

GAHC010176062023



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

Case No. : WP(C)/4608/2023

FAKRUL AHMED BARBHUIYA
S/O- LATE ASABUDDIN BARBHUIYA,
VILL- BERENGA,
P.O AND P.S- SILCHAR, DIST- CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
PWRD,
DISPUR, GUWAHATI-06.

2:THE CHIEF ENGINEER

PWRD

CHANDMARI
ASSAM
PIN- 781003.

3:THE STATE LEVEL COMMITTEE
TO BE REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-6.

4:THE DISTRICT LEVEL COMMITTEE
CACHAR
REP. BY THE DEPUTY COMMISSIONER
CACHAR

P.O AND P.S- SILCHAR

DIST- CACHAR
ASSAM

5:EXECUTIVE ENGINEER
PWRD
MECHANICAL DIVISION
SILCHA

Advocate for the Petitioner : MR. A M BARBHUIYA

Advocate for the Respondent : SC, P W D

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioners :Mr. A.M. Barbhuiya, Advocate

For the Respondents : Mr. R Dhar, GA, Assam

Date of Hearing : 07.12.2023

Date of Judgement : 07.12.2023

JUDGEMENT & ORDER (ORAL)

Heard Mr. AM Barbhuiya, learned counsel for the petitioner. Also heard Mr. R Dhar, learned counsel representing the State respondents.

2. The present application is filed being aggrieved by non-consideration of the case of the petitioner for appointment under the scheme of compassionate appointment formulated by the State of Assam. The case of the petitioner is that the father of the petitioner was allowed to go on retirement on medical ground with effect from 31.05.1996. In terms of policy decision under Office Memorandum dated 09.09.1993 formulated by

the State of Assam when a person retires on medical ground, his dependants is entitled for appointment under the scheme of compassionate appointment. Accordingly, on 14.06.1996, the petitioner applied for appointment under the aforesaid scheme. Subsequently, the matter was placed before the District Level Committee on 06.12.2014 and a positive recommendation was made in favour of the petitioner by the DLC.

3. It is the case of the petitioner that even after positive recommendation of the DLC on 06.12.2014, the State Level Committee has not considered the case of the petitioner till date and therefore a writ of mandamus should be issued directing the respondent SLC to consider the case of the petitioner under the aforesaid scheme.

4. On a pointed query that whether a writ of mandamus can be issued for consideration at this belated stage, the learned counsel for the petitioner relying on the judgment of a Co-ordinate Bench dated 27.04.2018 passed in **WP(C) 6173/2016 (Dwipen Chandra Kalita Vs. The State of Assam and 3 Ors)** submits that law has been laid down that when delay is on the part of the respondent authorities even after 20 years of delay, the case of the person needs to be considered under the scheme of compassionate appointment.

5. Per contra, Mr. Dhar, learned counsel for the respondent submits that in terms of the policy decision itself a case under compassionate appointment is required to be finalised within a period of two years and such policy has been formulated in terms of the decision of this court in **Achyut Ranjan Das & Ors. Vs State of Assam & Ors.** reported in **(2006) 4 GLT 674.**

6. He further contends that the purpose of granting compassionate appointment is non-existent in the case of the petitioner inasmuch as the petitioner has approached this court almost after 9 years from the date of recommendation by the DLC on 06.12.2014. Therefore, the present petition is also liable to be dismissed on the ground of delay and laches.

7. I have given anxious considerations to the argument advanced by the learned counsel for the parties. Law is by now well settled that compassionate appointment is not a right and same is related to the financial condition and hardship faced by the dependants of the deceased employee. There is no dispute that the State of Assam is having a policy that when a Government employee retires as a consequence of his ill health, a claim of compassionate appointment can be entertained under the scheme of compassionate appointment. Therefore, the principles of granting appointment under scheme of compassionate appointment shall also govern such claim.

8. The Hon'ble Apex court in a recent judgment rendered in ***State of West Bengal vs Debabrata Tiwari*** reported in ***2023 SCC OnLine SC 219*** after considering catena of its earlier judgments at paragraph 7 laid down certain principles of law for consideration of a case of compassionate appointment. The aforesaid paragraph is quoted hereinbelow for ready reference:

“7.2. 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.”

9. In view of the aforesaid settled proposition of law more particularly principles (I) & (II), let this court consider the present case.

10. It is clear from the facts of the present case that the petitioner has survived the initial hardship since 31.05.1996, when his father retired on health ground.

11. Now coming to the determination made by a Co-ordinate Bench that when no appropriate steps are taken by the competent authority even after filing of application for compassionate appointment and when delay is caused due to the action of the respondent State, the claim for compassionate appointment can still be considered following the legal maxim of *Nullus Commodum Capere Potest De Injuria Sua Propria* meaning thereby that no man can take advantage of his own wrong, in the considered opinion of this court cannot be made applicable in the given facts of the present case. The Hon'ble Apex Court in ***Debabrata Tiwari (supra)*** has clearly declared that the object of 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 manner, which the applications are possessed by the concerned authority but also in the conduct of the applicant in pursuing his case before the authorities and if needed before the courts. In the case in hand, the

application was filed on 14.06.1996 and it was considered by the DLC on 06.12.2014 and the petitioner survived the immediate hardship from 14.04.1996 to 06.12.2014. Even when on 06.12.2014 the case of the petitioner was recommended by the DLC, the petitioner waited to file a writ petition in this court till the year 2023 alleging that the SLC is sitting over the matter. Therefore, the immediacy of need is not available in the given facts of the present case. The petitioner has failed to make out a case that he was diligent in pursuing his case before the authority or approaching this court inasmuch as his explanation that he was pursuing the matter with the authority cannot be a reasonable explanation, more particularly when the matter relates to compassionate appointment.

12. In the aforesaid view of the matter, the present writ petition lacks merit and same stands dismissed. Parties to bear their own costs.

JUDGE

Comparing Assistant