

GAHC010097552019



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

Case No. : WP(C)/2930/2019

ARIF HUSSAIN
S/O- LT ALTAF HUSSAIN, VILL- RAIMADHA, P.O. KOMARKUCHI, P.S.
KOMARKUCHI, DIST- NALBARI, PIN- 781347

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, A.H. AND
VETERINARY DEPTT., DISPUR, GHY-6

2:DIRECTOR
A.H. AND VETY.
KHANAPARA
GHY
DIST- KAMRUP (M)
PIN- 781022

3:D.C.
KAMRUP
AMINGAON
GHY- 36

4:DISTRICT ANIMAL HUSBANDRY AND VETY.
OFFICER INCHARGE
DIST- KAMRUP (M)
CHENIKUTHI
GHY-3

5:CHIEF SECRETARY

GOVERNMENT OF ASSAM
STATE LEVEL COMMITTEE(SLC

Advocate for the Petitioner : MR. R C SAIKIA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 06-12-2023

1. Heard Mr. R.C. Saikia, learned counsel for the petitioner. Also heard Mr. C.S Hazarika, learned counsel for the respondent Nos.1 and 3 and Ms. M.M. Kakati, learned counsel for the respondent Nos.2 and 4.

2. The petitioner's father was a Grade-IV employee in the office of the Animal Husbandry & Veterinary Department, Guwahati who died in harness on 06.05.2015. Accordingly, the mother of the petitioner, (the wife of the deceased government employee) made an application before the authority for compassionate appointment. Thereafter, the District Level Selection Committee (DLC) recommended the case of the mother of the petitioner for appointment on 12.10.2015, however, such claim was rejected by the State Level Committee (SLC) by its decision in the meeting held on 25.01.2018 for the reason that she is over aged for appointment and subsequently, such decision was notified through order dated 06.04.2018. Such decision remain unchallenged.

3. Thereafter, in the year 2019, petitioner, who was a minor at the relevant point of time attained majority and accordingly, once

again applied for appointment on compassionate ground.

4. It is the case of the petitioner that such application was never considered by the District Level Selection Committee and being aggrieved, the petitioner has approached this court.

5. It is the case of the petitioner as urged by Mr. Saikia, learned counsel that there is no bar under the scheme of the compassionate appointment formulated by the State of Assam in filing an application after attainment of majority by a dependent of the deceased person who dies in harness and therefore, in absence of any bar under the scheme, the respondent authorities could not have taken a stand in the affidavit in opposition that such an application is not maintainable.

6. The further contention of Mr. Saikia is that though there was a delay in approaching the court but that delay was not due to fault on the part of the petitioner, rather, the respondent authorities never intimated the matter to the petitioner regarding rejection of the case of the mother of the petitioner.

7. It is the further argument of Mr. Saikia, learned counsel that when a minor applies for compassionate appointment after attainment of majority, the period from the death of the Government employee till the attainment of the majority of the dependent, should not be treated as the delay in approaching the authority inasmuch as, according to him, a minor cannot make an application during his minority.

8. In support of such contention, Mr. Saikia relies on a decision of

a coordinate bench dated 18.11.2022 passed in WP(C) 3290/2022 (***Rajesh Nath Vs. State of Assam & Others***).

9. Per contra, the learned State counsel submits that the case of the petitioner at any rate cannot be considered for the reason that his mother has already applied and her case was rejected and such rejection is not challenged till date. It is his further case that once an application is made and same is rejected, the other dependent is not permitted to file a separate application inasmuch as, by the time petitioner has approached for compassionate appointment, the object of providing compassionate appointment was no more existent and the family has already passed over the initial hardship.

10. Mr. C.S. Hazarika also argues that there is no prescription in the scheme of the state of Assam that a minor can be allowed to file an application beyond the period prescribed for making an application, for the reasons of his minority and there is also no provision to allow such minor to apply beyond two years from death after attainment of majority.

11. Mr. Hazarika, learned counsel further submits that without there being any specific provision regarding application by minor, the minority cannot be a ground to accept an application beyond the time as prescribed in the scheme of the State of Assam. In support of such contention, the learned counsel relies on the decision of the hon'ble Apex court rendered in the case of ***Smt. Sushma Gosain and others Vs. Union of India*** reported in ***(1989) 4 SCC 468***.

12. This court has given anxious consideration to the arguments advanced by the learned counsel for the parties.

13. Before coming to the merit of this case, let this court record the settled principle of law in respect of appointment on compassionate ground.

14. A provision of 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 exception to the general provision and must be restored to only in order to achieve the object of such scheme i.e. to enable the family of the deceased to get over the sudden financial crisis. It is also well settled that an appointment on compassionate ground is not a source of recruitment. The reason for making such benevolent scheme by the state or by the Public Sector Undertaking is to see that the dependents 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. Therefore, the compassionate appointment is not a vested right which can be exercised at any time in future.

15. It is equally well settled that compassionate appointment cannot be claimed or offered after a lapse of time and after the crisis is over. More particularly, such appointment is to be made in terms of the scheme under which such appointment is claimed [reference : ***State of West Bengal Vs. Debabrata Tiwari & Others reported in***

(2023) SCC OnLine SC 219]. It was also a settled proposition that the right of compassionate appointment is connected and relative to financial condition and hardship faced by the dependent of the deceased Government employee as a consequences of his death.

16. That being the settled legal position, now let this court consider the present case.

17. It is not in dispute that the claim of the wife of the deceased Government employee was rejected on 06.04.2018 but such rejection is not under challenge. Therefore, this court is not to endeavor into whether the order dated 06.04.2018 whereby the case of the mother of the petitioner i.e., the wife of the deceased Government employee was rejected on the ground of over age is correct or not.

18. Be that as it may, the second application filed by the petitioner was in the year 2019 i.e., almost after 4 (four) years from the date of the death of his father. Though, it is the case of the petitioner that order of rejection of the case of his mother was not communicated at any point of time, however, the fact also remains that such rejection is dated 06.04.2018 and the present writ petition was filed in the year 2019 and on the date of filing of the writ petition, the petitioner was aware of such rejection. Despite that, such order has not been challenged. Rather, they opted to file a second application through the minor son who has in the meantime attained majority.

19. From the aforesaid fact, this court is of the unhesitant view that the family of the deceased Government employee had been able to

tide over the first impact of the death of the deceased employee since the year 2015.

20. The Hon'ble Apex court in the case of Sushma Gosain (supra), in no un-ambiguity held that when a ward of a deceased Government employee was minor at the time of death of his father, it cannot be a ground to seek appointment as and when he becomes major, subject to the condition that the scheme itself provides such leeway or provisions that a minor shall be entitled to apply for compassionate appointment after attainment of majority.

21. In the case in hand and in the scheme formulated by the State of Assam, there is no mandate enabling a minor dependent to apply for compassionate appointment after attainment of majority. That being the position, this court is in total agreement with the arguments advanced by the learned counsel for the State Respondent that in the scheme of the compassionate appointment as formulated by the State of Assam, there is no scope for allowing a minor to make an application after attainment of majority beyond the period prescribed for appointment under the scheme i.e., two years.

22. Now, coming to the judgment relied on by Mr. R.C. Saikia, learned counsel for the petitioner that in [***Syed Khadim Hussain Vs. State of Bihar and Ors*** reported in **(2006) 9 SCC 195**] the Patna High Court allowed an application for compassionate appointment on the ground that the learned State counsel could not point out any other circumstances for which the appellant minor could not have been disentitled to be considered for appointment after

attainment of majority. The same is not in the case in hand inasmuch as there is no provision under the scheme as discussed hereinabove enabling a minor to apply after attainment of majority. Therefore, in the considered opinion of this court, the law laid down in Syed Khadim Hussain (supra) shall not be applicable in the present case.

23. Coming to the judgment relied on by Mr. Saikia in the case of Rajesh Nath (supra), this court is of the view that the aforesaid decision cannot be made applicable in the present case inasmuch as the said decision was rendered relying on the decision of the hon'ble Apex Court in the case of Syed Khadim Hussain (supra). In Syed Khadim Hussain (supra), the case of the widow was rejected without assigning any reason and the case of the minor was also rejected and on a background fact that there was no other circumstances for which the minor was disentitled to be considered for appointment. At the same time the hon'ble Apex Court in its subsequent judgment in Debabrata Tiwari (supra) after dealing with its earlier judgments has clearly declared that the object for formulating the compassionate appointment is founded on the consideration of immediacy. It is further held that essence of immediacy is called for, not only in the manner in which the applications are processed by the concerned authority but also in the conduct of the applicant pursuing his case before the authorities and if needed, before the courts.

24. In the case in hand, the case of the mother of the petitioner was rejected by the SLC on 25.01.2018 and such decision remained unchallenged. The father of the petitioner expired on 06.05.2015 and

the petitioner made the application after attainment of majority in the year 2019. Therefore, the petitioner and his mother survived the immediate hardship from 06.05.2015 till 25.01.2018, when the case of the mother of the petitioner was rejected by the SLC. Thereafter, an application was filed by the petitioner in the year 2019. Therefore, immediacy of need is not available in the given facts of the present case.

25. In view of the aforesaid, the present writ petition stands dismissed.

JUDGE

Comparing Assistant