

GAHC010027692022



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

Case No. : WP(C)/1278/2022

GUNAWATI PHUKAN HAZARIKA
W/O. LT. MINTU HAZARIKA, VILL. KORHALIGAON, P.O. K.P
HALOWAGAON, P.S. RUPAHI, DIST. NAGAON, PIN-782125, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM, DISPUR,
GUWAHATI-06.

2:CHIEF SECRETARY
STATE OF ASSAM
CUM CHAIRMAN
STATE LEVEL SELECTION COMMITTEE
DISPUR
GUWAHATI-06.

3:COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
PUBLIC WORKS ROADS DEPTT.

4:DEPUTY SECRETARY
TO THE GOT. OF ASSAM
PUBLIC WORKS ROADS DEPTT.

5:DEPUTY COMMISSIONER

NAGAON.

6:THE EXECUTIVE ENGINEER

PUBLIC WORKS DEPTT.

KALIABOR RURAL ROAD DIVISION
KALIABOR
ASSAM

Advocate for the Petitioner : MR. D P CHALIHA, MS M ROY

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

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioner : Shri DP Chaliha, Sr. Advocate,
Ms. M Roy, Advocate.

For the Respondents : Shri D Bora, GA, Assam and
Shri R Dhar, SC, PWD.

Date of Hearing : 07.08.2024.

Date of Judgment : 07.08.2024.

JUDGMENT & ORDER

Heard Shri DP Chaliha, learned Senior Counsel assisted by Ms. M Roy, learned counsel for the petitioner. Also heard Shri D Bora, learned State Counsel, Assam as well as Shri R Dhar, learned Standing Counsel, Public Works Department, Assam.

- 2.** The claim pertains to an appointment on compassionate ground.

- 3.** The facts projected are that the husband of the petitioner, Mintu Hazarika, who was an employee in the office of the Executive Engineer, Public works Department,

Kaliabor Rural Road Division, had died-in-harness on 28.05.2016. The petitioner had made an application for appointment in a Grade-III, LDA post on compassionate ground which was forwarded by the Executive Engineer, PWD, Kaliabor Rural Road Division to the Addl. Deputy Commissioner, Personnel, Nagaon vide letter dated 22.09.2016.

4. It is the case of the petitioner that in the District Level Committee (DLC) meeting held on 14.12.2016, the name of the petitioner was recommended for a Grade-III post. However, the State Level Committee (SLC) in its meeting held on 31.12.2018 rejected the case of the petitioner on of availability of vacancy under the 5% quota.

5. Shri Chaliha, learned Senior Counsel for the petitioner has submitted that the rejection of the case of the petitioner is unreasonable as the 5% quota has to be reckoned from the point of view of the cadre strength and not the vacancy position. It is submitted that 16 posts were there and therefore, the petitioner could have been considered for appointment.

6. *Per contra*, Shri Bora, learned State Counsel has raised the issue of delay and laches in approaching this Court. It is submitted that the death was in the year 2016 and the writ petition was filed only on 11.02.2022 i.e. after about 8 years. It is submitted that the objective of the scheme for appointment on compassionate ground is only to give immediate relief to a bereaved family which has lost the sole breadwinner. The learned State Counsel has also referred to the case of ***State of West Bengal Vs. Debabrata Tiwari & Ors.***, reported in **AIR 2023 SC 1467** and has submitted that after 10 years, no direction can be issued for appointment on compassionate ground.

7. Shri R Dhar, learned Standing Counsel has endorsed the submissions of the learned State Counsel, Shri D Bora.

8. The rival submissions have been considered.

9. The first contention is that 5% quota has to be calculated from the point of view of the cadre strength and it is submitted that the number of posts was 16. However, even if the aforesaid submission is accepted, 5% of 16 will not make even 1 vacancy. That apart, the admitted age of the petitioner at the time of filing of the case in the year 2022 was 49 and therefore, as on today she would be around 51 years of age which is much beyond the permissible age limit for Government service.

10. In any case, the objective of offering an appointment on compassionate ground is only to give immediate succour to the bereaved family which has lost the sole breadwinner and after about 8 years from the said death, no such directions can be issued.

11. In the instant case, it is not in dispute that the death of the government employee was in the year 2016 and in the meantime, long 8 years have passed. There is no acceptable or cogent reason explaining the delay for the period from 2018 when the meeting of the SLC was held. As on today, almost 4 years have passed and any direction towards consideration of the claim of the petitioner further would not be in sync with the claim of compassionate appointment. The Hon'ble Supreme Court in the 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.”*

12. This Court has noticed that on the aspect of delay, the Hon'ble Supreme Court in the aforesaid case while examining the said aspect from the context of

the scheme has also laid down that even if the delay is on account of the authorities, the sense of immediacy is diluted and lost. The relevant part as observed in paragraph 7.5 of the aforesaid judgment is extracted herein below:-

*“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 thought 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.”*

13. In view of the aforesaid discussions and the law laid down by the Hon'ble Supreme Court in the case of ***Debabrata Tiwari (supra)***, no case for interference is made out and accordingly, the writ petition is dismissed.

JUDGE

Comparing Assistant