

GAHC010038612023



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

Case No. : WP(C)/1464/2023

SMTI. MONTI PASWAN
W/O LATE UPEN PASWAN, R/O VILL-SENSWA GAON, CHALIHA GAON, P.O.-
BARBHETA, P.S.-JORHAT, DIST-JORHAT, ASSAM, PIN-785004

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM,
DISPUR, GUWAHATI-06

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
AGRICULTURE DEPARTMENT
DISPUR
GUWAHATI-06

3:THE DIRECTOR OF AGRICULTURE DEPARTMENT
GOVT. OF ASSAM
KHANAPARA
GUWAHATI
PIN-781022

4:THE CHAIRMAN
STATE LEVEL COMMITTEE FOR COMPASSIONATE APPOINTMENT
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-781006

5:THE DISTRICT LEVEL COMMITTEE FOR COMPASSIONATE
APPOINTMENT
REPRESENTED BY THE DEPUTY COMMISSIONER OF JORHAT
ASSAM

PIN-785001

6:THE DISTRICT AGRICULTURE OFFICER
JORHAT
ASSAM
P.O. AND P.S.-JORHAT
PIN-785001

7:THE EXECUTIVE ENGINEER (AGRICULTURE)
JORHAT DIVISION
P.O. AND P.S.-JORHAT
ASSAM
PIN-78501

Advocate for the Petitioner : S I AKAND

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

19.07.2024

Heard Shri SI Akand, learned counsel for the petitioner. Also heard Ms. M. Bhattacharjee, learned Additional Senior Government Advocate, Assam for the State respondents whereas Ms. G. Bora, learned Standing Counsel appears for the Agriculture Department.

2. The matter pertains to a claim for appointment on compassionate ground.
3. The facts projected is that the husband of the petitioner Upen Paswan was working as an Assistant Tractor Operator in the Agriculture Department, who had passed away on 05.07.2000. The petitioner claims to have applied for appointment on compassionate ground on 05.01.2001 followed by another application in the year 2016. The petitioner could know that her name was enlisted in a list prepared by the Executive Engineer. The learned counsel has

accordingly submitted that appropriate directions be issued for consideration of the case of the petitioner on compassionate ground. Shri Akand, learned counsel for the petitioner has however informed this Court that the petitioner is temporarily working as a Cleaner which however is not sufficient for her living.

4. Ms. Bhattacharjee, learned State Counsel has however submitted that the instant petition does not warrant any merit as the very essence of compassionate appointment is not there. It is submitted that the petitioner has approached this Court after about 23 years from the date of death and making a direction for consideration of such appointment after more than two decades would not be in consonance with the scheme of the compassionate appointment. The learned State Counsel has submitted that law is settled by a catena of decisions of the Hon'ble Supreme Court and in this context, she has placed reliance upon the case of the ***State of West Bengal Vs Debabrata Tiwari & Ors.*** reported in ***AIR 2023 SC 1467.***

5. In the instant case, it is not in dispute that the death of the government employee was in the year 2000 and in the meantime, more than two decades have passed. There is no acceptable or cogent reasons explaining the delay and the mere submission of representation would not extend the time. As on today, more than 20 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.”

6. 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 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."*

7. The principles have well settled that an appointment on compassionate ground is a departure from the normal rule and is an exception which is meant only to enable the bereaved family to tide over the sudden financial crisis on the death of a government servant while in service. It has also been clarified that it

is not a vested right and the aspect of delay would be of paramount consideration.

8. 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 relief can be granted to the petitioner and accordingly, the writ petition is dismissed.

JUDGE

Comparing Assistant