

GAHC010056632024



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

Case No. : WP(C)/1577/2024

JIAUL HAQUE CHOUDHURY
S/O- LT. ALIMUDDIN AHMED, VILLAGE- HELACHA, P.O. HELACHA, P.S.
HAJO, DIST.- KAMRUP, ASSAM, PIN- 781382

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, LAND AND REVENUE DEPARTMENT, DISPUR, GUWAHATI-06

2:THE STATE LEVEL COMMITTEE
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM-
CUM- CHAIRMAN OF STATE LEVEL COMMITTEE (SLC) FOR
APPOINTMENT ON COMPASSIONATE GROUND
DISPUR
GUWAHATI-06

3:THE DEPUTY COMMISSIONER-CUM-CHAIRMAN
OF DISTRICT LEVEL COMMITTEE (DLC)
KAMRUP
AMINGAON
DISTRICT- KAMRUP
ASSAM
PIN- 781032

4:THE CIRCLE OFFICER
HAJO REVENUE CIRCLE
HAJO
P.O. HAJO
DISTRICT- KAMRUP
ASSAM
PIN NO- 78110

Advocate for the Petitioner : MR. M R KHANDAKAR

Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioner : Shri MR Khandakar, Advocate.

For the Respondents : Shri R Dhar, State Counsel, Assam.

Date of Hearing : 19.07.2024.

Date of Judgment : 19.07.2024.

JUDGMENT & ORDER

Heard Shri MR Khandakar, learned counsel for the petitioner. Also heard Shri R Dhar, learned State Counsel, Assam.

2. The matter pertains to a claim for compassionate ground.

3. The facts projected are that the father of the petitioner, Alim Uddin Ahmed, who was working as a Lot Mandal in the Hajo Revenue Circle, had died-in-harness on 01.01.2012. The petitioner had accordingly applied for appointment on compassionate ground on 03.03.2012. As no action was forthcoming, the petitioner had filed WP(C)/4364/2013 which was disposed of by this Court vide an order dated 10.09.2013 with a direction to consider the case of the petitioner in terms of the law laid down in the field of compassionate appointment. The DLC, Kamrup had

accordingly considered the case of the petitioner in its meeting held on 30.01.2014 and the case of the petitioner was rejected. It was held that there were no posts available under Grade-III and Grade-IV and so far as the post of Lat Mondal is concerned, the petitioner was lacking the minimum qualification.

4. Shri Khandakr, learned counsel has submitted that the petitioner was not aware of the said minutes of meeting dated 30.01.2014 and had accordingly filed the second writ petition, being WP(C)/852/2023 and it is during the pendency of the said writ petition that the impugned minutes were handed over. The said writ petition was accordingly disposed of with a liberty to challenge the aforesaid minutes.

5. The learned counsel has submitted that the consideration, as would appear from the impugned minutes of meeting dated 30.01.2014, is erroneous. By referring to the reply received by the petitioner under the Right to Information Act, it is submitted that for the year 2014, under Grade-III, there were 15 numbers of vacancies and for Grade-IV, there were 12 numbers of vacancies. Shri Khandakar, learned counsel, therefore, submits that the rejection was not as per law and therefore, the matter is required to be reconsidered.

6. On the ground of delay, the learned counsel has relied upon an order dated 29.01.2018 passed by this Court in **WP(C)/364/2018 (*Safiqul Islam Vs. The State of Assam & Anr.*)** whereby a direction for consideration was made even after 10 years of the date of death.

7. *Per contra*, Shri Dhar, learned State Counsel, Assam has submitted, at the outset that consideration for appointment after more than 12 years from the date of death would not be in consonance with the scheme of compassionate appointment. He submits that the very essence of the scheme is to enable the bereaved family to

overcome the immediate crisis and such immediate crisis would not be there after more than 12 years.

8. Coming to the aspect of the minutes of meeting dated 30.01.2014, the learned State Counsel has defended the decision by stating that the meeting was held pursuant to the direction of this Court on 10.09.2013 and therefore, it is not acceptable that the petitioner was not aware of the outcome. The learned State Counsel has also criticized the aspect that the second writ petition was instituted after about 10 years from the first writ petition.

9. Referring to the minutes of meeting dated 30.01.2014, Shri Dhar, learned State Counsel has submitted that there is no error in the said minutes. Firstly, he has contended that the reply obtained under the RTI would show that for the year 2012 when the father of the petitioner had passed away, there were actually no vacancies in Grade-III and Grade-IV. Nevertheless, the consideration was made for the year 2014 wherein the RTI reply shows availability of vacancies. It is, however, submitted that the availability of vacancies has to be examined from the point of view of the percentage of quota earmarked for appointment under compassionate ground which is 5% and the vacancies shown to be existing in the year 2014 will not make any vacancies available under the 5% quota and under that context in the minutes of meeting dated 30.01.2014, the observations were made that vacancies were not there. As regards the case law cited by the petitioner in the case of ***Safiqul Islam*** (*supra*), the learned State Counsel has submitted that the Hon'ble Supreme Court in the recent case of ***State of West Bengal Vs. Debabrata Tiwari & Ors.***, reported in **AIR 2023 SC 1467** has made the position absolutely clear.

10. The rival contentions have been duly considered. The law relating to compassionate appointment is well settled. Such appointment is an exception to

general mode/method of recruitment wherein an exception is carved out to give immediate succour to a bereaved family which has lost the sole breadwinner who was a government servant. The essence of such appointment is of immediate nature and the said essence would be lost by efflux of time.

11. In the instant case, it is not in dispute that the death of the government employee was in the year 2012 and in the meantime, a decade has passed. There is no acceptable or cogent reasons explaining the delay for the period from 2014 when the case of the petitioner was rejected by the DLC, Kamrup vide minutes of the meeting dated 30.01.2014. As on today, more than 10 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