

GAHC010175922021



2024:GAU-AS:11736

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

Case No. : WP(C)/1369/2022

JITU DEKA
S/O. LT. SISHU RAM DEKA
R/O. VILL. KUWARIATI
P.O. NIZ NARIKALLI
P.S. KAMPUR
DIST. NAGAON
PIN-782426.

VERSUS

THE ASSAM POWER DISTRIBUTION COMPANY LIMITED AND 18 ORS
REP. BY THE CHAIRMAN
ASSAM POWER DISTRIBUTION CO. LTD. (APDCL)
BIJULEE BHAWAN
GUWAHATI-781001.

2:THE MANAGING DIRECTOR

ASSAM POWER DISTRIBUTION CO. LTD. (APDCL)
BIJULEE BHAWAN
GUWAHATI-781001.

3:THE CHIEF GENERAL MANAGER (HRA)

ASSAM POWER DISTRIBUTION CO. LTD. (APDCL)
BIJULEE BHAWAN
GUWAHATI-781001.

4:THE CHIEF EXECUTIVE OFFICER

NAGAON ELECTRICAL CIRCLE (CAR)
APDCL
NAGAON.

5:SMT. ARCHANA DEKA

W/O. LT. GAUTAM THAKURIA
R/O. TIHU TOWN
WARD NO.1
P.O. AND P.S. TIHU
DIST. NALBARI
ASSAM
PIN-781371.

6:SMT. SAGARIKA BORDOLOI
W/O. LT. SAURABH KR. NATH
VILL. BOGORIGURI
P.O. KUMURAGURI
P.S. MORIGAON
DIST. MORIGAON
ASSAM
PIN-782105.

7:SMT. PALLABI DEKA KALITA
W/O. LT. MANI KALITA
VILL. TULSIBARI TARANI P.O. TULSIBARI TARANI P.S. RANGIA
DIST. KAMRUP (R)
ASSAM
PIN-781345.

8:UDAY SARMA
S/O. LT. BHUBENSWAR SARMA
VILL. NIZ MADARTOLA
P.O. BAIHATA CHARIALI
P.S. KAMALPUR
DIST. KAMRUP (R)
ASSAM
PIN-781381.

9:SMT. ANITA SINGHA
W/O. LT. SHIBENDU KR. SINGHA
VILL. AND P.O. SINGARI
DIST. CACHAR
P.S. SILCHAR
ASSAM
PIN-788007.

10:SMT. SNEHA MOYEE RABHA
D/O. LT. RATAN KR. RABHA
VILL. PURANI BHERGAON
P.O. BHERGAON

P.S. TANGLA
DIST. UDALGURI
ASSAM
PIN-784522.

11:SMT. GEETIMONI GOGOI

W/O. LT. LAKHINATH GOGOI
VILL. KACHARIPATHAR GAON
P.O. NTPS
NAMRUP DIST. DIBRUGARH
ASSAM
PIN-786602.

12:SMT. DIPIKA NATH
W/O. LT. DAMODAR NATH
VILL. SOLPAM
P.O. AND P.S. SIPAJHAR
DIST. DARRANG
ASSAM
PIN-784145.

13:BHASKAR KALITA
S/O. LT. JADAV KALITA
VILL. SANAPARA GRANT
P.O. DAMPUR
P.S. HAJO
DIST. KAMRUP (R)
ASAM
PIN-781102.

14:DEVAJIT BORAH
S/O. LT. TIRTHA BORAH
VILL. 1 NO. KAKI (6 NO. GAON)
P.O. KAKI NO.1
DIST. HOJAI
ASSAM
PIN-782442.

15:SMT. BHANUPRIYA BORAH

D/O. LT. DILIP CH. BORAH
VILL. NAKHOLA GRANT
P.O. AND P.S. JAGIROAD
DIST. MORIGAON
ASSAM
782410.

16:SMT. NIJUMONI BORAH
W/O. KHETRO BARUAH
VILL. BELIMUKHIA
CHANGMAI GAON
P.O. NAMTI PATHER
P.S. AMGURI
DIST. SIVSAGAR
ASSAM
PIN-785640.

17:SMT. CHANDANA ROY

W/O. MANISH KR. ROY
VILL. DHOPERTOL
P.O. AND P.S. FAKIRAGRAM
DIST. KOKRAJHAR
ASSAM
PIN-783345.

18:DHONSING MALIK
S/O. LT. DILIPSING MALIK
VILL. BOGORI ANGLONG
P.O. AND P.S. BAITHALANGSO
DIST. WEST KARBI ANGLONG
PIN-782450.

19:SMT. KRISHNA BURAGOHAIN
D/O. LT. PRADIP BURAGOHAIN
VILL. PANIBIL JAMUNAMUKH
P.O. PANIBIL
P.S. SIMALUGURI
DIST. SIVASAGAR
ASSAM
PIN-785685.

Advocate for : MR. S MITRA

Advocate for : SC

APDCL appearing for THE ASSAM POWER DISTRIBUTION COMPANY
LIMITED AND 18 ORS

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

ORDER

Date : 27.11.2024

Heard Mr. S. Mitra, learned counsel for the petitioner. Also heard Mr. J. K. Goswami, learned Standing Counsel for the APDCL representing the respondent nos. 1 to 4 and Mr. M. K. Dev, learned counsel appearing for the respondent no. 17. The other respondents have remained unrepresented.

2. As consented to by the learned counsels appearing for the parties, the present writ petition is taken up for final consideration and disposal.

3. The petitioner in the present proceedings has assailed the appointments made in respect of the respondent nos. 5 to 19, on compassionate grounds on consideration of their cases by the respondents APDCL. The petitioner had also prayed for a direction upon the APDCL authorities for consideration of his case for appointment under the scheme in vogue in the APDCL.

4. The father of the petitioner, Sishu Ram Deka, while serving as a Line Man under the Langka Electrical Sub-Division, Nagaon Electrical Circle, APDCL, had died in harness on 27.02.2014. The petitioner had thereafter, submitted his application for being appointed on compassionate grounds. The materials on record reveal that the respondent authorities had considered the case of the petitioner, the private respondents herein and others, for appointment under compassionate grounds. On such consideration being made, the case of the petitioner was found to be not eligible for being extended with the benefit of appointment on compassionate grounds.

5. In response to an RTI application submitted in the matter by one Jitu Deka, the APDCL authorities had informed that the petitioner was not selected for appointment on compassionate grounds, inasmuch as, on consideration of the

financial status of the family of the petitioner, it was concluded that the family was not in need of an appointment on compassionate grounds. The contention so made in the said RTI reply dated 01.01.2022, being relevant is extracted herein below:-

“The candidature of Shri Jitu Deka has not been selected for appointment on compassionate ground under APDCL Compassionate Appointment Scheme, 2014 on the basis of the very object and purpose of APDCL Compassionate Appointment Scheme, 2014 and the principals/judgments laid down by the Hon’ble Supreme Court and Hon’ble Gauhati High Court.

In respect of Shri Jitu Deka, S/O late Sishu Ram Deka, it is seen that the family of the deceased receives a monthly pension of Rs. 17,228/-, which appears to be sufficient to save the family from starvation. Otherwise also, a casual employee gets a lump sum monthly amount of about Rs. 13,000/- only. It is also found that, after death of late Sishu Ram Deka, the family had received a considerable sum i.e. Rs. 11, 24, 041/- which, if invested wisely, could generate a substantial monthly income.

Hence, having regard to the fact of monthly pension and regular income which can be generated from the substantial terminal/aggregate amount, it appears that there is sufficient/adequate financial resources available in the hands of the dependents. Hence, the Committee decided that the case does not deserve to be considered for Compassionate Appointment.”

6. This Court has perused the conclusions reached by the Selection Committee constituted by the APDCL authorities and on perusal of the same, this Court is satisfied that the reasons so assigned, was so assigned by an examination of the financial condition of the petitioner and his family and accordingly, the conclusions reached by the Selection Committee would not warrant an interference.

7. Further, it is to be noted that the father of the petitioner had died in harness

on 27.02.2014 and by this time, around 10 years have already lapsed and the petitioner and her family members have sustained without being extended with an appointment on compassionate grounds. Accordingly, the immediacy required to be adhered for appointment on compassionate grounds is diluted and lost in the present matter.

8. Support in this connection is drawn from the decision of the Hon'ble Supreme Court in the case of **State of West Bengal Vs Debabrata Tiwari and Ors.**, reported in **(2023) SCC Online SC 219**, wherein the Hon'ble Supreme Court, upon considering its 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 dependents 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 dependents 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 dependents 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 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 dependents 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.”

9. Applying the ratio of the decision of the Hon’ble Supreme Court, in the case of **Debabrata Tiwari (supra)**, to the facts of the present case, it is noted that the immediacy having been lost in the present case and the petitioner and his family having sustained over the period of last 10 years, no direction is called for to be issued to the respondent authorities to consider the case of the petitioner for appointment on compassionate grounds.

10. In view of the above, this writ petition is held to be devoid of merit and accordingly, the same stands dismissed. However, there would be no order as to costs.

JUDGE

Comparing Assistant