

GAHC010021902024



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

**Case No. : WA/53/2024**

BIPLAB MEDHI  
S/O LATE RAJEN MEDHI, RESIDENT OF VILLAGE SANKAR NAGAR,  
BELTOLA, PO BALADMARI, DIST GOALPARA, ASSAM 783121

VERSUS

THE STATE OF ASSAM AND 4 ORS. F  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.  
OF ASSAM, PWD(ROADS) DISPUR, GUWAHATI 06

2:THE CHIEF SECRETARY CUM CHAIRMAN  
STATE LEVEL COMMITTEE (SLC)  
GOVT. OF ASSAM  
DISPUR  
GUWAHATI 781006

3:THE DEPUTY COMMISSIONER CUM CHAIRMAN  
DISTRICT LEVEL SELECTION COMMITTEE  
GOALPARA  
ASSAM 783101

4:THE CHIEF ENGINEER  
PUBLIC WORKS DEPARTMENT (ROADS) ASSAM  
CHANDMARI  
GUWAHATI 781003

5:THE EXECUTIVE ENGINNER  
PWD(RURAL ROADS) DIVISION  
GOALPARA  
ASSA

**Advocate for the Petitioner : MR. M DEKA, MD S HOQUE**

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

Linked Case : I.A.(Civil)/359/2024

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Advocate for : MR. M DEKA  
Advocate for : GA  
ASSAM appearing for THE STATE OF ASSAM AND 4 ORS.

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

**Date of hearing : 19.09.2024**

**Date of Judgment & Order : 23.09.2024**

**JUDGMENT & ORDER(CAV)**

**(N. Unni Krishnan Nair, J.)**

Heard Mr. S. Hoque, learned counsel for the appellant. Also heard Mr. D. Nath, learned Senior Government Advocate, Assam, appearing on behalf of all the respondents.

**2.** The present intra-Court appeal has been so instituted by the appellant, herein, presenting a challenge to an order, dated 29.11.2023, passed by the learned single Judge in WP(c)4431/2021, rejecting the prayer of the appellant, for a re-consideration of his application for appointment on compassionate ground after the same was so rejected by the State Level Committee in its meeting held on 23.12.2019.

**3.** As projected in the writ appeal; the father of the appellant, herein, while serving as a Junior Engineer in the establishment of the Executive Engineer, Public Works Department(Rural Roads) Division, Goalpara, had died in harness on 13.01.2015. The appellant, being a legal heir of the deceased employee; submitted his application on 05.02.2015, for being considered for appointment on compassionate ground. The application so submitted by the appellant was considered by the District Level Committee, Goalpara, in its meeting held on 29.04.2015, and on a consideration being made; the District Level Committee had recommended the name of the

appellant, herein, for appointment on compassionate ground against the vacant post of Junior Assistant identified in the Office of the Executive Engineer, Public Works Department(Rural Roads) Division, Goalpara, for the year 2014. The said recommendation was forwarded to the State Level Committee for further consideration.

**4.** The recommendations made in favour of the petitioner not being given a due consideration by the State Level Committee, the appellant, accordingly, approached this Court by way of instituting a writ petition being WP(c)6099/2018. During the pendency of the said writ petition; the respondents had apprised this Court that the case of the appellant was so considered by the State Level Committee in its meeting held on 19.06.2018 and the case of the appellant, was, on consideration, rejected on the ground of non-availability of vacancy within the 5 percent quota so reserved for appointment on compassionate ground. Being aggrieved, the appellant again approached this Court by way of instituting a writ petition being WP(c)2519/2019. The learned single Judge disposed of the said writ petition vide order, dated 11.04.2019, remanding the matter back to the State Level Committee for a re-consideration in accordance with the provisions of paragraph No. 15 of the Office Memorandum, dated, 01.06.2015.

**5.** It is seen that in terms of the directions passed by this Court; the recommendations made in favour of the appellant, herein, by the jurisdictional District Level Committee was again considered by the State Level Committee in its meeting held on 23.12.2019. On such consideration being so made by the State Level Committee; the case of the appellant was

again rejected on the ground of absence of a vacancy in any of the Divisions of the Department in the State within the 5 percent quota mandated. The further ground for rejection of the case of the appellant for appointment on compassionate ground assigned was that the appellant did not possess the requisite qualification for the post of Section Assistant for which his case was so considered.

**6.** Being aggrieved by the conclusions reached in respect of his case by the State Level Committee; the appellant, herein, again approached this Court by way of instituting a writ petition being WP(c)4431/2021, on 01.09.2021. The said writ petition was given a final consideration by the learned single Judge and vide order, dated 29.11.2023. The learned single Judge upon appreciating the fact that the appellant did not have the requisite educational qualification for being appointed against the post of Section Assistant, proceeded to conclude that the decision as arrived at by the State Level Committee in the case of the appellant, herein, in its meeting held on 23.12.2019, would not call for any interference, and accordingly, the said writ petition came to be dismissed. Being aggrieved, the appellant, herein, has instituted the present proceeding.

**7.** Mr. Hoque, learned counsel for the appellant, after reiterating the facts as noticed hereinabove; has contended that the case of the appellant was not given its due consideration by the State Level Committee and his claim was rejected on grounds which are perverse.

**8.** Mr. Hoque, learned counsel, has further contended that the appellant, herein, was required to be so considered for appointment against any

vacant post in any Grade III or Grade IV post so available within the 5 percent quota, either, in the Public Works Department or other Departments and the consideration ought not to have been so limited to the Grade-III posts in the Public Works Department.

**9.** Mr. Hoque, learned counsel, has also contended that the grounds assigned by the State Level Committee in rejecting the claim of the appellant for appointment on compassionate ground, even against the post of Section Assistant, was clearly perverse in-as-much as the appellant, herein, having a graduate qualification i.e. BA Degree; he was eligible for being appointed as a Section Assistant.

**10.** Mr. Hoque, learned counsel for the appellant, in support of his contentions has relied upon a decision of the co-ordinate Bench of this Court rendered in the case of ***Deba Kalita v. State of Assam & ors.***, vide judgment, dated 17.10.2023, in WA No. 147/2023.

**11.** Per contra, Mr. Nath, learned Senior Government Advocate, Assam, appearing on behalf of all the respondents; has contended, on instructions, that the case of the appellant, herein, was duly considered by the State Level Committee in its meeting held on 23.12.2019, in terms of the directions passed by this Court vide order, dated 11.04.2019, in WP(c)2519/2019. However, there being no vacancy available within the 5 percent quota against the post of Junior Assistant in any of the Divisions of the Department and/or Offices; the case of the appellant, herein, could not be recommended for appointment on compassionate ground.

**12.** Mr. Nath, learned Senior Government Advocate, Assam, has also contended that the case of the appellant was so considered for appointment against the post of Section Assistant against the vacancy so identified. However, the requisite minimum qualification for appointment as a Section Assistant being the Higher Secondary passed in Science stream and the appellant being a graduate in Arts; the State Level Committee could not proceed to recommend the case of the appellant for appointment on compassionate ground even against the identified vacant post of Section Assistant.

**13.** Mr. Nath, learned Senior Government Advocate, Assam, has further clarified that prior to the year 2018; the appointment to the post of Section Assistant in the Public Works(Rural Roads) Department was so made at the divisional level by the Executive Engineer and the educational qualification so prescribed for such appointment was Class-VIII passed. However, with coming into force of the All Assam Section Assistant and Sub-ordinate Engineers(Roads & Wings) Service Rule, 2018, w.e.f. 19.11.2018; the qualification for recruitment to the post of Section Assistant was enhanced to that of Higher Secondary(Science) passed. Accordingly, Mr. Nath, learned Senior Government Advocate, Assam, has submitted that the order of the learned single Judge, assailed in the present proceeding, would not call for any interference.

**14.** We have heard the learned counsels appearing for the parties and also perused the materials available on record.

**15.** The father of the appellant had died-in-harness while serving as a

Junior Engineer in the office of the Executive Engineer, Public Works Department(Rural Roads) Division, Goalpara, on 13.01.2015. It is seen that the case of the appellant was duly recommended by the jurisdictional District Level Committee for appointment on compassionate ground against a post of Junior Assistant identified for the purpose. However, the State Level Committee while considering the case of the appellant in its meeting held on 19.06.2018, rejected the case of the appellant on the ground that there was no vacancy available within the 5 percent quota reserved for appointment of the appellant on compassionate ground against the post of Junior Assistant. Thereafter, pursuant to the directions passed by this Court by the learned single Judge vide the order, dated 11.04.2019, in WP(c)2519/2019; the case of the appellant for appointment on compassionate ground was again re-considered by the State Level Committee in its meeting held on 23.12.2019. The State Level Committee in its meeting held on 23.12.2019, on consideration of the case of the appellant, herein, had rejected the same on the following grounds:

***“1. Applicant cannot be accommodated within 5% of cadre strength in any Division in Assam.***

***2. Applicant do not possess required educational qualification for the post S.A. i.e. H.S.(Sci).”***

**16.** The challenge as made by the appellant to the rejection of his case for appointment on compassionate ground by the State Level Committee in the above-noted grounds in its meeting held on 23.12.2019, was considered by the learned single Judge and upon such consideration; vide the order, dated 29.11.2023, passed in WP(c)4431/2021; proceeded to dismiss the said writ petition. The learned single Judge in the said order, dated 29.11.2023, had noticed that the qualification for appointment

against the post of Section Assistant in terms of the provisions of Rule 8 of the All Assam Section Assistant and Sub-ordinate Engineers(Roads & Wings) Service Rule, 2018; was the possession by such candidate of the qualification of Higher Secondary(Science) passed.

**17.** It was also concluded by the learned single Judge in the the said order, dated 29.11.2023, that the appellant, herein, being a Graduate in Arts; cannot be said to have possessed the qualification of Higher Secondary(Science) and accordingly, he cannot be held to be so eligible to be considered for appointment against the post of Section Assistant on compassionate ground.

**18.** The learned single Judge had further proceeded to consider the contention of the appellant, herein, that persons having BA Degree were considered and appointed on compassionate ground against the post of Section Assistant earlier. On consideration of such contention; the learned single Judge had concluded that the appellant had not brought on record any material to demonstrate that the persons having BA Degree so appointed against the post of Section Assistant, did not have the qualification of a Higher Secondary(Science). Further, the learned single Judge concluded that even if the State respondents had earlier recommended persons who did not have the qualification of Higher Secondary(Science) for appointment on compassionate ground against the post of Section Assistant; this Court would not allow the said illegality committed by the State respondents earlier to be perpetuated in-as-much as the same would be in clear violation of the Recruitment Rules holding the field.

**19.** The conclusions as drawn by the learned single Judge vide order, dated 29.11.2023, in WP(c)4431/2021, is in tune with the provisions of the All Assam Section Assistant and Sub-ordinate Engineers(Roads & Wings) Service Rule, 2018, and admittedly, the appellant, herein, not possessing the requisite educational qualification for appointment on compassionate ground against the post of Section Assistant; the rejection of his case by the State Level Committee on the said ground, would not call for any interference.

**20.** As noticed hereinabove; the father of the appellant had died-in-harness on 13.01.2015. The appellant and his family members had thereafter sustained for the last more than 9(nine) years after the death of his father and accordingly, it is seen that the immediacy as required to be followed in the matter of compassionate ground in the case of the appellant, herein, has been diluted and the claim of the appellant, has been rendered stale.

**21.** The appellant and his family members having sustained for the last more than 9(nine) years without there being an appointment made in respect of any of the family members on compassionate ground; 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 at any point of time after the 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 appellant for appointment on compassionate ground at this distant point of time, is not called for.

**22.** The claim of the appellant, herein, 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.

**23.** In the case on hand, the family having survived for such a reasonable period of time after the death of the father of the appellant had occasioned on 13.01.2015; the acceptance of the claim of the appellant 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.

**24.** Support has been drawn for the aforesaid conclusions reached by this Court from the decision of the Hon'ble Supreme 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 *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."*

**25.** At this stage, the decision of a co-ordinate Bench of this Court in the case of ***Deba Kalita***(supra) by the learned counsel for the appellant, is to be considered.

**26.** On a consideration of the said decision; we are of the considered view that the conclusions reached by this Court, therein, would not be applicable to the case of the appellant, herein, in view of the clarifications submitted in the matter by Mr. Nath, learned Senior Government Advocate, Assam, with regard to the educational qualification mandated to be possessed by a candidate for appointment against the post of Section Assistant. The said decision was so rendered by this Court without taking into note the provisions of the All Assam Section Assistant and Sub-ordinate Engineers(Roads & Wings) Service Rule, 2018.

**27.** Accordingly, in the light of the clarifications so placed before us by the respondents, more particularly, the provisions of the All Assam Section Assistant and Sub-ordinate Engineers(Roads & Wings) Service Rule, 2018; it has to be held that the decision of this Court in the case of ***Deba Kalita***(supra), would not advance the case of the appellant, herein.

**28.** In view of the foregoing discussions as well as the decision of the Hon'ble Supreme Court rendered in the case of ***Debabrata Tiwari***(supra), the policy/scheme for compassionate ground being founded on consideration of immediacy, the appellant not having been appointed on compassionate ground and the delay so occasioning in the matter; the claim of the appellant has to be held to have been rendered stale, accordingly, this Court would not, at this stage, proceed to issue any directions requiring the consideration of the case of the appellant for appointment on compassionate ground.

**29.** Accordingly, the order, dated 29.11.2023, passed by the learned single Judge in WP(c)4431/2021, would not call for any interference.

**30.** The writ appeal, accordingly, stands dismissed. However, there shall be no order as to costs.

**JUDGE**

**CHIEF JUSTICE**

**Comparing Assistant**