

GAHC010017732024



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

Case No. : WP(C)/608/2024

DEBARPITA CHAKRABORTY
DAUGHTER OF LATE DILIP CHAKRABORTY, RESIDENT OF
SUBASHNAGAR, NEAR SAWSAN, KALIBARI, PS AND DIST- KARIMGANJ,
ASSAM, PIN- 788710

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT OF ASSAM, DEPT.
SCHOOL EDUCATION, DISPUR, GUWAHATI-06

2:THE CHAIRMAN OF THE STATE LEVEL COMMITTEE (SLC)
REPRESENTED BY THE CHIEF SECERTARY TO THE GOVT. OF ASSAM

3:THE DISTRICT LEVEL SELECTION COMMITTEE (DLC)
REPRESENTED BY THE DEPUTY COMMISSIONER OF HAILAKANDI
DISTRICT DIST.- HAILAKANDI ASSAM

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER (DEEO)
HAILAKANDI P.O. P.S. AND DIST.- HAILAKANDI ASSAM

Advocate for the Petitioner : MR H R CHOUDHURY

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 13.02.2024

Heard Mr. H. R. Choudhury, learned counsel for the petitioner.

Also heard Ms. Deepanjalee Das Barman, learned Addl. Senior Government Advocate, appearing on behalf of Respondents No. 2 & 3; and Mr. Bedanta Kaushik, learned standing counsel, Elementary Education Department, appearing on behalf of Respondent No. 4.

2. The petitioner by way of instituting the present proceedings, has raised a grievance with regard to non-consideration of her case for appointment on compassionate ground by the jurisdictional District Level Scrutiny Committee (DLSC) inspite of the fact that her case was so forwarded to the said Committee by the Respondent No. 4 for such consideration.

3. The brief facts requisite for adjudication of the issues arising in the present proceedings, is noticed hereinbelow:

The father of the petitioner Late Dilip Chakraborty while working as an Assistant Teacher in 385 No. Dhalai Adarsha L.P. School, Katlicherra, had died in harness on 26.01.2008. It is contended that the petitioner on 11.04.2008, had submitted an application for appointment on compassionate ground before the authorities. During pendency of the said application, the petitioner was given in marriage on 10.05.2009 and a child was also borne out of her wedlock on 21.05.2010. However, on account of certain differences arising between the petitioner and her husband; divorce proceedings came to be instituted and ultimately on 02.04.2014, the learned District Judge, Karimganj, in T.S.(Divorce) No. 70/2013, passed an order granting divorce.

It is the contention of the petitioner that after her divorce, she has been staying with her mother in her uncle's house. The brother of the petitioner is stated to be a handicapped person and bed-ridden. Under such circumstances, the mother of the petitioner, on 27.03.2023, filed a representation before the authorities praying for appointment of the petitioner on compassionate ground.

The said representation of the mother of the petitioner was placed before the Deputy Commissioner, Karimganj, and the Office of the Deputy Commissioner, Karimganj, vide communication, dated 25.04.2023, required the District Elementary Education Officer, Hailakandi, to submit formal proposals as per existing rules in the matter.

The representation as submitted by the petitioner as well as her mother praying for consideration of the petitioner's case for appointment on compassionate ground having not been considered; the present proceedings has been instituted by the petitioner.

4. The facts as set-out in the writ petition reveals that the father of the petitioner had died in harness on 26.01.2008, and thereafter, the petitioner was given in marriage on 10.05.2009 and she had continued in her matrimonial house till the divorce proceedings was initiated in 2013 and the divorce was ordered on 02.04.2014. It is seen that the mother of the petitioner had submitted a representation on 27.03.2023 and therein, it is seen that she had contended that her daughter is qualified and eligible for being appointed on compassionate ground although in the writ petition, it has been projected that

the communication, dated 27.03.2023, was in the form of a reminder. A perusal of the representation, dated 27.03.2023, reveals that it was an application made with the contention that earlier, the family was incapable of forwarding the names of the children of the deceased employee for employment on compassionate ground due to their ineligible academic qualifications.

5. Poised with the said contention as made and also the assertion made by the petitioner's counsel that the petitioner had duly submitted an application for appointment on compassionate ground on 11.04.2008; this Court had required the Deputy Commissioner, to place on record, the clarification as regards the applications stated to have been submitted by the petitioner and her mother. In response to such query, the Addl. Deputy Commissioner, Hailakandi, vide communication, dated 13.02.2024, had informed Ms. Barman, learned Addl. Senior Government Advocate, that no application, dated 11.04.2008, stated to have been submitted by the petitioner, was ever received by the Office of the Deputy Commissioner. It was also stated that the application that was received by the Office of the Deputy Commissioner, was the one submitted by the mother of the petitioner on 27.03.2023 which was duly acknowledged and on 25.04.2021, the District Elementary Education Officer, Hailakandi, was directed to submit a proposal thereon as per existing rules to be placed before the next District Level Scrutiny Committee(DLSC).

The said communication as submitted by the Office of the Deputy Commissioner, Hailakandi, reveals that the family of the petitioner had, for the first time, submitted an application seeking appointment on compassionate

ground in the case of the petitioner, herein, on account of the death of the father of the petitioner in 2008. The said application is clearly a belated one and was submitted after around 15 years of the death of the petitioner's father. Even if it is assumed that the petitioner had submitted an application for appointment on compassionate ground on 11.04.2008, there is nothing brought on record to show as to in what manner the petitioner and/or her family had pursued the said matter and accordingly, a conclusion can be drawn that the petitioner and/or her family had not diligently pursued the matter for appointment on compassionate ground.

6. The issues arising herein is covered by the recent decision of the Hon'ble Apex Court rendered in the case of ***State of West Bengal 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 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.”

7. Applying the ratio of the Hon'ble Supreme Court in the case of ***State of West Bengal v. Debabrata Tiwari & ors.*** (supra), to the facts of the present case in hand, it is seen that the appointment on compassionate ground is not a vested right which can be exercised at any time in future. The compassionate employment cannot be claimed or offered after a lapse of time and after the

crisis is over. 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. 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 the 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 for appointment on compassionate ground, would be frustrated.

8. In the present proceedings, on account of the long lapse of time that has occurred since the death of the petitioner's father, the sense of immediacy for seeking compassionate appointment has ceased to exist and thus, loses its significance and this would be a relevant circumstance for this Court to consider whether a case has been made-out for issuing a direction to the authorities for consideration of the case of the petitioner.

9. Any prolonged delay occasioning in the matter either on account of the fault on the part of the respondent authorities and/or on the part of the petitioner in pursuing her claim diligently for appointment on compassionate ground, it is held that the sense of immediacy has been diluted and/or lost.

10. It is to be noted that in the event, a direction is issued after such prolonged delay for consideration of the case of the petitioner, the claim for

appointment on compassionate ground would be raised to a status, wherein, it would become a matter of inheritance based on a line of succession which is contrary to the very scheme for extending such appointment.

11. Accordingly, in view of the above position; this Court is not inclined to direct the respondent authorities to now consider the case of the petitioner for appointment on compassionate ground.

12. The above discussions and conclusions as reached by this Court leads this Court to hold that the case of the petitioner is not a fit one for being directed to be considered for appointment on compassionate ground after a long delay has occasioned from the date of death of the petitioner's father in harness and that too, after the sense of immediacy for effecting such appointment is lost and/or diluted.

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

JUDGE

Comparing Assistant