

GAHC010058492019



2024:GAU-AS:9811

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

Case No. : WP(C)/1901/2019

TOFIKUR RAHMAN

S/O- LT ALI AZGAR, R/O- VILL- KAWAIMARI, P.O. TINSUKIA, P.S. JURIA,
DIST- NAGAON, ASSAM, PIN- 782124

VERSUS

THE STATE OF ASSAM AND 4 ORS.

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, P.W.D., RURAL
ROAD DEPTT., ASSAM DISPUR, GHY-6

2:THE CHIEF ENGINEER

P.W.D. KOLIABOR RURAL ROAD DIVISION
CHANDMARI ASSAM PIN- 781003

3:THE EXECUTIVE ENGINEER P.W.D.

KOLIABOR RURAL ROAD DIVISION
JAKHALABANDHA
NAGAON ASSAM PIN- 782136

4:THE STATE LEVEL COMMITTEE FOR COMPASSIONATE APPOINTMENT
(RURAL ROAD DEPTT.) REP. BY ITS CHAIRMAN

THE CHIEF SECRETARY TO THE GOVT. OF ASSAM DISPUR GHY-6

5:THE DISTRICT LEVEL COMMITTEE FOR COMPASSIONATE
APPOINTMENT

REP. BY ITS CHAIRMAN THE DY. COMMISSIONER
NAGAON DIST- NAGAON ASSAM PIN- 78200

Advocate for the Petitioner : MD. M H CHOUDHURY, MS. M DEORI, MRS. L N
CHOUDHURY, MR. M K CHOUDHURY, MR. V ACHUMI, MR H J YEPTHO, MS. S KHAN

Advocate for the Respondent : GA, ASSAM,

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date of hearing : 30.09.2024

Date of Judgment : 30.09.2024

Judgment & order(Oral)

Heard Mr. M. H. Choudhury, learned senior counsel, assisted by Mr. T. L. Choudhury, learned counsel for the petitioner. Also heard Mr. A. Chakraborty, learned Government Advocate, appearing on behalf of respondents No. 4 & 5. However, none appears on behalf of respondents No. 1, 2 & 3.

2. The petitioner, herein, by way of instituting this present proceeding, has presented a challenge to the decision of the State Level Committee in its meeting held on 31.12.2018, rejecting the claim of the petitioner, herein, for appointment on compassionate ground by concluding that there was no vacant post available for accommodating the petitioner within the 5% quota permissible for appointment on compassionate ground.

3. As projected in the writ petition, the father of the petitioner late Ali Azgar, while serving as a Grade-IV employee in the office of the Samaguri Block Divisional Officer under the Executive Engineer, PWD Kaliabor Rural Road Division, Nagaon, Assam, had died-in-harness on 09.05.2013. The petitioner, thereafter, submitted his application on 08.08.2013, for being considered for appointment on compassionate ground.

4. The case of the petitioner not being so considered by the District Level Committee; he had approached this Court by way of instituting a writ petition being WP(c)3290/2015. This Court vide order, dated 19.08.2015, had disposed of

the said writ petition, requiring the Deputy Commissioner, Nagaon, to place the case of the petitioner for consideration before the District Level Committee, Nagaon, in its next meeting for consideration in accordance with law. The jurisdictional District Level Committee on consideration of the case of the petitioner, in its meeting held on 26.09.2016, proceeded to recommend the name of the petitioner for appointment on compassionate ground against a Grade-IV post.

5. It is seen that the case of the petitioner was, thereafter, placed before the State Level Committee in its meeting held on 31.12.2018. The case of the petitioner on being considered along with that of the other claimants for appointment on compassionate ground; the State Level Committee proceeded to reject the case of the petitioner, herein, holding that there was no vacant post available within the 5% quota mandated for appointment on compassionate ground and accordingly, rejected the case of the petitioner, herein.

6. Being aggrieved; the petitioner has instituted the present proceeding before this Court.

7. I have heard Mr. Choudhury, learned senior counsel appearing on behalf of the petitioner as well as Mr. Chakraborty, learned counsel appearing on behalf of respondents No. 4 & 5; and also perused the materials available on record.

8. It is not disputed that the father of the petitioner, herein, had died-in-harness on 09.05.2013, and further that the petitioner had on 08.08.2013, submitted his application for being considered for appointment on compassionate ground. The application of the petitioner after directions issued by this Court vide order, dated 19.08.2015, in WP(c)3290/2015; was placed before the jurisdictional

District Level Committee and the said Committee in its meeting held on 26.09.2016, had recommended the case of the petitioner, herein, for compassionate ground against an identified vacant Grade-IV post. Thereafter, the matter on being placed before the State Level Committee; the State Level Committee in its meeting held on 31.12.2018, considered the recommendations so made in favour of the petitioner by the jurisdictional District Level Committee and on such consideration, the case of the petitioner was rejected by holding that there was no vacant post available within the 5% quota so prescribed for appointment on compassionate ground in the establishment concerned.

9. From the writ petition, it is seen that with effect from the date of the death of the father of the petitioner which had occasioned on 09.05.2013; almost 11 years have since elapsed and accordingly, after lapse of such a considerable period of time, the purport for appointment on compassionate ground naturally stands diluted and lost.

10. The materials on record reveal that the family of the petitioner had sustained for the last about 11 years and also, it being a settled position of law that compassionate appointment cannot be claimed after lapse of considerable time from the date of death of the government servant, the object being to enable the family to get over the financial crisis occasioning at the time of the death of the deceased of the Government servant; accordingly, a direction for consideration of the case of the petitioner for appointment on compassionate ground after such long lapse of time, is not called for.

11. The claim of the petitioner as on date is a stale claim and the same if allowed to be considered at this distant point of time, would amount to treating compassionate appointment as though it were a matter of inheritance based on the line of succession.

12. In the case on hand, the family having survived for a reasonable period of time after the death of the father of the petitioner had occasioned on 09.05.2013, the acceptance of the claim of the petitioner at this distant point of time, would not be in furtherance of the object behind the purport of a scheme for providing appointment on compassionate ground.

13. The issue as arising in the present proceeding is covered by the recent decision of the Hon'ble Apex Court rendered in the case of **State of W.B. v. Debabrata Tiwari & ors.**[reported in **(2023) SCC Online SC 219**], wherein the Hon'ble Court upon considering the earlier decisions available in the matter, had concluded as follows:

"32. On consideration of the aforesaid decisions of this Court, the following principles emerge:

i. That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must be resorted to only in order to achieve the stated objectives, i.e., to enable the family of the deceased to get over the sudden financial crisis.

ii. Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependants of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.

iii. Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over.

iv. That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

v. In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits if any, received by the family, the age, dependency and marital status of its members, together with the income from any other source.

33. *The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis due to the death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be in a position to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Having regard to such an object, it would be of no avail to grant compassionate appointment to the dependants of the deceased employee, after the crisis which arose on account of death of a bread-winner, has been overcome. Thus, there is also a compelling need to act with a sense of immediacy in matters concerning compassionate appointment because on failure to do so, the object of the scheme of compassionate appointment would be frustrated. Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and thus lose its significance and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out for consideration.*

34. *As noted above, the sine qua non for entertaining a claim for compassionate appointment is that the family of the deceased employee would be unable to make two ends meet without one of the dependants of the deceased employee being employed on compassionate grounds. The financial condition of the family of the deceased, at the time of the death of the deceased, is the primary consideration that ought to guide the authorities' decision in the matter.*

35. *Considering the second question referred to above, in the first instance, regarding whether applications for compassionate appointment could be considered after a delay of several years, we are of the view that, in a case where, for reasons of prolonged delay, either on the part of the applicant in claiming compassionate appointment or the authorities in deciding such claim, the sense of immediacy is diluted and lost. Further, the financial circumstances of the family of the deceased, may have changed, for the better, since the time of the death of the government employee. In such circumstances, Courts or other relevant authorities are to be guided by the fact that for such prolonged period of delay, the family of the deceased was able to sustain themselves, most probably by availing gainful employment from some other source. Granting compassionate appointment in such a case, as noted by this Court in *Hakim Singh* would amount to treating a claim for compassionate appointment as though it were a matter of inheritance based on a line of succession which is contrary to the Constitution. Since compassionate appointment is not a vested right and the same is relative to the financial condition and hardship faced by the dependents of the deceased government employee as a consequence of his death, a claim for compassionate appointment may not be entertained after lapse of a considerable period of time since the death of the government employee.*

36. *Laches or undue delay, the blame-worthy conduct of a person in approaching a Court of Equity in England for obtaining discretionary relief which disentitled him for grant of such relief was explained succinctly by Sir Barnes Peacock, in *Lindsay Petroleum Co. v. Prosper Armstrong*, [1874] 3 P.C. 221 as under:*

"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a

waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation, in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute or limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of Justice or injustice in taking the one course or the other, so far as it relates to the remedy."

37. Whether the above doctrine of laches which disentitled grant of relief to a party by Equity Court of England, could disentitle the grant of relief to a person by the High Court in the exercise of its power under Article 226 of our Constitution, came up for consideration before a Constitution Bench of this Court in Moon Mills Ltd. v. M. R. Meher, President, Industrial Court, Bombay, AIR 1967 SC 1450. In the said case, it was regarded as a principle that disentitled a party for grant of relief from a High Court in the exercise of its discretionary power under Article 226 of the Constitution.

38. In State of M.P. v. Nandlal Jaiswal, (1986) 4 SCC 566 this Court restated the principle articulated in earlier pronouncements in the following words:

"9.... the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the Petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this Rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction."

39. While we are mindful of the fact that there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution, ordinarily, a writ petition should be filed within a reasonable time, vide Jagdish Lal v. State of Haryana, (1997) 6 SCC 538; NDMC v. Pan Singh, (2007) 9 SCC 278.

40. Further, simply because the Respondents-Writ Petitioners submitted their applications to the relevant authority in the year 2005-2006, it cannot be said that they diligently perused the matter and had not slept over their rights. In this regard, it may be apposite to refer to the decision of this Court in State of Uttaranchal v. Shiv Charan Singh Bhandari, (2013) 12 SCC 179, wherein the following observations were made:

"19. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time."

14. As noticed by the Hon'ble Apex Court in ***Debabrata Tiwari*** (supra), the operation of a policy/scheme for compassionate appointment is founded on consideration of immediacy.

15. In that view of the matter, the issue involved in the present proceeding, being a stale issue; this Court refrains from proceeding to issue any direction requiring consideration of the case of the petitioner for appointment on compassionate ground pursuant to the death of his father in harness, occasioning in the year 2013.

16. This writ petition is, thus, found to be bereft of any merit and the same accordingly stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant