

GAHC010008832011



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

Case No. : WP(C)/5393/2011

DIPAK SARMAH
S/O- LT. LILADHAR SARMAH, R/O VILL.- MELAMORA GAON, P.O.-
MELAMORA, P.S.- KAMARGAON, DIST.- GOLAGHAT, ASSAM.

VERSUS

THE STATE OF ASSAM AND ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
DEPTT. OF PANCHAYAT AND RURAL DEVELOPMENT, DISPUR, GHY- 6.

2:THE CHIEF SECRETARY
STATE OF ASSAM
-

3:THE DY. SECRETARY GOVT. OF ASSAM
PANCHAYAT and RURAL DEVELOPMENT DEPTT.
ASSAM
PIN- 781006.

4:THE DIRECTOR OF PANCHAYAT AND RURAL DEVELOPMENT
ASSAM
GHY- 6.

5:THE DY. DIRECTOR OF PANCHAYAT AND RURAL DEVELOPMENT
ASSAM
GHY- 6.

6:THE DY. COMMISSIONER
GOLAGHAT
DIST.- GOLAGHAT
ASSAM
PIN- 786421.

7:THE SUB-DIVISIONAL PLANNING OFFICER
GOLAGHAT
PIN- 786421

For the Petitioner : Mr. A.K. Purkayastha, Advocate.

For the Respondents : Mr. S.Baruah, GA, Assam.

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
ORDER

25.07.2023

The instant writ petition has been filed seeking a direction upon the Respondent Authorities to appoint the Petitioner on compassionate ground to a post in Grade-IV.

2. It appears from the records that the father of the Petitioner who was working as a Grade-IV employee in the office of the Panchayat & Rural Development Department, Golaghat died in harness on 11.06.2003. The Petitioner submitted his application for appointment on compassionate ground on 15.09.2008.

3. An affidavit-in-opposition has been filed by the Respondent No. 1 wherein the Office Memorandum dated 2nd of March, 2009 has been enclosed. In the said Office Memorandum, it has been mentioned that applications for appointment under the scheme in the prescribed format should be submitted within a period of three months from the date of death of the person. On the ground that the Petitioner had submitted an application after 5 years, the Petitioner's application was rejected.

4. This Court finds it relevant at this stage to refer to a judgment of the Supreme Court in the case of ***State of West Bengal Vs. Debabrata Tiwari and Ors.*** reported in ***2023 SCC Online SC 219***, wherein at paragraph No. 32, the Supreme Court after making a copious detail of various judgments observed the various principles which emerges therefore for compassionate appointment. In paragraph No. 35 of the said judgment, the Supreme Court further observed that when applications for compassionate appointment could not be considered after a delay of several years, either on account of the fault of the applicant in claiming compassionate appointment or on account of the fault of the authorities in deciding the said claim, the sense of immediacy is diluted and lost. It was further observed that the financial circumstances of the family of the deceased may have changed, for the better since the time of the death of a 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 sources. It was further observed that granting of compassionate appointment in such a case would be 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. Paragraph Nos. 32 to 35 of the said judgment being relevant are quoted herein under :

“32. 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.*

33. *The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis due to the death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be in a position to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Having regard to such an object, it would be of no avail to grant compassionate appointment to the dependants of the deceased employee, **after** the crisis which arose on account of death of a bread-winner, has been overcome. Thus, there is also a compelling need to act with a sense of immediacy in matters concerning compassionate appointment because on failure to do so, the object of the scheme of compassionate would be frustrated. Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and thus lose its significance and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out for consideration.*

34. *As noted above, the sine qua non for entertaining a claim for compassionate appointment is that the family of the deceased employee would be unable to make two ends meet without one of the dependants of the deceased employee being employed on compassionate grounds. The financial condition of the family of the deceased, at the time of the death of the deceased, is the primary consideration that ought to guide the authorities' decision in the matter.*

35. *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.”

5. In the instant case, it appears from the record that the Petitioner's father expired on 11.06.2003. Twenty years have passed by when the instant matter is taken up for adjudication, this Court is of the opinion that the petitioner as well as his family for the last 20 years have been able to sustain themselves most probably by availing gainful employment from some other sources inasmuch as there is no indication by filing any additional pleadings or documents that the family of the petitioner is still in a penurious state. Under such circumstances, this Court is of the opinion that the direction so sought for directing the Respondent Authorities to appoint the Petitioner on compassionate grounds does not arise for which the instant petition stands dismissed.

JUDGE

Comparing Assistant