

Serial No. 42
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 315 of 2022

Date of Decision: 25.04.2023

Shri. Rajiv R. Marak

Vs.

State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. P. T. Sangma, Adv.

For the Respondent(s) : Ms. A. Thungwa, GA
Ms. I. Lyngwa, GA
Ms. R. Colney, GA.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

Oral:

1. The brief facts of the case are that the petitioner before the withdrawal of the compassionate scheme of appointment on February, 2010 on the death of his father, who was serving in the Police

Department, had applied for appointment on compassionate ground. It appears thereafter, the petitioner had appeared before the screening test and also for interview which was conducted on the months of February and May, 2011.

2. Thereafter as nothing transpired, the petitioner had filed a representation on 10.10.2019, for consideration of his case, which however did not evoke any response. Being aggrieved thereby, the writ petitioner, then approached this Court by way of WP(C) No. 69 of 2020, wherein this Court by order dated 20.04.2021, directed the respondents to decide the petitioner's representation dated 10.10.2019, on its own merit and in accordance with law.

3. The respondents in compliance with the order of this Court, then disposed of the representation on 04.02.2022, which however, was inconclusive as the relevant records of the writ petitioner were not available, which were required for consideration of the said employment. The respondent No. 2, while disposing of the representation, then requested the Director General of Police to furnish him with the required comments to enable a final decision in the matter. From the affidavit of the respondents, a certain correspondence dated 7th July, 2022, which appears at Annexure – 4, it is seen that the documents in respect of the writ petitioner, had then been submitted to the

respondent No. 2, for further consideration and for process of the matter, as it deemed fit. However, as no further orders were forthcoming, the writ petitioner had again approached this Court by way of this instant writ petition.

4. Mr. P.T. Sangma, learned counsel for the petitioner submits that firstly, the application for compassionate ground had been made in time and was not delayed in any manner. He further submits that, the petitioner also was found fit for appointment after the screening test, that was held by the respondents for appointment to the post of Constable. He contends that, the inaction of the respondents has caused grievous harm, as in due course, if his case has been considered, he would have since attained employment on compassionate ground.

5. Ms. A. Thungwa, learned GA for the State respondents has firstly, raised the ground that the case of the writ petitioner is hopelessly delayed, inasmuch as, the screening test had taken place, as far back as 2011 and representation which was taken into consideration was filed only in the year 2019. She further submits that the delay in consideration cannot be attributed to the respondents, as the records were not submitted by the writ petitioner for consideration, at that point of time. She lastly submits that, compassionate appointment being a means to alleviate the financial suffering of a family, due to the demise

of the breadwinner, the grant of such employment is to be determined by assessing the financial condition of the family, at that relevant point of time.

6. Learned GA has also placed a decision of the Hon'ble Supreme Court in the case of *State of J&K & Ors. vs. Sajad Ahmed Mir* reported in (2006) 5 SCC 766, where it has been held that, due to the delay and laches, compassionate ground appointment cannot be afforded. She therefore submits that, on account of the delay and laches of the writ petitioner, no case has been made out for consideration and the writ petitioner is liable to be dismissed.

7. I have heard learned counsels for the parties and examined the materials on record. On perusal of the same, it is true that the writ petitioner had made an application for consideration for compassionate appointment, well within time and immediately after the demise of his father. It is also not disputed that, the writ petitioner had appeared for a screening test. However, what transpired after the initial application selection is not known, nor did the petitioner pursue the same till 2019, when the representation was filed, after a good period of 8(eight) years had elapsed, after the said application and screening test.

8. The respondents it is noted, in their reply, and in consideration of the case of the writ petitioner have processed the same, but it

remained inconclusive, apparently due to the fact that the matter was not pursued by the writ petitioner and as such, had been left in cold storage for a considerable period of time. The subsequent activity with regard to the consideration of the case of the petitioner, came only after the order was passed in the earlier writ petition, when directions were issued for disposal of the representation.

9. This Court while considering the case of the petitioner cannot lose sight of the fact that, an appointment on compassionate ground is an exception to the general of appointment and can be made only in consideration of a certain parameters such as financial situation and suitability of the candidate. In the instant case, though the petitioner had applied within time, the very fact that he did not pursue his case before the respondents shows that he may be, was not under financial difficulty. The aspect of the delay therefore also cannot be overlooked. The respondents as noted earlier though having initiated the exercise for consideration of appointment, however, did not conclude the same in time to enable them to pass any effective orders.

10. In this backdrop taking into account, the principles and policy of compassionate appointment, and the rights of the petitioner which have been alleged to have been violated, this Court in consideration of the facts and circumstances and as it is evinced from the records that,

the respondents are still considering the case of the petitioner, directs as follows:-

The said consideration for compassionate appointment shall keep in mind the requirements of such an appointment, being an appointment which is an exception to the rule, by taking into account.

- (i) delay of the petitioner in pursuing his case.
- (ii) his fitness.
- (iii) present financial condition.
- (iv) suitability and other eligibility factors.

11. With the above noted directions, this writ petition stands closed and disposed of. It is expected that the entire exercise shall be completed preferably within a period of 6(six) months from the date of this order is presented before the respondents.

Judge

Meghalaya
25.04.2023
"D.Thabah-PS"