



GAHC010136622023

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

Case No. : WP(C)/3627/2023

AKRAM ALI @ AKROM ALI
S/O- LATE KITAB ALI, R/O- VILL.- BORKOLIA NASHKARA, P.O. AIRKATA,
P.S. FAKIRGANJ, DIST.- DHUBRI, ASSAM, PIN- 783330.

VERSUS

THE STATE OF ASSAM AND 4 ORS
THROUGH THE COMMISSIONER AND SECRETARY, GOVT. OF ASSAM,
P.W.D. DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE CHIEF ENGINEER

P.W.D. (ROADS)
ASSAM
CHANDMARI
GUWAHATI-3.

3:THE EXECUTIVE ENGINEER
P.W.D.
DHUBRI RURAL ROADS DIVISION
P.O. AND
P.S. DHUBRI
DIST. DHUBRI
ASSAM
PIN- 783301.

4:THE DEPUTY COMMISSIONER
DHUBRI
P.O.
P.S. AND DIST. DHUBRI
ASSAM
PIN- 783301.



5:THE CHIEF SECRETARY TO THE GOVT. OF ASSAM-CUM- CHAIRMAN
STATE LEVEL COMMITTEE FOR COMPASSIONATE APPOINTMENT
DISPUR
GUWAHATI-6

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocate for the petitioner : Shri S. Alim, Advocate

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

Date of hearing : 05.04.2024

Date of judgment : 05.04.2024

Heard Shri S. Alim, learned counsel for the petitioner. Also heard Shri R. Dhar, learned Addl. Senior Government Advocate, Assam representing the respondents.

2. The claim in this petition is with regard to compassionate appointment. It is the case of the petitioner that his father Kitab Ali was working as a regular Muster Roll Worker in the office of the Executive Engineer, P.W.D. Rural Roads Division, Dhubri, who had died in harness on 24.03.2014. The petitioner claims



that on 20.03.2015, he had made an application for appointment in a Grade-III (Section Assistant) post in the category of compassionate appointment. The petitioner, admittedly has passed the Higher Secondary Examination. The case of the petitioner was recommended by the District Level Committee (DLC). However, the State Level Committee vide the impugned decision dated 11.01.2019 had rejected the case of the petitioner on two grounds namely, firstly that 5 % quota was already filled up and secondly, that the petitioner was under qualified for the post he has applied. Shri Alim, the learned counsel for the petitioner has submitted that though in his application for appointment, he had applied for Grade-III (SA), the appointment on compassionate ground being available for Grade-III as well as Grade-IV, his candidature could have been very well considered for a Grade-IV post, more so, when the entire objective of the scheme is to give a source of income to the bereaved family which has lost the sole earning member, who was a Government Servant. It is also contended that the ground that 5 % quota is already filled up is cryptic as no details have been provided. It is also contended that the DLC while recommending the case of the petitioner had referred about an existing vacancy.

3. *Per contra*, Shri R. Dhar, the learned State Counsel has, at the outset submitted that a direction for consideration of the case of the petitioner at this stage after a lapse of about 10 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 10 years.

4. The learned State Counsel further submits that the SLC had cited cogent reasons while rejecting the case of the petitioner. He submits that while the reason that 5 % vacancies were not available is a factual aspect based on records, it is also not disputed that the petitioner who had passed the Higher Secondary Examination had applied for a Grade-III post which requires a minimum qualification of Graduation.

5. 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 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.

6. Rival contentions have been duly considered.

7. The reasons cited in the impugned decisions of the SLC dated 11.09.2019 are twofold. Firstly, that the petitioner was under qualified for the post applied for and secondly, the 5 % quota for appointment on compassionate ground has



already been filled up.

8. This Court is of the opinion that both the reasons cited are cogent and acceptable. The application of the petitioner for appointment on compassionate ground clearly discloses that a post was chosen by him to be in the Grade-III (SA). The aforesaid post requires a candidate to be a Graduate and therefore, the claim for such consideration cannot arise. Though the post earmarked for appointment on compassionate ground is to be confined to Grade-III and Grade-IV, in view of the specification made by the petitioner himself in the application that he was interested in a Grade-III post, the petitioner cannot claim, as a matter of right that he should also have been considered for appointment in a Grade-IV post. The second ground that the vacancies under 5% quota have already been filled up are factual in nature and this Court cannot embark upon those factual aspects.

9. This Court also finds force in the contention of the learned State Counsel by relying upon the aforesaid case of **Debrata Tiwari** (supra) that any direction for consideration of appointment on compassionate ground after a period of more than 10 years would not be in sync with the objective of the scheme.

10. In the case of **Debabrata Tiwari** (supra), the Hon'ble Supreme Court, after considering the earlier cases on the subject of compassionate appointment has reiterated the principles which are 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."

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 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."

12. 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.

13. In view of the aforesaid discussions, the writ petition stands dismissed.

JUDGE

Comparing Assistant