



GAHC010190472022

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

Case No. : WP(C)/6234/2022

SHEKH AHMED RAJAKUR RAHMAN
S/O- LATE MOTIUR RAHMAN,
R/O- AMGAON,P.O AND P.S- PANIKHAITI, GUWAHATI,
DIST- KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER AND SECRETARY, TO THE GOVERNMENT
OF ASSAM, HOME DEPARTMENT, DISPUR, GUWAHATI-06

2:THE DIRECTOR GENERAL OF CIVIL DEFENCE AND COMMANDANT
GENERAL OF HOME GUARDS
ASSAM
BELTOLA
GUWAHATI-28
DIST-KAMRUP(M)
ASSAM

3:THE COMMANDANT
ASSAM SPECIAL RESERVE FORCE
(ASRF)

BN-II
KARAGAON
P.O- KARAGAON

DIST- KARBI ANGLONG
ASSA

Advocate for the Petitioner : Mr. R. Das

Advocate for the Respondents : Mr. A. Chakrabarty



**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 19-12-2022

Heard Mr. R. Das, the learned counsel appearing on behalf of the petitioner and Mr. A. Chakrabarty, the learned Government Advocate appearing on behalf of the respondent Nos. 1, 2 and 3.

2. The instant application has been filed challenging the inaction of the respondent authorities in not appointing the petitioner in terms with the Scheme/Policy of the Government for appointment on compassionate grounds.

3. From the materials on record, it reveals that the father of the petitioner was working as a Constable 308 in the Office of the Commandant, Assam Special Reserve Force (ASRF), BM-II, Karagaon, Karbi Anglong. He died on 18.01.2013 while he was in service. Thereupon, the petitioner who has qualification upto Class-10 applied for appointment on compassionate grounds for any Grade-IV post in the department vide an application dated 04.03.2013. It further appears from the record that the petitioner waited for all these years and it was only on 02.04.2021 that the petitioner submitted a representation to the Director General of Civil Defence and Commandant for appointment on compassionate grounds. As the said representation having not been considered, the petitioner has approached this Court under Article 226 of the Constitution of India.

4. The law as regards appointment on compassionate ground is well settled.



The Supreme Court in the case of ***Secretary to the Government, Department of Education (Primary) and Others Vs. Bheemesh Alias Bheemappa*** reported in ***(2021) SCC Online SC 1264*** after taking into account various judgments rendered earlier by the Supreme Court observed that if compassionate appointment is one of the conditions of service and is made automatic upon the death of an employee in harness without any kind of scrutiny whatsoever, the same would be treated as a vested right in law. It was further observed that it was not so inasmuch as appointment on compassionate ground is not automatic but subject to strict scrutiny of various parameters including the financial position of the family, the economic dependence of the family upon the deceased employee and the avocation of the other members of the family. It was emphasized in the said judgment that no one can claim to have a vested right for appointment on compassionate grounds. In another judgment, the Supreme Court in the case of ***State of Uttar Pradesh and Others Vs. Premlata*** reported in ***(2022) 1 SCC 30*** had observed that compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependants of the deceased dying in harness and leaving his family in penury and without any means of livelihood, and in such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting the compassionate appointment as observed by the Supreme Court in the said judgment is enable the family to tide over the sudden crisis and the object is not to give such family a post much less a post held by the deceased. In this context, this Court would also referred to another judgment of Supreme

Court in the case of **Umesh Kumar Nagpal Vs. State of Haryana and Others** reported in **(1994) 4 SCC 138** and more particularly to paragraph Nos. 2 and 6 which are being relevant is reproduced hereinbelow:

“2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or

required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.

6. *For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.*

5. The above quoted paragraphs would show that it has been clearly observed by the Supreme Court that compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. It was also reiterated that the object being to enable the family to get over the financial crisis which it faces at the time of death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

6. In the backdrop of the above law, this Court would like to take into consideration the attending facts. From a perusal of the writ petition as well as the enclosures enclosed therewith, it is apparent that the father of the petitioner expired on 18.01.2013 and the petitioner filed the application on 04.03.2013. Thereafter, there is no mention whatsoever as to what happened during the period since 04.03.2013 to 02.04.2021 when the petitioner submitted another



representation that too after a lapse of 8 years. There is also no mention in the writ petition as to how the petitioner has been surviving of these years after the death of the father of the petitioner.

7. At this stage, this Court also finds it necessary to take into account the contention of the learned counsel for the petitioner that a direction may be given for consideration of the representation so submitted by the petitioner on 02.04.2021. The Supreme Court in the case of ***Government of India and Another Vs. P. Venkatesh*** reported in ***(2019) 15 SCC 613*** observed that “dispose of the representation” mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy disposal of the cases in overburdened adjudicatory institutions. But, they do not serve the cause of justice and the litigant is back again before this Court as had happened in the said case.

8. In view of the above as there is no materials placed as to how the petitioner and his family members were able to tide over the crisis after the death of the father of the petitioner and there is already a lapse of 9 years as on the date of consideration of the instant petition, this Court is not inclined to issue notice in the instant writ petition and accordingly, dismisses the instant writ petition for the reasons above mentioned.

JUDGE

Comparing Assistant