



GAHC010244102017

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

Case No. : WP(C)/7290/2017

SABBIR AHMED
S/O- LATE ALTAF HUSSIAN, R/O- DALGAON, ALIPUR ROAD, DALGAON,
DIST- DARRANG, ASSAM, PIN- 784116

VERSUS

THE STATE OF ASSAM and 2 ORS.
REP. BY COMMISSIONER SECRETARY GOVT OF ASSAM, GENERAL
ADMINISTRATION B DEPARTMENT, DISPUR, GHY- 06

2:DIVISIONAL COMMISSIONER
NORTH ASSAM DIVISION
TEZPUR
ASSAM
PIN- 784001

3:THE DEPUTY COMMISSIONER
DARRANG AT MANGALDAI
PIN- 78412

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner : Shri P. Bhardwaj, Advocate.

Advocates for the respondents : Shri. R. Dhar, GA.

Date of hearing : **22.04.2024**

Date of Judgment : **22.04.2024**



JUDGMENT & ORDER

Heard Shri P. Bhardwaj, learned counsel for the petitioner. Also heard Shri R. Dhar, the learned State Counsel for the respondents.

2. The claim is towards an appointment on compassionate ground.
3. The facts projected in the petition is that the father of the petitioner, Altaf Hussain, who was working as a Junior Assistant in the amalgamated establishment of the Office of the Deputy Commissioner, Darrang had died-in-harness on 19.11.2010. The petitioner, who claims to be qualified and according applied for appointment on compassionate ground on 07.01.2011. However, the District Level Committee in its meeting held on 01.10.2016 had rejected the case of the petitioner basically on two grounds. Firstly, it has been reflected that there were no vacancies and secondly, due to an order passed by this Court.
4. Shri Bhardwaj, the learned counsel for the petitioner has submitted that the grounds of rejection though may be relevant at that point of time is no longer existing. In this regard, by drawing the attention of this Court to the annexures in the additional affidavit filed on 27.09.2023, the learned counsel has submitted that the interim stay order pursuant to which the selection was kept on abeyance was vacated by this Court on 06.04.2018 passed in the concerned WP(C) No. 7318/2013 by which the writ petition itself was dismissed.
5. The learned counsel has also referred to an advertisement dated 09.10.2017 whereby applications were invited for appointment to the post of Junior Assistant in the said establishment. The learned counsel accordingly submits that when vacancies were available and there was no impediment in the

form of any stay order, a direction may be issued for consideration of the case of the petitioner.

6. Shri Dhar, the learned State Counsel has however opposed the writ petition. At the outset, the learned State Counsel has submitted that the death was in the year 2010 and after an efflux of about 14 years, any direction for consideration would not be in consonance with the scheme for compassionate appointment.

7. On the facts of the case, the learned counsel has submitted that though the impediment in the form of stay order was removed vide order dated 06.04.2018, the advertisement which has been issued on 09.10.2017 would show that 12 numbers of posts were advertised. It is submitted that since the reservation is 5%, no posts otherwise also can be given to any persons under the aforesaid category.

8. The learned State Counsel has also placed reliance on the recent judgment of the Hon'ble Supreme Court in the case of ***State of West Bengal Vs Debabrata Tiwari*** reported in ***(2023) SCC Online SC 219***.

9. 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.

10. In the instant case, the death of the father of the petitioner was in the

year 2010 and the writ petition itself has been filed after 7 years. There is no acceptable or cogent reasons explaining the delay and the mere submission of representation would not extend the time. As on today, about 14 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.”

11. 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."

12. 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

Comparing Assistant