

GAHC010177122023



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

Case No. : WRIT APPEAL NO. 333 of 2023

Ismoth Tufa Laskar,
Age-29 years, D/o Late Azir Uddin,
Laskar (died in harness on 19.11.2013 as
Khalasi, Grade-IV at Silchar PHE Division, Cachar),
R/o Vill- Saidpur Part-I; P.O.-Sonabarighat;
Distr. Cachar, Assam.

.....Appellant

-Versus-

1. The State of Assam represented by the Commissioner and Secretary to the Government of Assam, Public Health Engineering Department, Dispur, Guwahati-788006.
2. The State Level Committee (for compassionate appointment) to be represented by the Chief Secretary to the Government of Assam, Dispur, Guwahati – 788006.
3. The Deputy Commissioner-cum- Chairman of District Level Committee (DLC), Cachar, P.O.-Silchar, Dist.- Cachar, Assam, PIN-788001.
4. The Chief Executive Engineer, PHE (P), Assam, Hengrabari, Guwahati, District.- Kamrup (Metro), Assam, PIN- 781036.
5. The Additional Chief Engineer, PHE, Barak Valley Zone, Silchar, District – Cachar,

Assam, PIN-788001.

6. The Executive Engineer, (PHE) Silchar Division No. 1, Silchar, District – Cachar, Assam, PIN – 788001.

.....Respondents.

Advocates for the appellant: Mr. R P Sarmah, Sr. Adv.

Advocate for the respondents: Mr. B Choudhury, SC, APDCL.

BEFORE
HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Date of hearing : 18.09.2023

Date of judgment : 18.09.2023

JUDGEMENT AND ORDER

(Susmita Phukan Khaund, J.)

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Heard Mr B Purkayastha, learned counsel appearing on behalf of the appellant. Also heard Ms M D Borah, learned Government Advocate, Assam, and Mr D Gogoi, learned Standing Counsel, PHE.

2. This appeal is preferred against the Judgment and Order dated 24.07.2023, passed by the learned Single Judge in WP(C) No. 2575 of 2023, dismissing the writ petition of the appellant. The appellant, in this case is Ismoth Tufa Laskar. The State of Assam, represented by the Commissioner & Secretary to the Government of Assam- PHE, The State Level Committee - represented by the Chief Secretary, the Deputy Commissioner –cum- Chairman

of the District Level Committee, the Chief Engineer-PHE(P), the Additional Chief Engineer, the Executive Engineer-(PHE), Silchar Division No. 1 are arrayed as respondent Nos. 1 to 6 respectively.

3. The brief facts of this appeal are that the appellant herein-petitioner, is the eldest daughter of Late Azir Uddin Laskar, who died in harness on 19.11.2013, leaving behind the appellant, her mother and two sisters. The appellant's father was a Grade-IV employee and he used to serve as a Khalasi under the Executive Engineer (PHE), Silchar, Cachar. The appellant's father was the sole bread winner of the family and after his death, the family had to endure acute financial hardship. At that time, the appellant had already completed her 12th grade. On advice of her family members, the appellant applied for appointment on compassionate ground, for a Grade-IV post on 18.12.2013. Meanwhile, in the year 2014, the appellant successfully completed her diploma in Computer Applications from Assam Rifles Institution of Information and Technology. The appellant's mother also provided a No Objection Certificate for the appellant's appointment on compassionate ground.

4. The untimely death of the appellant's father took away the sole earning member of the family and this impelled the appellant to submit the application for appointment on compassionate ground on 18.12.2013, but unfortunately she was not apprised of the outcome of the application by the respondent authorities, even after repeated requests made by her. In the month of November, 2022, she managed to collect the minutes of the DLC meeting held on 05.08.2017, from the Office of the Executive Engineer (PHE), and the appellant learnt that her application which was placed before the DLC, was rejected on the ground of lack of vacancy.

5. It is averred that the respondent authorities had purportedly rejected the application mechanically. The appellant was not informed about the rejection of her application for appointment on compassionate ground. After she collected the minutes of the DLC meeting dated 05.08.2017, the appellant submitted a detailed representation on 23.11.2022, along with her earlier representations dated 18.12.2013, 12.08.2015 and letter dated 02.08.2021 before the respondent No. 6, with a prayer for appointment on compassionate ground.

6. It is contended that as per Government OM No. ABP/50/2006/Pt/182 dated 01.06.2015, it is provided that if sufficient vacancies are not available in any particular Department, then the administrative Department is to take up the matter to other Departments, so that an early appointment under compassionate ground can be provided.

7. The appellant has referred to a decision in connection with WP(C) No. 243/2020, wherein, the case of the petitioner was rejected on the ground that no vacancy was available and the said writ petition was disposed of on 10.08.2022 and the matter was remanded to the DLC for re-consideration with a further direction to take up the matter with all other Departments to enquire about any vacancy in any other Department and to place the case of the petitioner before the next available DLC for appropriate order.

8. The original writ petition was refuted by the respondents that the petition was filed after an inordinate delay and was thus, not maintainable. It is averred that this appeal is bereft of merits and is liable to be dismissed.

SUBMISSIONS-

9. It is submitted on behalf of the appellant that the learned Single Judge without entering

into the merits of the case, dismissed the writ petition. The learned Single Judge has ignored that the delay was caused due to administrative negligence and laches on the part of the respondents. It is contended that the appellant's father passed away on 19.11.2013 and she applied for appointment on compassionate ground on 18.12.2013, i.e., within the period of limitation and thus, there was no negligence or inaction on her part. This application of the appellant was placed before the DLC on 05.08.2017. As mandated, the DLC ought to have convened its meeting after every two months, but due to the apathy of the DLC, the appellant was, thus, deprived of her rights. In an unjustifiable manner, the DLC has shifted their liability to the appellant on the ground of delay by the appellant. It is further contended that the State respondents have violated the provisions of the existing OM dated 01.06.2015, which mandates that the DLC should convene its meeting after every two months. The State respondents ought to have informed the decision of the DLC to the appellant and this would have enabled her to retry for appointment on compassionate ground within the framework of time. The appellant has thus, prayed to set aside the order dated 24.07.2023, passed in WP(C) No. 2575/2023 and the minutes of the DLC meeting dated 05.08.2017, in so far as the appellant herein is concerned. The appellant has also prayed to give a direction to the State respondents to place the case of the appellant afresh before the DLC, Cachar, as per Clause 15 and other provisions of OM dated 01.06.2015.

10. The learned counsel for the respondents has supported the order passed in WP(C) No. 2575 of 2023. It is submitted that the order dated 24.07.2023, in WP(C) No. 2575 of 2023, has been appositely passed. It was rightly held that the appellant's father died way back in the year 2013 and the appellant's application was rejected in the year 2017, but the writ petition was filed after nearly six years. It is also submitted on behalf of the respondents that

the only reason assigned to justify the inordinate delay of the appellant in filing the aforementioned application is that she was not aware of the resolution adopted by the DLC. It is also submitted on behalf of the respondents that only 5% of the total number of vacant posts can be filled up on compassionate ground and all the applications on compassionate grounds have to be scrutinized and shortlisted, and appointment provided according to the policies of the scheme for compassionate appointment.

CONSIDERATION OF SUBMISSIONS-

11. We have given our thoughtful considerations to the submissions at the Bar.

12. The appellant's father passed away on 19.11.2013 and thereafter, the appellant applied for appointment on compassionate ground on 18.12.2013, against any vacant Grade-IV post. When the appellant was not informed about the outcome of her application, she repeatedly visited the office of the respondent authorities, but in the last part of November in the year 2022, the appellant was provided with the outcome of the minutes of the DLC meeting. She learnt that the DLC meeting was held on 05.08.2017 and her application which was placed before the DLC, was rejected due to lack of vacant posts. Although the applicant has submitted some documents to buttress her contentions, yet it is manifest that she was unsuccessful to assign sufficient cause to explain the inexplicable delay in obtaining the copies of the DLC meeting dated 05.08.2017.

13. The appellant has also failed to justify the hiatus from 18.12.2013 upto 12.08.2015. Apart from her representation dated 18.12.2013 (Annexure-4), letter dated 12.08.2015 (Annexure-6 C) and letter received by the Deputy Commissioner on 02.08.2021, the appellant

has not brought anything on record to buttress her stance that she ceaselessly approached the respondent authorities with queries about the fate of her application on compassionate ground. It is true that between certain intervals of time, the appellant had indeed approached the authorities, but at the same time, the appellant's submission that she had relentlessly and ceaselessly pursued the matter relating to her initial application for appointment on compassionate ground, is not found to be worthy of credence. The ratio of the decision dated 10.08.2022 in WP(C) No. 243/2020, relied upon by the appellant is not applicable to this case. Moreover, as per the Office Memorandum dated 01.06.2015, only 5% of the total vacancies can be reserved for compassionate appointment. It has to be borne in mind that the candidates have to be shortlisted on priority basis, within this 5% of allocated quota.

14. It may be apposite to refer to the decision of Hon'ble the Supreme Court in ***Umesh Kumar Nagpal vs. State of Haryana; (1994) 4 SCC 138***, on the rationale behind the policy or scheme for compassionate appointment. In this case, it has been observed and held by the Hon'ble Supreme Court that-

“6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.”

15. In the instant case too, it is apparent that the appellant slumbered over her rights. Initially, she dropped her application on 18.12.2013 and, thereafter, she approached the authorities on 12.08.2015 and finally, her letter to the DC was received on 02.08.2021. The

appellant then submitted her representation on 23.11.2022, after she learnt about the resolution adopted by the DLC on 05.08.2017. The appellant and her siblings had survived all odds over the period of time. The object of compassionate appointment is to give succour to the family to tide over penury that has befallen upon the dependants on account of the premature demise of the sole earning member. It would not be justified in directing appointment for the appellant after a long gap of ten years. Compassionate appointment is provided immediately to redeem the family in distress. It has been clarified by Hon'ble the Supreme Court in ***Umesh Kumar Nagpal's case (supra)***, that compassionate appointment is not a vested right which can be exercised at any time, after the death of a Government Servant.

16. In the wake of the foregoing discussions, it is held that it has been appositely held by the learned Single Bench that-

“Moreover, once the DLC has taken a decision which was in consonance of the provisions of the scheme, the aforesaid matter in the opinion of this Court cannot be re-opened at this point of time , only to explore other vacancies were available at the relevant point of time so as to consider the case of the petitioner, as such approach might lead to multiplicity of legal proceedings. Besides the above, the element of compassion, in the opinion of this Court is also lost in the matter since the appellant has survived more than ten years after the premature demise of her father.”

17. In the light of the decision of the Hon'ble Supreme Court in ***Umesh Kumar Nagpal's case (supra)***, it is held that as the appellant approached the writ Court for ventilating her grievance of non-consideration of her case for compassionate appointment after lapse of considerable amount of time of nine years, she was rightly denied the relief claimed. The appeal, thus, lacks merit and is hereby rejected.

18. Appeal is hereby dismissed.

19. No order as to cost(s).

JUDGE

CHIEF JUSTICE

Comparing Assistant