



GAHC010111502020

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

Case No. : WP(C)/3290/2020

RAJESH NATH
S/O. LT. RABINDRA CHANDRA NATH, R/O. SRIKONA T.V. TOWER ROAD,
P.O. SRIKONA, DIST. CACHAR, ASSAM.

VERSUS

THE STATE OF ASSAM AND 8 ORS
THROUGH THE SECRETARY, TO THE GOVT. OF ASSAM, HOME AND
POLITICAL DEPTT., DISPUR, GUWAHATI-781006.

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

3:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI-781007.

4:THE DISTRICT LEVEL COMMITTEE FOR COMPASSIONATE
APOOINTMENT
REP. BY ITS CHAIRMAN
THE DY. COMMISSIONER
CACHAR
SILCHAR
DIST. CACHAR
ASSAM.

5:THE ADDL. DIRECTOR GENERAL OF POLICE
(ADMN.)
ASSAM



ULUBARI
GUWAHATI-781007.

6:THE ASSTT. INSPECTOR GENERAL OF POLICE (W AND S)
ASSAM
ULUBARI
GUWAHATI-07.

7:THE DY. INSPECTOR GENERAL OF POLICE
(SR)
ASSAM
SILCHAR
DIST. CACHAR
ASSAM.

8:THE SUPDT. OF POLICE
CACHAR
SILCHAR
DIST. CACHAR
ASSAM.

9:THE RESERVE OFFICER
OFFICE OF THE SUPDT. OF POLICE
CACHAR
SILCHAR
DIST. CACHAR
ASSAM

Advocate for the Petitioner : MR. S C BISWAS
Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 18-11-2022

JUDGMENT & ORDER (ORAL)

Heard Mr. MJ Quadir, learned counsel for the petitioner and Mr. SS Roy, learned Junior Government Advocate for the respondents.

2. The father of the petitioner Rabindra Chandra Nath, who was working as Armed Branch (AB) Constable under the Superintendent of Police, Cachar, died



in harness on 27.7.2009 in a motor-cycle accident while he was on official duty. At the time of his death, the petitioner was aged about 16 years and upon attaining majority, he submitted an application for compassionate appointment on 28.10.2011. The said application was given its consideration by the DLC of Cachar district in its meeting of 31.07.2012, but rejected by providing the reason of late submission of the application. Being aggrieved, this writ petition is instituted.

3. The respondents seek to justify the rejection by the DLC by taking a stand that under the prevailing law, an application for compassionate appointment is required to be made within a period of one year from the date of the death. But in the case of the petitioner, the death had occurred on 27.07.2009 and the application was made on 28.10.2011 i.e. a little over two years.

4. Technically and fundamentally we are in acceptance with the stand taken by the respondents that as because the application was made beyond the prescribed time of one year, it may not be duly entertained.

5. But Mr. MJ Quadir, learned counsel for the petitioner on the other hand points out that at the relevant time when the father of the petitioner died, he was 16 years some months, meaning thereby that he was a minor and immediately upon attaining majority the application for compassionate appointment was made on 28.10.2011.

6. On the entitlement of a minor upon attaining majority to make an application for compassionate appointment, Mr. MJ Quadir, learned counsel for the petitioner relies on a pronouncement of the Hon'ble Supreme Court rendered in Syed Khadim Hussain vs State of Bihar, reported in (2006) 9 SCC 195, wherein in paragraphs 6 and 7, it is provided as extracted:-

“6. In the instant case, the widow had applied for appointment within the prescribed period and without assigning any reasons the same was rejected. When the appellant submitted the application he was 13 years’ old and the application was rejected after a period of six years and that too without giving any reason and the reason given by the authorities was incorrect as at the time of rejection of the application he must have crossed 18 years and he could have been very well considered for appointment. Of course, in the rules framed by the State there is no specific provision as to what should be done in case the dependents are minors and there would be any relaxation of age in case they did not attain majority within the prescribed period for submitting application.

7. As the widow had submitted the application in time the authorities should have considered her application. As eleven years have passed she would not be in a position to join the Government service. In our opinion, this is a fit case where the appellant should have been considered in her place for appointment. Counsel for the State could not point out any other circumstance for which the appellant would be dis-entitled to be considered for appointment. In the peculiar facts and circumstances of this case, we direct the respondent authorities to consider the application of the appellant and give him appropriate appointment within a reasonable time at least within a period of three months.”

7. In the matter before the Hon’ble Supreme Court in Syed Khadim Hussain (supra), the widow of the deceased therein submitted an application for compassionate appointment within the prescribed time. But without assigning any reason thereof, it was rejected. Thereafter the applicant submitted an application when he was 13 years old and the said application was rejected after a period of six years and that the reason given by the authorities was also incorrect inasmuch as, when the rejection order was passed, the applicant was over 18 years old. In the aforesaid circumstance, the Hon’ble Supreme Court took the view that the applicant therein ought to have been considered for a compassionate appointment as per the law inasmuch as, in the mean time the widow of the deceased also became ineligible.

8. Mr. SS Roy learned junior Government Advocate for the respondents points out that in the instant case, there was no such application made by the widow of the deceased which was incorrectly rejected, nor was any application made by the petitioner as a minor immediately within the prescribed time which

required a consideration after he attained majority, and as such, the proposition laid down in Syed Khadim Hussain (supra), would be in applicable.

9. We are not expressing any view on the said submission of Mr. SS Roy learned junior Government Advocate for the respondents inasmuch as, the facts in the present case as indicated may be different.

10. Mr. MJ Quadir, learned counsel for the petitioner refers to another pronouncement of this Court rendered in Safiqul Islam vs State of Assam, reported in (2018) 3 GLR 627, wherein the proposition laid down in Syed Khadim Hussain (supra) was followed and an appropriate order for consideration of the application for compassionate appointment was made. But we have noticed that the factual aspect involved in this writ petition is a little different from that in Safiqul Islam (supra).

11. Mr. SS Roy, learned junior Government Advocate for the respondents refers to a judgement of the Hon'ble Supreme Court rendered in State of Manipur vs MD. Rajaodin, reported in (2003) 7 SCC 511 to substantiate the contention that an application submitted by a minor for compassionate appointment upon attaining majority is untenable. Accordingly, reference is made to paragraphs 6, 7 and 9 of the judgement of the Hon'ble Supreme Court in MD. Rajaodin (supra), which are extracted as below:-

“6. In support of the appeal, learned counsel for the appellant State submitted that the respondent's father died on 19-7-1980. The respondent applied for a post on 25-7-1997. The Scheme itself provides the time period within which an application has to be filed. The letter dated 15-12-1999 does not confer any right on the respondent as the Scheme itself provided that the appointment will be made by the appointing authority concerned after clearance from the Government of Manipur, Department of Personnel and Administrative Reforms (Personnel Division). Admittedly, when no approval has been given by the Department concerned, the mere issuance of a letter does not confer any right, particularly when the stipulation is contained in the Scheme itself, and there was a ban operating in respect of appointments.

7. In response, the learned counsel for the respondent submitted that within the time period stipulated, an application was filed in the year 1981, but there was no response. Finding no other alternative the respondent who was a minor at the time of his father's death applied afresh and the State cannot take plea that the benefit cannot be extended.

9. Admittedly, the respondent's father died before the office memorandum came into operation. In the memorandum a time period is stipulated. Since the Scheme itself was not in operation when the respondent's father died, the time stipulation as provided in the Scheme would not be strictly applicable to the case of the respondent and anyone seeking for relief thereunder has to at least move within the time stipulated commencing from the date of the order. Nevertheless, keeping in view at any rate the object for which such appointments which are also compassionate appointments are made, the minimum requirement is that the request for appointment should be made as expeditiously as the circumstances warrant. It could not be brought to our notice whether there was any scheme in operation prior to the Scheme of 1984 referred to above. As the appointments of such nature envisaged under the said Scheme are made to tide over immediate difficulties, there is an inbuilt requirement of urgency in making the application. Though it was contended that the respondent was a minor at the time of his father's death, it is to be noted that he was 10 years of age in 1980 when his father died. Even if a reasonable period after he attained majority is taken, certainly the application on 25-7-1997 seeking appointment was highly belated."

12. The factual circumstance in MD. Rajaodin (supra) was that the deceased died on 19.07.1980 and the application for compassionate appointment was made on 25.07.1997 and the plea taken was that at the relevant point of time when the deceased died, the applicant was a minor. In the aforesaid circumstance, where an application for compassionate appointment was made by a minor upon attaining majority after about 17 years of the date of death of the deceased, the Hon'ble Supreme Court was of the view that the minimum requirement for compassionate appointment is that the request for appointment should be made as expeditiously as possible and as the circumstance warrant. The aforesaid provision of the Hon'ble Supreme Court in MD. Rajaodin (supra), refers to two aspects i.e. firstly, the request for appointment should be made as expeditiously as possible and secondly it should be as the circumstance warrant,

meaning thereby that both the elements of expeditiousness as well as circumstance which may warrant are relevant considerations. To understand the proposition, we have to take note that it was laid down in a circumstance where the application for compassionate appointment was made by a minor upon attaining majority after 17 years of the date of death of the deceased and therefore the expression 'as expeditiously as possible' would have its relevance to the fact that it was made after 17 years.

13. But in the instant case, the father of the petitioner died on 27.07.2009 at which point of time, the petitioner was 16 years few months and therefore was short of being a major by about one year and few months. Further, immediately upon attaining majority, the petitioner had submitted the application for compassionate appointment on 28.10.2011. The factual narration in the instant case also satisfies the requirement that the application of the petitioner was made as expeditiously as possible as the circumstance warranted and in the given circumstance, no further delay is noticed in making the application although technically speaking, it may not have been made within the period of one year as prescribed for such application.

14. The other circumstance in MD. Rajaodin (supra) was that when the death of the person concerned took place on 19.07.1980, there was no scheme for compassionate appointment that was in place and the scheme was brought forth only sometime in the year 1984. In other words, no legal right was in favour of any person to make an application for compassionate appointment when the death had actually occurred.

15. This principle had been further elucidated by the Hon'ble Supreme Court in State of Madhya Pradesh and others –vs Ashish Awasthi, reported in (2022) 2 SCC 157, wherein in paragraph 6, it has been provided that in respect of

compassionate appointment, the scheme prevalent on the date of the death of the deceased employee is the only consideration.

16. In the instant case, when the father of the petitioner died on 27.07.2009, the scheme for compassionate appointment was definitely in place, unlike the factual situation in MD. Rajaodin (supra) before the Hon'ble Supreme Court, where at the time of the death of the deceased, no such compassionate appointment scheme was in place.

17. For the aforesaid reasons, we are interfering with the rejection of the claim of the petitioner for compassionate appointment by the DLC of Cachar district in its meeting dated 31.07.2012 whereby the application of the petitioner stood rejected on the ground of late submission in a circumstance where the death had occurred on 27.07.2009 and the application was made on 28.10.2011, and at the time of death the petitioner was a minor, but immediately upon attaining majority, the application for compassionate appointment was made.

18. Accordingly, the matter is remanded back to be now placed before the next available meeting of DLC of Cachar district for a fresh consideration on the claim of the petitioner for compassionate appointment.

The writ petition is allowed as indicated above.

JUDGE

Comparing Assistant