

GAHC010096862022



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

Case No. : Review.Pet./94/2022

BISWAJIT DEURI
S/O LATE JAGAT CH. DEORI, R/O VILL AND PO BAHGORAH, PS BIHPURIA,
DIST. NORTH LAKHIMPUR, ASSAM, PIN-784161

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
DEPTT. OF HEALTH AND FAMILY WELFARE, ASSAM (CIVIL)
SECRETARIAT, DISPUR, GUWAHATI-788006

2:THE CHIEF SECRETARY TO THE GOVT. OF ASSAM CUM CHAIRMAN
STATE LEVEL COMMITTEE FOR COMPASSIONATE APPOINTMENT
ASSAM CIVIL SECRETARIAT
DISPUR
GUWAHATI
ASSAM
PIN-781006

3:THE DIRECTOR OF HEALTH SERVICES (FAMILY WELFARE)
ASSAM
SWASTHYA BHAWAN
HENGRABARI
GUWAHATI
ASSAM
PIN-781036

4:THE DEPUTY COMMISSIONER CUM CHAIRMAN OF DISTRICT LEVEL
COMMITTEE (DLC)
NORTH LAKHIMPUR
ASSAM
PIN-787001

5:THE JOINT DIRECTOR OF HEALTH SERVICE (FW)
NORTH LAKHIMPUR
ASSAM
PIN-787001

6:THE ADDITIONAL CHIEF MEDICAL AND HEALTH OFFICER (FW)
NORTH LAKHIMPUR
DIST. NORTH LAKHIMPUR
ASSAM
PIN-78700

Advocate for the Petitioner : MR. S ROY

Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

HON'BLE MRS. JUSTICE MITALI THAKURIA

16/03/2023

(M.R. Pathak, J)

Heard Mr. M H Laskar, learned counsel for the review petitioner/writ petitioner. Also heard Mr. D Upamanyu, learned Standing counsel, Health and Family Welfare Department for the respondent Nos. 1, 3, 5 & 6 and Ms. U Das, learned Government Advocate, Assam for the respondent Nos. 2 & 4.

2. Earlier the case of the petitioner for his compassionate appointment was rejected by the Deputy Commissioner, Lakhimpur and it was communicated to the District Elementary Education Officer on 01.04.2010. Later, a similarly placed person, namely, Ghana Dutta, whose case was also rejected by the Deputy Commissioner, Lakhimpur; preferred a writ petition being WP(C) No. 2100/2017 that was disposed of on 18.07.2019 by the Court directing the District Level Committee for compassionate appointment of Lakhimpur District, respondent therein to consider the case of said petitioner.

- 3.** After coming to know about the said order dated 18.07.2019 passed in WP(C) No. 2100/2017 (*Ghana Dutta Vs. State of Assam and 5 Ors.*) the present review petitioner as a petitioner preferred a writ petition being WP(C) No. 5310/2020 to consider his case by the District Level Committee, Lakhimpur against the vacant posts of Grade-III and Grade-IV in the Lakhimpur District on compassionate ground.
- 4.** The Hon'ble Single Judge by an order dated 12.03.2021 dismissed the said WP(C) No. 5310/2020 as it was filed after more than 10 years from the date of issuance of order dated 01.04.2010 by the Deputy Commissioner, Lakhimpur rejecting the claim of the petitioner for his compassionate appointment.
- 5.** Against the same, the petitioner preferred a Writ Appeal being WA No. 124/2021 which too was dismissed by a Division Bench of this Court on 12.08.2021 on the ground that the said writ petition was filed after inordinate delay and the petitioner did not explain the delay for which it was liable to be rejected on the ground of laches.
- 6.** Further, the Hon'ble Division Bench by the said order dated 12.08.2021 observed that there was no scope for interference in the case of the petitioner as the writ petition preferred by him was highly belated and that it is a settled Principle of law that the Court should not come to the rescue of those who sleep over their rights.
- 7.** Now the petitioner has filed this review petition stating that it is the Deputy Commissioner, Lakhimpur, who without placing the case of the petitioner before the District Level Committee (DLC) for compassionate appointment rejected his case for compassionate appointment, stating further that the communication of the Deputy Commissioner, Lakhimpur dated 01.04.2010 was not known to him. Therefore, the petitioner prayed that the order dated 12.08.2021 passed by the Division Bench of this Court as well as the order dated 12.03.2021 passed by the Single Bench of this Court should be reviewed and the matter should be considered afresh.
- 8.** On perusal of the copy of the writ petition, it is seen that the petitioner is silent with regard to the receipt of the said communication dated 01.04.2010 of the Deputy

Commissioner, Lakhimpur, North Lakhimpur, whereby the case of the petitioner for his compassionate appointment was rejected by the DLC, Lakhimpur.

9. The petitioner in his said WP(C) No. 5310/2020 at paragraph-6 categorically stated that as he stands on the same footing like that of Ghana Dutta [petitioner of WP(C) No. 2100/2017 that was disposed of on 18.07.2019], in that view of the matter, the Hon'ble Court may be pleased to dispose of his said writ petition directing the respondents therein to place the case of the petitioner before the DLC, Lakhimpur and thereafter, before the State Level Committee (SLC) for compassionate appointment for fresh consideration of his case for compassionate appointment.

10. Further, at paragraph-8 of the said WP(C) No. 5310/2020, the petitioner categorically stated that after disposal of said WP(C) No. 2100/2017 by order dated 18.07.2019, though the petitioner tried to manage the cost of litigation to approach this Court, but due to spread of Covid-19 and lockdown, he could not approach the Court.

11. It is not the case of the petitioner that he was not aware of the communication dated 01.04.2010 issued by the Deputy Commissioner, Lakhimpur rejecting his case for compassionate appointment, but he decided to approach the Court after the said order dated 18.07.2019 passed in WP(C) No. 5310/2020.

12. In the case of *Meera Bhanja (Smt) Vs. Nirmala Kumari Choudhury (Smt)* reported in (1995) 1 SCC 170, the Hon'ble Supreme Court held that — *review proceeding is not by way of appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. The review petition has to be entertained only on the ground of error apparent on the face of record and not on any other ground. An error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of rejoining on points where there may conceivably be two opinions.*

13. The Hon'ble Apex Court in the case of *Lily Thomas Vs. Union of India*, reported in (2000) 6 SCC 224, have held that — *the power of review can be exercised for correction*

of a mistake but not to substitute a view. Such powers can be exercised within limits of the statute dealing with the exercise of power. The review cannot be treated an appeal in disguise. The mere possibility of two views on the subject is not a ground for review.

14. Moreover, against the communication of the Deputy Commissioner, Lakhimpur, North Lakhimpur dated 01.04.2010 intimating him regarding rejection of his case for compassionate appointment by the DLC, Lakhimpur; the petitioner had approached this Court by filing the writ petition only in the year 2020, i.e., WP(C) No. 5310/2020 that too after coming to know about the order dated 18.07.2019 passed in WP(C) No. 2100/2017 (*Ghana Dutta Vs. State of Assam and 5 Ors.*) as noted above and thereby in the form of laches and delays as well as acquiescence. The Hon'ble Supreme Court in the case of *State of Uttar Pradesh and Others -Vs- Arvind Kumar Srivastava and Others*, reported in (2015) 1 SCC 347 have held that — “*The normal rule is that when a particular set of employees is given relief by the Court all other identically situated persons need to be treated alike by extending that benefit. However, this principle is subject to well-recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays and/or the acquiescence, would be a valid ground to dismiss their claim.*”

15. In the case in hand, the review petitioner has failed to establish the error apparent on the face of the order dated 12.08.2021 passed in WA No. 124/2021 as well as the order dated 12.03.2021 passed by the learned Single Judge in said WP(C) No. 5310/2020, so as to review the orders mentioned above.

16. We do not find any convincing ground on the part of the review petitioner to review those orders dated 12.08.2021 passed in WA No. 124/2021 and dated 12.03.2021 passed in said WP(C) No. 5310/2020.

17. For the reasons above, this review petition being devoid of merit, stands dismissed.

JUDGE

JUDGE

Comparing Assistant