

GAHC010016912019



2024:GAU-AS:9814

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

Case No. : WP(C)/569/2019

PRADIP DAS

S/O- LT KALIPRASANNA DAS, R/O- KARAKUCHI, HOCKEY STADIUM, GHY-28, P.O. BELTOLA, P.S. BASISTHA, DIST- KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS.

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM,, DEPTT. OF ECONOMICS AND STATISTICS, DISPUR, GHY-6, ASSAM

2:THE STATE LEVEL COMMITTEE

REP. BY CHIEF SECY. TO THE GOVT. OF ASSAM
DISPUR GHY-6 ASSAM

3:THE DISTRICT LEVEL COMMITTEE

KAMRUP (M)
REP. BY THE DY. COMMISSIONER AS THE CHAIRMAN
KAMRUP (M) GHY-1 ASSAM

4:THE DIRECTOR

DIRECTORATE OF ECONOMICS AND STATISTICS
BELTOLA GHY- 28 ASSAM

5:SMTI. JUNU LAHAN BORDOLOI

OFFICIATING AT OFFICE OF THE DIRECTOR
DIRECTORATE OF ECONOMICS AND STATISTICS
BELTOLA GHY- 28 ASSAM

6:SMTI. NIYANITA DAS

OFFICE OF THE DIRECTORATE OF ECONOMICS AND STATISTICS
BELTOLA GUWAHATI-28

Advocate for the Petitioner : MR S P DAS,

Advocate for the Respondent : GA, ASSAM, MS. P K DEVI,MR. U SARMA,MR H BEZBARUA,MRS P RAI

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date of hearing : 30.09.2024

Date of Judgment : 30.09.2024

Judgment & order(Oral)

Heard Mr. S. P. Das, learned counsel for the petitioner. Also heard Mr. A. Chakraborty, learned Government Advocate, Assam, appearing on behalf of respondents No. 1 to 4. However, none appears on behalf of respondents No. 5 & 6.

2. The petitioner, herein, by way of instituting this present proceeding, has presented a challenge to the decision of the State Level Committee in its meeting held on 20.08.2018, in respect of the application submitted by the petitioner, herein, for appointment on compassionate ground and rejecting the same on a comparison of merit so made with that of the case of respondents No. 6, and one other claimant. The petitioner has further assailed the selection and appointment of the respondent No. 5, herein, against a Grade-IV post, on compassionate ground.

3. As projected in the writ petition, the father of the petitioner late Ali Azgar, while serving as a Grade-IV employee in the Directorate of Economics & Statistics, Government of Assam, had died-in-harness on 06.11.2011. The petitioner, thereafter, applied for an appointment on compassionate ground on 01.03.2012, before the Director, Economics & Statistics, Government of Assam.

4. At this stage, it is to be noted that the petitioner has projected that on

account of amputation of his left leg on 23.05.2011, he was declared to suffer from 60% permanent physical impairment.

5. Though the case of the petitioner was placed before the jurisdictional District Level Committee in its meeting held on 17.02.2015, but the case of the petitioner was not recommended by the said Committee for compassionate appointment on the ground that the application of the petitioner had lost its force on completion of 2 years from the date of submission of such application. The petitioner being aggrieved, instituted a writ petition being WP(c)6111/2015 before this Court against the decision so arrived at by the jurisdictional District Level Committee in his case. This Court vide order, dated 07.10.2015, on considering the materials brought on record, proceeded to set aside the decision so arrived at by the District Level Committee in its meeting held on 17.02.2015, with a further direction to re-consider the case of the petitioner in accordance with the decisions available in the matter of this Court.

6. In terms of the directions passed by this Court vide order, dated 07.10.2015, in WP(c)6111/2015; the case of the petitioner was, thereafter, taken-up for consideration by the jurisdictional District Level Committee, in its meeting held on 01.03.2016, and on such consideration; the case of the petitioner came to be recommended for appointment on compassionate ground against an identified Grade-IV vacant post. Thereafter, the recommendation so made in favour of the petitioner came to be placed before the State Level Committee in its meeting held on 20.08.2018. However, the case of the petitioner on being considered along with other applicants so available in the matter basing on the evaluation of the mandated criteria; the case of the respondent No. 6 came to be so recommended for appointment on compassionate ground.

7. Being aggrieved, the petitioner has instituted the present proceeding before

this Court.

8. I have heard Mr. Das, learned counsel appearing on behalf of the petitioner as well as Mr. Chakraborty, learned counsel appearing on behalf of respondents No. 1 to 4; and also perused the materials available on record.

9. The petitioner in the present proceeding, in addition to presenting a challenge to the rejection of his case by the State Level Committee, had also presented a challenge to the appointment effected in the case of the respondent No. 5, herein, by the Director, Economics & Statistics, Government of Assam, vide order, dated 01.06.2013, on compassionate ground against a Grade-IV post.

10. At this stage, it is to be noted that the appointment of the respondent No. 5 was so effected in terms of the recommendations so made in her favour by the State Level Committee in its meeting held in the year 2013.

11. A perusal of the materials brought on record would go to reveal that the State Level Committee had rejected the case of the petitioner, herein, on an inter se comparison of various applicable criteria between the petitioner; respondent No. 6 and another person, who were all claimants for appointment under compassionate ground.

12. The petitioner had impleaded the respondent No. 6 as a party respondent in the present proceeding. However, there is no challenge presented to the selection of the respondent No. 6 for appointment on compassionate ground. In the absence of a challenge being made to such selection made in respect of respondent No. 6; this Court would not be in a position to consider the validity of such selection so made in respect of the respondent No. 6, herein.

13. With regard to the selection and appointment of the respondent No. 5 on compassionate ground; it is seen that such selection and appointment was in pursuance of the directions of the State Level Committee issued some time in the year 2013. The appointment of the respondent No. 5 was so effected vide an order, dated 01.06.2013, i.e. prior to the date when the case of the petitioner, was so considered by the constituted Committees. The petitioner, in the writ petition, has not brought on record, any material to highlight the illegality, if any, in the appointment effected in respect of the respondent No. 5, herein. Accordingly, this Court is of the considered view that it is not open to the petitioner, herein, to assail such appointment effected in respect of the respondent No. 5, and that too, after lapse of a period of about 6 years from the date of such appointment.

14. As noticed hereinabove; the father of the petitioner died-in-harness on 06.11.2011. The case of the petitioner was duly considered and the State Level Committee in its meeting held on 20.08.2018, had not recommended the case of the petitioner after having made an inter se comparison between the claim of the petitioner; the respondent No. 6 and another person.

15. From the writ petition, it is seen that with effect from the date of the death of the father of the petitioner which had occasioned on 06.11.2011; almost 13 years have since elapsed and accordingly, after lapse of such a considerable period of time, the purport for appointment on compassionate ground naturally stands diluted and lost.

16. The materials on record reveal that the family of the petitioner had sustained for the last about 13 years and as such, the immediate object behind the grant of appointment on compassionate ground being to mitigate the hardship caused to the family due to death of the bread earner in the family and also, it

being a settled position of law that compassionate appointment cannot be claimed after lapse of considerable time from the date of death of the government servant, the object being to enable the family to get over the financial crisis occasioning at the time of the death of the deceased of the Government servant; a direction for consideration of the case of the petitioner for appointment on compassionate ground, is not called for.

17. The claim of the petitioner as on date is a stale claim and the same if allowed to be considered at this distant point of time, would amount to treating compassionate appointment as though it were a matter of inheritance based on the line of succession.

18. In the case on hand, the family having survived for a reasonable period of time after the death of the father of the petitioner had occasioned on 06.11.2011, the acceptance of the claim of the petitioner at this distant point of time, would not be in furtherance of the object behind the purport of a scheme for providing appointment on compassionate ground.

19. The issue as arising in the present proceeding 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 decisions 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 Uttarakhand 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."

20. 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.

21. In that view of the matter, the issue involved in the present proceeding, being a stale issue; this Court refrains from proceeding to issue any direction requiring consideration of the case of the petitioner for appointment on compassionate ground pursuant to the death of his father in harness, occasioning in the year 2011.

22. This writ petition is, thus, found to be bereft of any merit and the same accordingly stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant