would be of no aid as the facts of the case was different and there was a requirement of filing application within five years from the death. Further, the application by the widow in that case was initially rejected which is not akin to the facts of the present case.

12. We are also of the view that the present proceeding being an intra court appeal, unless the views expressed by the learned Single Judge is wholly opposed to the law or wholly unreasonable, interference with such views should not be generally made. In this connection, reference can be made to the case of ***Management of Narendra***

& Co. (P) Ltd. v. Workmen reported in **(2016) 3 SCC 340** wherein it has been held as follows:-

“5. ... Be that as it may, in an intra-court appeal, on a finding of fact, unless the Appellate Bench reaches a conclusion that the finding of the Single Bench is perverse, it shall not disturb the same. Merely because another view or a better view is possible, there should be no interference with or disturbance of the order passed by the Single Judge, unless both sides agree for a fairer approach on relief.”

13. In view of the aforesaid discussions we find no merits in the appeal and the same accordingly dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant