



GAHC010140592020

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

Case No. : WP(C)/4335/2020

PRITAM RABI DAS

S/O- LT. JUMUNA RABI DAS, R/O- PWD ROAD, WARD NO. 24, P.O. AND P.S.-
SILCHAR, DIST.- CACHAR, ASSAM, PIN- 788001.

VERSUS

THE STATE OF ASSAM AND 5 ORS

REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM, P.W.D.
(BUILDING AND N.H.) DEPTT., DISPUR, GHY- 6.

2:THE CHIEF ENGINEER
P.W.D. (BUILDING) DEPTT.
CHANDMARI
GHY- 3.

3:THE DY. COMMISSIONER-CUM-CHAIRMAN
DISTRICT LEVEL SELECTION COMMITTEE
SILCHAR
DIST.- CACHAR
ASSAM
PIN- 788001.

4:THE EXECUTIVE ENGINEER
PWD
GUWAHATI ELECTRICAL DIVISION
CHANDMARI
GHY- 3.

5:THE ASSTT. EXECUTIVE ENGINEER
PWD SILCHAR ELECTRICAL SUB-DIVISION
DIST.- CACHAR
ASSAM
PIN- 788001.



6:THE CHAIRMAN STATE LEVEL COMMITTEE
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-06

Advocate for the Petitioner : MR. H ALI
Advocate for the Respondent : GA, ASSAM

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner : Shri H. Ali, Advocate.

Advocates for the respondents : Shri. R. Dhar, Addl. Sr. Govt. Advocate.

Date of hearing : **05.04.2024**

Date of Judgment : **05.04.2024**

JUDGMENT & ORDER

The claim for appointment on compassionate ground is the subject matter in this writ petition. It is the case of the petitioner that his father Jumuna Rabi Das, who was working as a Gr-IV employee in the Office of the Assistant Executive Engineer, PWD, Silchar Electrical Sub-Division had died-in-harness on 26.10.2010. The petitioner, who claims to be eligible for consideration for appointment on compassionate ground had accordingly applied for such appointment on 04.01.2011. Consequent upon such application, the District Level Committee, Cachar district (hereinafter DLC) had recommended the case of the petitioner vide minutes of meeting dated 28.05.2013. Thereafter, the petitioner did not hear regarding any further consideration by the State Level Committee (SLC). According to the petitioner, it was only after a query made by



invoking the ***Right to Information Act, 2005*** in the years 2015 and 2020 that the petitioner was informed that the SLC in its meeting held on 20.08.2018 had rejected the case of the petitioner. The grounds of rejection was stated that the ceiling of 5% was already met.

2. I have heard Shri H. Ali, learned counsel for the petitioner whereas the State respondents are represented by Shri R. Dhar, the learned Addl. Senior Govt. Advocate, Assam.

3. The materials placed before this Court have been duly considered.

4. Shri Ali, the learned counsel has submitted that there was no delay or lapse on the part of the petitioner in offering his candidature for appointment on compassionate ground on the death of his father while working as a Gr-IV staff in the concerned office. The fact that the DLC had recommended the case of the petitioner on 28.05.2013 fortifies the claim of the petitioner towards such appointment. The learned counsel has also criticized the action of the State authorities in not maintaining transparency on the ground that the recommendation of the DLC was not acted upon in time as required under the law and even the consideration done in the meeting dated 20.08.2018 by the SLC was not made known to the petitioner. It is submitted that the impugned decision of the SLC could be known only in the year 2020 after filing of application under the RTI Act and immediately thereafter the writ petition has been filed.

5. Shri Ali, the learned counsel has further submitted that the ground of rejection is cryptic as no details have been given as to how the ceiling of 5% has been said to be over when his case was duly recommended by the DLC. The

learned counsel accordingly submits that appropriate directions be issued for consideration of the case of the petitioner.

6. *Per contra*, Shri R. Dhar, the learned State Counsel has, at the outset submitted that consideration of the case of the petitioner at this stage after a lapse of about 14 years from the date of death of the government servant will not be in consonance with the scheme for appointment on compassionate ground. It is submitted that the objective of the scheme is to enable a bereaved family losing their sole breadwinner to overcome the immediate crisis and would be a succor for such a bereaved family. It is submitted that the aforesaid factor would not be prevalent or existing after a period of 14 years.

7. As regards the delay in consideration by the SLC, the learned State Counsel has submitted that the ceiling fixed for appointment on compassionate ground as per the scheme is 5% and only when such consideration can be made depending on the vacancy, the same is made and therefore no fault can be attributed on the State Authorities. The State Counsel has also submitted that there was no effort from the petitioner to know the outcome of such consideration from 2013 when his case was recommended by the DLC and only the year 2020, the instant writ petition has been filed.

8. Shri Dhar, the learned Addl. Sr. Govt. Advocate has submitted that law is settled by a catena of decisions of the Hon'ble Supreme Court and in this context, he has placed reliance upon the case of the ***State of West Bengal Vs Debabrata Tiwari & Ors.*** reported in ***AIR 2023 SC 1467***. It is submitted that in this case which has been decided on 03.03.2023, almost all the earlier cases on the subject of compassionate appointment have been discussed and the principles have been laid down. It is submitted that the principles have 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 tied 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.

9. The learned State Counsel accordingly submits that any direction for consideration of the case of the petitioner for appointment on compassionate ground after expiry of around 14 years from the death will not be in consonance with the scheme of compassionate appointment.

10. Rival contentions have been duly considered.

11. The eligibility of the petitioner and his offer of candidature are not disputed in this case and rather this Court has noticed that the DLC in its meeting dated 28.05.2013 had indeed recommended the case of the petitioner. The SLC had considered the case of the petitioner on 20.08.2018. With regard to the aspect of delay in consideration, the explanation of the State Government is that the vacancy position *vis-à-vis* the 5% quota is to be ascertained by the SLC as such exercise is not within the domain of the District Level Committee.

12. The information regarding such rejection has been claimed by the petitioner to have been obtained by an application made under the RTI in the year 2020 and there is no denial to the aforesaid aspect.

13. It transpires that apart from the delay of 5 years by the SLC to consider the case of the petitioner, there is also the aspect of the decision not being conveyed to the petitioner in the year 2018 and therefore filing of this petition in the year 2020 cannot be held in any manner to be an afterthought or delay.



14. Having observed as above, the claim made by the petitioner has nonetheless is required to be considered and examined in the context of the principles laid down by the Hon'ble Supreme Court more specifically in the case of ***Debabrata Tiwari*** (supra). For ready reference, the relevant part of the said judgment is extracted herein below:-

“ 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."*

15. 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.”

16. It is a settled law that 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.

17. In the instant case, while the petitioner's candidature was not found fault with, the observation of the SLC rejecting the case of the petitioner is on the ground that ceiling of 5% is already met. Such ground being matters of facts, this Court may not have the expertise to go into the correctness of such facts, more so when the said fact is not the subject matter of disputes. However, 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 would not be in sync with the objective of the scheme for compassionate appointment.

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

19. Writ petition accordingly stands dismissed.

JUDGE

Comparing Assistant