

GAHC010049662024



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

Case No. : WP(C)/1388/2024

TAPA DEB TARAFDAR
W/O- LATE SANTANU DAS TARAFDAR,
R/O- RANGABAK, PART-I,
KATLICHERRA, DIST.- HAILAKANDI,
ASSAM, PIN- 788161.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
PUBLIC WORKS DEPARTMENT,
ASSAM (CIVIL) SECRETARIAT, DISPUR,
GUWAHATI- 788006.

2:THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
CUM CHAIRMAN STATE LEVEL COMMITTEE
FOR COMPASSIONATE APPOINTMENT

ASSAM CIVIL SECRETARIAT

DISPUR
GUWAHATI
ASSAM

PIN- 781006.

3:THE CHIEF ENGINEER
PUBLIC WORKS DEPARTMENT (RURAL ROAD DIVISION)
CHANDMARI
GUWAHATI
ASSAM

PIN- 781003.

4:THE DEPUTY COMMISSIONER CUM CHAIRMAN OF DISTRICT LEVEL
COMMITTEE (DLC)
HAILAKANDI
ASSAM.

5:THE EXECUTIVE ENGINEER
PUBLIC WORKS DEPARTMENT
HAILAKANDI RURAL ROAD DIVISION

HAILAKANDI
DIST. HAILAKANDI

ASSAM

Advocate for the Petitioner : MR. A K DUTTA, MR. B PURKAYASTHA

Advocate for the Respondent : SC, PWD, GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 30.09.2024

Heard Mr. B. Purkayastha, learned counsel for the petitioner. Also heard Ms. M. Bhattacharjee, learned Additional Senior Government Advocate for the State respondent.

2. By filing the instant petition under Article 226 of the Constitution of India, the petitioner is assailing the impugned SLC minutes dated 31.12.2018 so far as the petitioner is concerned and for further direction to consider the case of the petitioner for appointment on

compassionate ground as Grade-IV or Grade-III employee.

3. The facts of the case is that the petitioner after the death of her husband on 09.07.2014 who was working as Chowkidar/Grade-IV employee under the Public Works Department Rural Road Division, Hailakandi applied for appointment on compassionate ground by application dated 11.08.2014.

4. The DLC on 03.04.2017, in its meeting recommended the name of the petitioner against the vacant post of SA to be appointed on compassionate ground against 5% reserved quota.

5. However, the SLC in its meeting on 31.12.2018 rejected the case of the petitioner on the ground of delay submission of application and under qualified for the Grade-III post. Against the aforesaid rejection of SLC, the present petition has been filed on 05.03.2024.

6. Mr. B. Purkayastha, learned counsel for the petitioner submits that SLC has erroneously rejected the application of the petitioner for appointment on compassionate ground and therefore the same is liable to be interfered with by this Court.

7. Per contra Ms. M. Bhattacharjee, learned Additional Senior Government Advocate vehemently opposes the prayer of the petitioner on the ground that the writ petition has been belatedly filed after almost 6 (six) years from the date of the decision of the SLC.

8. She further relies upon the decision of the Apex Court in the case of ***State of West Bengal Vs Debabrata Tiwari & Ors. reported in 2023 2 Supreme 612.***

9. I have given my prudent consideration to the aforesaid submissions of the learned counsels appearing for both the parties and perused the material available on record.

10. Apt to refer to the decision of the Apex Court in the case of ***Debabrata Tiwari (supra)***, before entering into the merit of the matter. The Apex Court in the aforesaid case while dealing with the issue as whether applications for compassionate appointments could be considered after a delay of several years, has held that after a delay of several years, either on the part of the applicant claiming compassionate appointment, or on the part of the authorities in deciding such claim, the sense of immediacy is diluted and lost. Paragraphs 7, 8 & 9 of the aforesaid judgment are reproduced hereunder for ready reference:-

"7. The majesty of death is that it is a great leveller for, it makes no distinction between the young and the old or the rich and the poor. Death being as a consequence of birth at some point of time is inevitable for every being. Thus, while death is certain, its timing is uncertain. Further, a deceased employee does not always leave behind valuable assets; he may at times leave behind poverty to be faced by the immediate members of his family. Therefore, what should be done to ensure that death of an individual does not mean economic death for his family? The State's obligation in this regard, confined to its employees who die in harness, has given rise to schemes and rules providing for compassionate appointment of an eligible member of his family as an instance of providing immediate succour to such a family. Support for such a provision has been derived from the provisions of Part IV of the Constitution of India, Le. Article 39 of the Directive Principles of State Policy.

7.1. *It may be apposite to refer to the following decisions of this Court, on the rationale behind a policy or scheme for compassionate appointment and the considerations that ought to guide determination of claims for compassionate appointment:*

(i) In Sushma Gosain us. Union of India, (1989) 4 SCC 468, this Court observed that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. That the purpose of providing appointment on compassionate grounds is to mitigate the hardship caused due to the death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress.

(ii) In Umesh Kumar Nagpal vs. State of Haryana, (1994) 4 SCC 138, this Court observed that the object of granting compassionate employment is to enable the family of a deceased government employee to tide over the sudden crisis by providing gainful employment to one of the dependants of the deceased who is eligible for such employment. That mere death of an employee in harness does not entitle his family to such source of livelihood; the Government or the public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied that, but for the provision of employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family, provided a scheme or rules provide for the same. This Court further clarified in the said case that compassionate appointment is not a vested right which can be exercised at any time after the death of a government servant. That the object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, compassionate employment cannot be claimed and offered after lapse of

considerable amount of time and after the crisis is overcome.

(ii) In Haryana State Electricity Board vs. Hakim Singh, (1997) 8 SCC 85, this Court placed much emphasis on the need for immediacy in the manner in which claims for compassionate appointment are made by the dependants and decided by the concerned authority. This Court cautioned that it should not be forgotten that the object of compassionate appointment is to give succour to the family to tide over the sudden financial crisis that has befallen the dependants on account of the untimely demise of its sole earning member. Therefore, this Court held that it would not be justified in directing appointment for the claimants therein on compassionate grounds, fourteen years after the death of the government employee. That such a direction would amount to treating a claim for compassionate appointment as though it were a matter of inheritance based on a line of succession.

(iv) This Court in State of Haryana vs. Ankur Gupta, AIR 2003 SC 3797 held that in order for a claim for compassionate appointment to be considered reasonable and permissible, it must be shown that a sudden crisis occurred in the family of the deceased as a result of death of an employee who had served the State and died while in service. It was further observed that appointment on compassionate grounds cannot be claimed as a matter of right and cannot be made available to all types of posts irrespective of the nature of service rendered by the deceased employee.

(v) There is a consistent line of authority of this Court on the principle that appointment on compassionate grounds is given only for meeting the immediate unexpected hardship which is faced by the family by reason of the death of the bread earner vide Jagdish Prasad vs. State of Bihar, (1996) 1 SCC 301. When an appointment is made on compassionate grounds, it should be kept confined only to the

purpose it seeks to achieve, the idea being not to provide for endless compassion, vide I.G. (Karmik) vs. Prahalad Mani Tripathi, (2007) 6 SCC 162. In the same vein is the decision of this Court in Mumtaz Yunus Mulani vs. State of Maharashtra, (2008) 11 SCC 384, wherein it was declared that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis.

(vi) In State of Jammu and Kashmir vs. Sajad Ahmed Mir, AIR 2006 SC 2743, the facts before this Court were that the government employee (father of the applicant therein) died in March, 1987. The application was made by the applicant after four and half years in September, 1991 which was rejected in March, 1996. The writ petition was filed in June, 1999 which was dismissed by the learned Single Judge in July, 2000. When the Division Bench decided the matter, more than fifteen years had passed from the date of death of the father of the applicant. This Court remarked that the said facts were relevant and material as they would demonstrate that the family survived in spite of death of the employee. Therefore, this Court held that granting compassionate appointment after a lapse of a considerable amount of time after the death of the government employee, would not be in furtherance of the object of a scheme for compassionate appointment.

(vii) In Shashi Kumar, this Court speaking through Dr. D.Y. Chandrachud, J. (as His Lordship then was) observed that compassionate appointment is an exception to the general rule that appointment to any public post in the service of the State has to be made on the basis of principles which accord with Articles 14 and 16 of the Constitution. That the basis of the policy is that it recognizes that a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in

service. That it is the immediacy of the need which furnishes the basis for the State to allow the benefit of compassionate appointment. The pertinent observations of this Court have been extracted as under:

‘41. Insofar as the individual facts pertaining to the Respondent are concerned, it has emerged from the record that the Writ Petition before the High Court was instituted on 11 May 2015. The application for compassionate appointment was submitted on 8 May 2007. On 15 January 2008 the Additional Secretary had required that the amount realized by way of pension be included in the income statement of the family. The Respondent waited thereafter for a period in excess of seven years to move a petition Under Article 226 of the Constitution. In Umesh Kumar Nagpal (supra), this Court has emphasized that the basis of a scheme of compassionate appointment lies in the need of providing immediate assistance to the family of the deceased employee. This sense of immediacy is evidently lost by the delay on the part of the dependant in seeking compassionate appointment.”

7.2. 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, ie. 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.

7.3. 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 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.

7.4. 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.

7.5. 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.

8. 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. vs. Prosper Armstrong*, (1874) 3 PC 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."

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. vs. 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.

In State of M.P. vs. 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.'

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 vs. State of Haryana, (1997) 6 SCC 538 and NDMC vs. Pan Singh, (2007) 9 SCC 278.

9. 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 vs. 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."

(Emphasis by us)"

11. In the present case, the petitioner had made her application for appointment on compassionate ground on 11.08.2014, i.e. immediately after the death of her husband.

12. It appears that the SLC had considered the said application in the meeting dated 31.12.2018, wherein the case of the petitioner was rejected. However, after almost 6 (six) years, the present writ petition has been filed assailing the said order of the SLC.

13. Undoubtedly, the respondent authorities had been sitting over the application of the petitioner for a considerable long time, whereby the very object of compassionate appointment has been frustrated. This

Court deprecates such conduct of the respondent authorities of sitting over the applications for compassionate appointments.

14. It is settled law that the object underlining for making appointment on compassionate ground 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.

15. It is thus with this very object that unless some source of livelihood is provided, the family could not be in a position to make both ends meet, appointment on compassionate ground is provided. However, the same is not a vested right.

16. Thus, 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 ceases to exist and loses its signification and thereby disentitling the applicant for appointment on compassionate grounds.

17. The Apex Court, as noted in the aforesaid decision, has clearly held 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 claim for compassionate appointment is not maintainable.

18. Apparent that in the present case after the petitioner had filed the

application 11.08.2014 for appointment on compassionate ground, she has not taken any steps whatsoever till 05.03.2024, i.e. the date of filing the present writ petition, to expedite the process of her application and or to have approached this Court by way of a writ petition under Article 226 of the Constitution of India.

19. It appears that the petitioner during the interregnum period has been able to sustain her livelihood and therefore the sense of immediacy has been lost and diluted.

20. It further appears that the instant writ petition has been filed after almost 6 (six) years from the date of issuance of the impugned rejection by the SLC.

21. Be that as it may, it is apparent on the face of the record that there has been gross delay on the part of the respondent authorities in considering the application of the petitioner for appointment on compassionate ground and that the petitioner has also not taken any positive steps during the interregnum period to expedite the process for consideration of her application and as such, she has disintitiled herself from being considered to be appointed on compassionate ground.

22. Therefore, considering the entire facts and circumstances of the case including the decision rendered by the Apex Court in the case of ***Debabrata Tiwari (supra)***, this Court is of the view that the petitioner has failed to make out any case.

23. Accordingly, the writ petition stands dismissed with the above

observation.

JUDGE

Comparing Assistant