

GAHC010024472023



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

Case No. : WP(C)/643/2023

PANKAJ BHUYAN
S/O- LT. TOPEDHAR BHUYAN,
VILL.- KUTUWAGURI GAON,
P.O.- TELAHI,
DIST.- LAKHIMPUR,
ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVT. OF ASSAM,
DEPARTMENT OF HOME AND POLITICAL,
GUWAHATI-06.

2:THE DIRECTOR GENERAL OF POLICE
ASSAM
ASSAM POLICE HEADQUARTER

ULUBARI
GUWAHATI- 781007.

3:THE DY. COMMISSIONER
LAKHIMPUR CUM CHAIRMAN DISTRICT LEVEL COMMITTEE FOR
COMPASSIONATE APPOINTMENT
DIST.- LAKHIMPUR
ASSAM.

4:THE SUPERINTENDENT OF POLICE
LAKHIMPUR
DIST.- LAKHIMPUR
ASSAM

Advocate for the Petitioner : MR M J QUADIR

Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri MJ Quadir, Adv.

Advocate for the respondent : Shri JK Goswami, Add.Sr.GA-Assam

Dates of hearing : **03.04.2024 and 04.04.2024**

Date of Judgment : **10.04.2024**

JUDGMENT & ORDER

The instant petition under Article 226 of the Constitution of India has been filed challenging, *inter alia* the rejection of the candidature of the petitioner for appointment on compassionate ground which has been done by the District Level Committee, Lakhimpur (hereinafter DLC) in its meeting dated 13.12.2022.

2. The projected case of the petitioner, in a nutshell is that his father, Topedhar Bhuyan who was working as a Constable in Assam Police had died in harness on 01.07.2007. He left behind his wife and three minor children including the petitioner. The petitioner was stated to be a minor at the time of the death of his father. The petitioner being the eldest son of his family had submitted an application in the year 2007. As his case was not considered, he had approached this Court by filing WP(C)/6038/2011 which was disposed of by this Court vide an order dated 09.01.2012 with a

direction for consideration of the case of the petitioner.

3. It is the case of the petitioner that in spite of such direction, no action was taken and therefore, the petitioner had filed a second writ petition being WP(C)/4287/2021. In the said writ petition, while notice was issued vide order dated 03.09.2021, it was observed that pendency would not be a bar for consideration of the case of the petitioner.

4. Consequently, the matter was taken up by the DLC in its meeting dated 08.11.2021. Against Sl. No. 4, though the name of the petitioner was forwarded to the SLC, an observation was made that the petitioner was a minor at that time. The SLC vide minutes of meeting dated 10.02.2022 had however rejected the case of the petitioner on account of late submission of the application.

5. The petitioner thereafter had filed another writ petition in this Court being WP(C)/6352/2022 which was disposed of vide order dated 26.09.2022 whereby the minutes of the DLC dated 18.11.2021 was set aside and the matter was remanded to the DLC for a fresh consideration.

6. The DLC, accordingly in its meeting dated 13.12.2022 considered the case of the petitioner. Upon such consideration, the candidature of the petitioner was rejected on the ground that the petitioner was minor at the time of the death of his father, who was the concerned Government servant. It is this rejection which is the subject matter of challenge in this petition.

7. I have heard Shri M. J. Quadir, learned counsel for the petitioner. I have also heard Shri J.K. Goswami, learned Additional Senior Government Advocate, Assam.

8. The learned counsel for the petitioner has submitted that there was no negligence on his part in applying for appointment on compassionate ground. It is submitted that a proper consideration would only be made after the petitioner had attained majority and could be offered of appointment in a Government job.

9. The learned counsel for the petitioner has relied upon an order of this Court dated 18.11.2022 passed in ***WP(C)/3290/2020 [Rajesh Nath Vs. State of Assam]***. In the said case, a direction has been made for consideration for appointment on compassionate ground wherein the petition of the candidate was rejected on the ground of late submission as the said candidate was a minor at the time of the death of the Government servant. Reliance have also been placed in an order dated 13.12.2022 of this Court passed in ***WP(C)/6271/2022 [Paban Chetry Vs. State of Assam]*** in which a direction for consideration has been made for appointment on compassionate ground. In the said case of ***Paban Chetry*** (supra), this Court has referred to the judgment of the Hon'ble Supreme Court in ***Syed Khadim Hussain Vs. State of Bihar*** reported in ***(2016) 9 SCC 195***.

10. *Per contra*, Shri Goswami, learned State Counsel has submitted that the objective of the scheme for appointment on compassionate ground is to give immediate relief to a bereaved family which has lost its sole bread winner, who was a Government servant. It is submitted in the instant case that the death was on 01.07.2007 and in the meantime, almost 17 years have passed and therefore, there is no requirement in law for such consideration.

11. The rival contentions of the learned counsel for the parties have

been duly considered.

12. The facts on record make it clear that the death of the father of the petitioner was on 01.07.2007 and the initial application was claimed to be made by the petitioner on 06.08.2007 when admittedly the petitioner was a minor. The first writ petition was filed in the year 2012 when there was a direction for consideration. Subsequently, after about 9 years, the second writ petition was filed by the petitioner in which there was an observation made by this Court in its order dated 03.09.2021 that pendency of the case would not be a bar for consideration of the case of the petitioner. Under those circumstances, the DLC in its meeting dated 08.11.2021, though had forwarded the name of the petitioner, an observation was made that the petitioner was a minor at the time of the death of the Government servant.

13. The rejection by the SLC on 10.02.2022 is on the ground of late submission which in the opinion of this Court does not appear to be in consonance with the facts and circumstances. Be that as it may, in the subsequent writ petition filed namely, WP(C)/6352/2022, this Court vide order dated 26.09.2022 had however interfered only with the decision of the DLC and not the SLC and the matter was accordingly remanded to the DLC for a fresh consideration. The DLC accordingly, vide the impugned order dated 13.12.2022 rejected the candidature of the petitioner on the ground that at the time of death of his father, he was a minor.

14. The law is well settled on the field of appointment on compassionate ground. It has been laid down that in a case where an applicant was a minor at the time of death of the Government servant, there is no requirement in law to wait for such consideration till such applicant attains majority. Further, in the instant case, the first approach of the petitioner to

the Court was after five years from the date of death and the second approach is after a period of about 14 years.

15. The very objective of appointment of compassionate ground, which is an exception to the general mode of recruitment is to give immediate succor to a family which has lost its sole breadwinner who was a Government servant and such objective would not survive after a gap of 17 years.

16. The Hon'ble supreme Court in the case of ***Sanjay Kumar Vs State of Bihar*** reported in ***(2000) 7 SCC 192*** has laid down as follows:-

“3. We are unable to agree with the submissions of the learned Senior Counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the breadearner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education v. Pushpendra Kumar. It is also significant to notice that on the date when the first application was made by the petitioner on 2-6-1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there are some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief.”

17. Though reliance has been placed by the learned counsel for the

petitioner on certain decisions of this Court which were based on the case of the Hon'ble Supreme Court in ***Syed Khadim Hussain Vs State of Bihar*** reported in ***(2006) 9 SCC 195***, such reliance would be of no aid as the facts of the case before the Hon'ble Supreme Court was different and there was a requirement of filing application within five years from the death.

18. The law on compassionate appointment has been elaborately explained by Hon'ble Supreme Court in the recent case of ***State of West Bengal Vs Debabrata Tiwari*** reported in ***(2023) SCC Online SC 219***. In the said case, almost all the earlier cases on the subject of compassionate appointment have been discussed and the principles have been laid down. It has been reiterated 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 tie 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. The relevant portion of the said judgment is extracted hereinbelow-

“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."

19. On the aspect of delay, the Hon'ble Supreme Court in the aforesaid case of **Debabrata Tiwari** (supra), 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.”

20. An appointment on compassionate ground is a departure from the normal mode of recruitment wherein a certain quota (5%) is reserved and

the objective is to enable a bereaved family losing their sole breadwinner who was a government servant to overcome the immediate financial crisis. It has been laid down that such appointment cannot be held to be a matter of any vested right and it is not a source of recruitment.

21. In the instant case, the issue raised regarding the delay is required to be considered *vis-à-vis* the observation made by the Hon'ble Supreme Court in paragraph 7.5 of the case of **Debabrata Tiwari** (supra). It has been clearly laid down that in case of prolonged delay either on the part of the applicant or the authorities, the sense of immediacy is diluted and lost. In view of such law laid down by the Hon'ble Supreme Court, this Court has no other option but to hold that any further direction for consideration of the case of the petitioner on compassionate ground after a period of about 17 years from the death of a Government servant would not be in sync with the objective of the scheme for compassionate appointment.

22. Accordingly, this Court is not in a position to grant any relief to the petitioner.

23. The writ petition accordingly stands dismissed.

JUDGE

Comparing Assistant