

GAHC010045592022



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

Case No. : WP(C)/1808/2022

SARALA BRAHMA
W/O. LT. MNOMOTH BRAHMA, VILL. NORTH GHOSH KATA, P.O.
BONORGAON, DIST. KOKRAJHAR, PIN-783347.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM, INDUSTRIES
AND COMMERCE DEPTT., ASSAM, DISPUR, GUWAHATI-781006.

2:THE CHAIRMAN

STATE LEVEL COMMITTEE
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-781006.

3:THE COMMISSIONER SECRETARY
TO THE GOVT. OF ASSAM
INDUSTRIES AND COMMERCE DEPTT.
ASSAM, DISPUR
GUWAHATI-781006.

4:THE DEPUTY SECRETARY
TO THE GOVT. OF ASSAM
INDUSTRIES AND COMMERCE DEPTT.
ASSAM, DISPUR
GUWAHATI-781006.

5:THE BODOLAND TERRITORIAL COUNCIL
REP. BY THE PRINCIPAL SECRETARY CUM CHAIRMAN DISTRICT LEVEL
COMMITTEE

BODOFA NWGWR
KOKRAJHAR
B.T.C. ASSAM.

6:THE GENEREAL MANAGER
DISRICT INDUSTRIES AND COMMERCE CENTRE
B.T.C. KOKRAJHAR
PIN-783370

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocate for the petitioner : Shri J.U. Ahmed, Advocate
Advocate for respondents : Shri CKS Baruah, GA, Assam.
Shri T. Chakma, SC, BTC,
Shri. N. Kalita, SC, Industries & Commerce Deptt.

Date of hearing : 03.05.2024

Date of judgment : 03.05.2024

The issue raised in this petition is towards a claim for appointment on compassionate ground.

2. The facts projected in this petition is that the husband of the petitioner, late Monomat Brahma, was working as an Extension Officer in the Office of the District Industries & Commerce Department Centre, Kokrajhar who had died in harness on 09.04.2011.

3. The petitioner who claims to be eligible and qualified had accordingly submitted an application for appointment on compassionate ground which was forwarded by the Deputy Commissioner, Kokrajhar on 30.06.2011. It is claimed that the case of the petitioner was duly recommended by the District Level Committee and was sent to the

State Level Committee. The SLC however in its meeting dated 03.10.2015 did not consider the case of the petitioner and accordingly, the petitioner had filed a writ petition being WP(C)/969/2016. The same was disposed of by this Court vide order dated 09.09.2016 directing consideration of the case of the petitioner in the next meeting of the SLC. The SLC, accordingly in its meeting dated 18.01.2020 after considering the case of the petitioner had rejected the same on the ground of lack of vacancy.

4. I have heard Shri J.U. Ahmed, learned counsel for the petitioner. Also heard Shri CKS Baruah, Govt. Advocate, Assam, Shri T. Chakma, Standing Counsel, BTC and Shri. N. Kalita, Standing Counsel, Industries & Commerce Deptt.

5. Shri Ahmed, the learned counsel for the petitioner has submitted that the rejection of the case of the petitioner by the SLC is not legally tenable as the petitioner fulfils all the necessary requirements for such appointment on compassionate ground. He accordingly submits that necessary directions be issued for a fair consideration and appointment of the petitioner on compassionate ground.

6. *Per contra*, the learned Counsel for the respondents have submitted that the petition has been filed without giving any details including the Minutes of the District Level Committee containing the consideration on which the name of the petitioner was forwarded. It is submitted that the case of the petitioner was duly considered by the State Level Committee on 18.01.2020 and upon such consideration, the case of the petitioner was rejected on the ground of lack of vacancy within the 5% quota.

7. The learned Counsel for the respondents further submit that the writ petition has been filed only in the year 2022 and the death of the Government Servant was in the

year 2011. Therefore, any direction for consideration of the case of the petitioner at this stage would not be in consonance with the objective of the Scheme. Reliance has been placed upon a recent judgment of the Hon'ble Supreme Court in the case of ***State of West Bengal vs. Debabrata Tiwari & Ors.*** reported in ***AIR 2023 SC 1467***.

8. The rival contentions have been duly considered and the materials placed before this Court have been carefully examined.

9. The petitioner has neither annexed the Minutes of the Meeting of the DLC nor given any details thereof by which it is claimed that her case for appointment on compassionate ground was forwarded to the SLC. As such, this Court is not in a position to know the mode and details of such consideration before the DLC. The petitioner has also not annexed the copy of the order of this Court passed in the earlier proceeding WP(C)/969/2016 in which it has been claimed that there was a direction for consideration of the case of the petitioner.

10. Be that as it may, the consideration by the SLC is the only material before this Court which is also the subject matter of challenge. The Minutes dated 18.01.2020 of the SLC would show that the rejection was on the ground of want of vacancies. Such action, *per se* cannot be held to be wholly unreasonable in absence of any specific contention or grounds of challenge.

11. There is another important aspect in the matter pertaining to the very essence of the objective of the scheme for appointment on compassionate ground. The objective of the scheme of compassionate appointment which is an exception to the general rules of recruitment is to give immediate succour to a bereaved family which

has lost its sole breadwinner and the same cannot be a matter of right. In any case, the entire objective would lose its essence in case of elapse of a considerable period of time.

12. In the instance case, the period from 2011 to 2024 is a considerable period and therefore any further directions for consideration of the case for appointment on compassionate ground of the petitioner would not be in sync with the scheme of compassionate appointment.

13. The Hon'ble Supreme Court in the aforesaid case of ***Debabrata Tiwari*** (supra) has laid down as follows:

“ 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, 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.

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."

14. In the aforesaid case, the Hon'ble Supreme Court, as indicated above had gone to the extent that even if the delay is on account of the respondent authorities, that would also be taken into account while considering the case for appointment on compassionate ground.

15. Accordingly, this Court is of the opinion that no relief can be granted to the petitioner in this case and accordingly the writ petition is dismissed.

JUDGE

Comparing Assistant