

GAHC010121852020



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

Case No. : Review.Pet./83/2020

NABANITA LAHKAR
D/O- LATE KARUNA LAHKAR, R/O- VILL.- NO. 2 LAZUM, WARD NO. 3, P.O.
MARGHERITA (NEAR CIVIL HOSPITAL), P.S. AND DIST.- TINSUKIA
(ASSAM), PIN- 786181.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM, FOREST
DEPARTMENT, DISPUR, GUWAHATI-06.

2:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS
ARANYA BHAWAN
BELTOLA
GUWAHATI- 29
ASSAM.

3:DIVISIONAL FOREST OFFICER
DIGBOI DIVISION
DIGBOI
DIST.- TINSUKIA
PIN- 781171
ASSAM.

4:FOREST RANGE OFFICER
MARGHERITA WEST RANGE
DIST.- TINSUKIA
ASSAM
PIN- 786181

Advocate for the Petitioner : MR. U K NAIR

Advocate for the Respondent : SC, FOREST

For the Petitioner(s) : Mr. J. Kalita, Advocate

For the Respondent(s) : Mr. P.N. Goswami, Additional Advocate General,
Mr. I. Kalita, Advocate

- B E F O R E -

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANISH CHOUDHURY

ORDER

08.08.2023

(Manish Choudhury, J)

We have heard Mr. J. Kalita, learned counsel for the review petitioner and Mr. P.N. Goswami, learned Additional Advocate General, Assam for all the respondents.

2. The review petitioner who was the appellant in the writ appeal, Writ Appeal no. 74/2020, has sought review of the order dated 03.08.2020 by which the writ appeal was dismissed. The writ appeal, Writ Appeal no. 74/2020 was preferred to challenge an order dated 11.03.2020 passed in a writ petition, W.P. [C] no. 751/2020 filed by the review petitioner herein as the writ petitioner.

3. The facts which are not in dispute can be delineated at first, briefly, in order to appreciate the contentions raised by the review petitioner in the instant review petition. The father of the review petitioner/writ appellant/writ petitioner [hereinafter referred to as 'the review petitioner', for the sake of brevity] was an employee in the Forest Department, Government of Assam. The father of the review petitioner who was serving as Forester – I, died in harness on

07.12.1995 leaving behind his wife and two minor daughters with the review petitioner as the younger daughter. Subsequent to the demise of the review petitioner's father, the mother of the deceased employee, that is, the mother of the review petitioner submitted an application before the respondent authorities for her compassionate appointment, on 03.02.1996, in a post under the Forest Department. Though the receipt of the said application was acknowledged, the application for compassionate appointment, filed by the mother of the review petitioner, never came to be considered by the respondent authorities in the Forest Department as it transpires that the application was neither rejected nor allowed. It is found that the mother of the petitioner did not pursue her claim for compassionate appointment in any manner in the subsequent period. In essence, the mother of the review petitioner appeared to have abandoned the claim. The elder daughter of the deceased employee did not prefer any application seeking her appointment on compassionate ground. According to the review petitioner, she was only 7 [seven] years of age at the time of death of her father. It was after attaining majority, the review petitioner filed an application before the respondent Forest Department authorities seeking her appointment on compassionate ground. There was some confusion as regards the year of submission of the application by the review petitioner. While the review petitioner has contended that the application was filed in the year 2007, the State respondents have contended that the application was submitted only on 03.02.2010.

4. Contending that the case of the review petitioner for compassionate appointment did not receive due consideration for a prolonged period, the writ petition was preferred seeking *inter alia* a direction to the State Level Committee

[SLC] to consider the case of the review petitioner for compassionate appointment. The learned Single Judge after considering the principles governing the matter of compassionate appointment, was of the view that the very basis for compassionate appointment stood removed by efflux of time. Two aspects were considered by the learned Single Judge, *firstly*, the application for compassionate appointment was filed after 11 [eleven] years from the date of death of the deceased employee; and *secondly*, about 15 [fifteen] years had passed at the time of consideration of the writ petition. As the very basis for compassionate appointment was to tide over the immediate crisis befallen on the family due to death of its sole breadwinner and there cannot be a reservation of vacancy till such time a minor becomes a major, the writ petition was found to be bereft of any merit and the same was dismissed.

5. When the intra-court appeal was preferred against the order dated 11.03.2020 passed in the writ petition, the grounds urged on behalf of the review petitioner were considered. The concept of compassionate appointment was considered in the light of the principles governing the issue and also in the light of the law laid down by the Hon'ble Supreme Court of India in the cases of Umesh Kumar Nagpal vs. State of Haryana and others, reported in [1994] 4 SCC 138 and Government of India and another vs. P. Venkatesh, reported in [2019] 5 SCC 613, *qua* the factual matrix obtaining in the case of the review petitioner. That the object offering an employment to an eligible member from the family of a deceased employee on compassionate ground is only to enable the family to get over the financial crisis which it faces as a result of death of the sole breadwinner, has been noted. It has been observed that any right to be offered compassionate appointment as an exception to the rule of giving employment in

public service cannot continue for a period more than a decade. Finding no ground to interfere with the findings arrived at by the learned Single Judge, the writ appeal was dismissed by an order dated 03.08.2020, review of which has been sought for in the present review petition.

6. It is averred by the review petitioner that no appointment was made on compassionate ground in the Forest Department, Government of Assam since the year 1992. When after attaining majority the review petitioner who obtained the degree in Bachelor of Arts in the year 2011, submitted the application for compassionate appointment, the respondent authorities in the Forest Department started initiating a process in the year 2014 by collecting necessary information about all the applications received by the Department for compassionate appointment. The review petitioner was requested to submit a fresh application by the Departmental authorities and accordingly, an application was submitted by the review petitioner again on 22.04.2014. When the review petitioner came to learn that a Meeting of the State Level Committee [SLC] was held on 01.04.2015 to consider the applications for compassionate appointment in the Forest Department, she made efforts to collect the information about the list of applicants. On enquiry, the review petitioner found that her name was not included in the list of applicants and thus, was not placed in the Meeting of the SLC, held on 01.04.2015. With the allegation that the respondent authorities had done nothing to consider her case till the year 2019, the review petitioner as writ petitioner preferred a writ petition, W.P.[C] no. 5594/2019. When the review petitioner received information that her case was likely to be considered by the SLC, the writ petition, W.P.[C] no. 5594/2019 was withdrawn on 05.08.2019, with the liberty to approach again. The writ petition, W.P.[C] no.

751/2020 was filed thereafter, when on 21.12.2019, the respondent authorities had published a list of 25 [twenty five] nos. of candidates for compassionate appointment, which did not contain the name of the review petitioner.

7. The instant review petition has been preferred on the ground that the Court did not take into account the facts of her case and took a general view regarding compassionate appointment, while dismissing the writ appeal by order dated 03.08.2020.

8. It is well settled that a party is not entitled to seek a review of a judgment delivered by a Court merely for the purpose of a re-hearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final and departure from that principle is justified only when circumstances of a substantial and compelling character are made out. A review is not a routine procedure and an earlier order is not to be reviewed unless there is material error, manifest on the face of the record, which has the effect of undermining its soundness or resulting in miscarriage of justice. A petition for review cannot be treated like an appeal in disguise and the mere possibility of two views on the subject is not a ground for review.

9. Admittedly, the review petitioner was a minor at the time of the death of her father in the year 1995. It was after 11 [eleven] years from the date of death of her father, the review petitioner attained majority in the year 2007. The mother of the review petitioner who filed an application for compassionate appointment in the year 1996, had apparently abandoned her claim by choosing not to pursue the same in the subsequent period. When the elder daughter of

the deceased employee whose year of birth has not been disclosed, had chosen not to apply for compassionate appointment, it was the review petitioner who after attaining majority in the year 2007, stated to have filed an application for compassionate appointment. If it is assumed that such an application was filed in the year 2007, then by that time a period of about 12 [twelve] years had passed since the death of the deceased employee. If the year of submission of such an application is taken as 2010, as contended by the State respondents, then a period of about 15 [fifteen] years had elapsed since the death of the deceased employee. It is evident on either count that the immediate need of providing a source of earning to the family was absent on the date of submission of the application if one considers the principal object behind providing any employment on compassionate ground. After submission of the application for compassionate appointment, the review petitioner waited for a substantial period till the year 2019, to approach the Court. By the time the writ petition, W.P.[C] no. 751/2020 was preferred, a period of 25 [twenty five] years had already passed. In the backdrop of such fact situation, this Court does not find any ground, not to speak of any good and sufficient ground, to review the order dated 03.08.2020 as by no stretch, it is possible to take any different view, other than the one taken in the order dated 03.08.2020. Thus, the review petition is bereft of any merit. Consequently, we order its dismissal. No cost.

JUDGE

CHIEF JUSTICE

Comparing Assistant