



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

Case No. : WP(C)/1843/2024

JAHANGIR SULTAN MAZUMDER
S/O LT. ASRAF UDDIN MAZUMDER, R/O HAILAKANDI TOWN, WARD NO. 4,
P.O. AND P.S.-HAILAKANDI, DIST- HAILAKANDI, ASSAM, PIN-788151

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, DEPARTMENT OF SCHOOL EDUCATION,
DISPUR, GUWAHATI-6

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

3:THE DISTRICT LEVEL COMMITTEE FOR RECOMMENDATION OF THE
CASE FOR APPOINTMENT ON COMPASSIONATE GROUND
HAILAKANDI
REPRESENTED BY THE DEPUTY COMMISSIONER
HAILAKANDI
DIST- HAILAKANDI
ASSAM
PIN-788151

4:THE DEPUTY INSPECTOR OF SCHOOLS
HAILAKANDI
DIST- HAILAKANDI
ASSAM
PIN-788151

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER

HAILAKANDI
DIST- HAILAKANDI
ASSAM
PIN-78815

Advocate for the Petitioner : MR. H A LASKAR

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

JUDGMENT & ORDER(ORAL)

Date : 08.04.2024

Heard Ms. N. Kalita, learned counsel for the petitioner. Also heard Ms. S. Chutia, learned Standing Counsel for the Elementary Education Department representing the respondents no. 1, 2, 4 & 5 and Ms. D. Das Barman, learned Addl. Senior Government Advocate appearing for the respondent no. 3.

2. The petitioner, by way of instituting this writ petition has raised a grievance with regard to the action/inaction on the part of the respondent authorities in not considering the case of the petitioner for appointment on compassionate ground.

3. As projected in the writ petition, the father of the petitioner Late Asraf Uddin Mazumdar while serving as an Assistant Teacher in 783 No. Bawarghat L.P. School had died in harness on 21.03.2006. It is contended that at the time of death of the father of the petitioner, the petitioner was aged about 12(twelve) years and accordingly, being a minor, the mother of the petitioner had submitted

a representation dated 20.06.2006, before the Deputy Inspector of Schools, Hailakandi, praying for an appointment on compassionate ground so as to maintain the family after the death of the Government employee. It is contended that the said application submitted by the mother of the petitioner was not given its due consideration and accordingly, the petitioner, on reaching the age of majority, proceeded to submit an application on 04.10.2012 and the same not being considered, the petitioner purportedly, again approached the respondent authorities vide a representation dated 18.11.2019, praying for his appointment on compassionate ground.

4. It is seen that the father of the petitioner had died on 21.03.2006 and although, it is contended that the mother of the petitioner had immediately preferred an application for her appointment on compassionate ground, no material has been brought on record to demonstrate as to how the said application was so pursued by the family of the petitioner. Thereafter, the petitioner, on reaching the age of majority had submitted his application for such appointment on 04.10.2012, followed by a representation dated 18.11.2019. The present proceeding was instituted on 30.03.2024 i.e. after 18 years from the date of death of the father of the petitioner and after around 12 years from the date when the petitioner had submitted his application on 04.10.2012.

5. The objective behind the appointment on compassionate ground being to provide immediate relief to the family of the deceased government servant to tide over the financial crisis falling on the family because of the death of the

bread earner in the family; such appointment is to be so made with immediacy.

6. The issues arising herein 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 decision 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 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 JagdishLal 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.”

7. Applying the ratio as contained in the decision of the ***Debabrata Tiwari*** (supra) to the facts of the present case, it is found that there is nothing on record to show that the petitioner or his family members were diligently pursuing the matter with the authorities till the institution of the present proceeding before this Court. It has further not been brought on record by the petitioner as to why the application as submitted by his mother not being considered by the authorities, proceedings were not initiated before this Court praying for consideration of such application. The above position also reflects that the petitioner’s family had not faced any financial distress on account of death of the Government employee and accordingly, they were not in a grave need of any of the members of the family to be appointed on compassionate

ground for sustenance of the family.

8. 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.

9. The petitioner and/or his family members having not pursued the matter in the long absence occasioning after the death of the father of the petitioner; the petitioner having been able to eke out a living even though not favored with an appointment on compassionate ground, this Court does not deem it to be a fit case to direct the respondent authorities to consider the case of the petitioner for appointment on compassionate ground.

10. In that view of the matter, this writ petition is found to be devoid of merit and the writ petition accordingly stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant