

GAHC010210112023



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

Case No. : I.A.(Civil)/2852/2023

PROBIN KUMAR CHINTEY
S/O LATE SURENDRA NATH CHINTEY, VILL.- NALANIPAM GAON, P.O., P.S.
AND DIST.- DHEMAJI, ASSAM.

VERSUS

THE STATE OF ASSAM
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVT. OF ASSAM, SECONDARY EDUCATION DEPTT., DISPUR, GUWAHATI-
6.

2:THE DIRECTOR
NON-FORMAL AND ADULT EDUCATION
ASSAM
HOUSE NO. 18
KAHILIPARA ROAD
DIST.- KAMRUP (M)
GUWAHATI
ASSAM.- 781019.

3:THE DISTRICT LEVEL COMMITTEE FOR COMPASSIONATE
APPOINTMENT (DLC)
LAKHIMPUR
REP. BY ITS CHAIRMAN CUM DEPUTY COMMISSIONER
NORTH-LAKHIMPUR.
P.O.
P.S. AND DIST.- NORTH LAKHIMPUR
ASSAM.

4:THE DISTRICT ADULT EDUCATION OFFICER
LAKHIMPUR
P.O.

P.S. AND DSIT.- NORTH-LAKHIMPUR
ASSAM

Advocate for the Petitioner : MS. S G BARUAH

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 22-09-2023

1. Heard Ms. S.G. Baruah, learned counsel for the applicant, Ms. P. Das, learned Standing Counsel for respondent No. 1 and Mr. N. Das, learned Government Advocate for respondent No. 3.

2. The appellant/applicant has filed this interlocutory application u/s 5 of the Limitation Act, 1963 with prayer for condonation of delay of 221 days in preferring the accompanying writ appeal. The State of Assam represented by Commissioner & Secretary to the Govt. of Assam, the Director/Non-Formal & Adult Education, the District Level Committee for Compassionate Appointment (DLC)/Lakhimpur and the District Adult Education Officer, Lakhimpur are arrayed as respondents No. 1, 2, 3 and 4 respectively.

3. The brief facts of this case are that the applicant's father Late Surendra Nath Chintey died in harness on 31.10.2007, due to cardiac arrest. On 02.09.2008 the appellant submitted an application seeking appointment on compassionate ground. After receipt of the application, the District Adult Education Officer vide letter dated 12.06.2009 forwarded the application for compassionate appointment to the DLC – Respondent No. 3. Thereafter on

14.06.2009 the applicant filed a representation before the District Level Committee (DLC for short) for consideration of his prayer for another Grade-III post. It is contended that the appellant learnt about the minutes of the workshop on 'Enhancing Efficiency of Government Machinery' chaired by the Chief Minister of Assam held on 05.07.2021 wherein it was approved that all pending compassionate appointment matters prior to 2017 would be finalized within three (3) months. While seeking information in the office of the respondent authorities the, applicant learnt that the process of consideration of compassionate appointment was pending since 2017, but the applicant's matter was not considered in the workshop held on 05.07.2021. This impelled the applicant to file a writ petition being WP(C) No. 6000 of 2022 and vide impugned order dated 05.01.2023 the learned Single Judge dismissed the prayer of the applicant. Against this order the applicant is before this Court.

4. The learned counsel for the respondents raised objection stating that there is no merit in the writ appeal. It is also further contended that no sufficient cause has been ascribed by the applicant justifying the inexplicable delay of 221 days in filing the appeal, and thereby the application is not tenable in law.

5. Further the learned counsel for the applicant laid stress in her argument that after the demise of the applicant's father on 31.10.2007, he submitted his application in proper format on 02.09.2008 to the respondent authorities, but his application was forwarded to the DLC on 12.06.2009. Again on 14.06.2009, the applicant filed a representation before the DLC and since then he has been approaching the respondent authorities on different occasions who had assured him that his matter would be duly considered. However unfortunately his matter was not considered. The applicant is aggrieved by the

order dated 05.01.2023 in WP(C) No. 6000/2022, because his prayer was dismissed on the strength of the record placed by the learned Government Advocate that the Deputy Commissioner (DC for short), Lakhimpur vide communication No. LPE.41/2015/528 dated 05.12.2022 clarified that the case of the applicant was received by the office of the DC on 16.06.2009 and was placed before the DLC and it was held in the DLC meeting dated 10.08.2009 that the applicant's case could not be considered due to lack of vacancy.

6. Regarding the delay in filing the accompanying writ appeal, it is urged by the applicant that being the eldest son, he is somehow trying to make both ends meet as they are suffering from severe financial hardship due to his father's demise. He could not file the connected appeal within the period of limitation, because in the month of December, 2022 he went to Arunachal Pradesh to work under a contractor as Mohori (clerk) and consequentially he was unable to contact his engaged legal counsel owing to poor network connection. On 12.02.2023, when he came to his home town for one week to celebrate 'Ali Ai Lignag', he asked his legal counsel about the result of the writ petition and he learnt about the order dated 05.01.2023 passed in WP(C) No. 6000/2022. On 17.02.2023 when the applicant heard about the order dated 05.01.2023 he was agonized, but on 19.02.2023 he returned to Arunachal Pradesh for work.

7. In the month of March, 2023 the applicant took ill and was suffering from jaundice and when his health deteriorated, he returned to his home town for traditional medicine therapy. Because of his ailment, the applicant experienced a decline of his physical health and was unable to pursue his case. He was under continuous anxiety and was perturbed owing to the acute financial constraints which he had to endure being the sole bread winner of the

family. His family consists of his mother, wife and daughter. It is submitted that out of the family pension, a significant amount has to be spent for his ailing mother's treatment. Due to the afore-mentioned hurdles and also due to the flood situation the applicant could not come to Guwahati to engage an Advocate. Finally the applicant came to Guwahati on 20.08.2023 and obtained the certified copies of the order dated 05.01.2023 in WP(C) No. 6000 of 2022 on 21.08.2023 and he handed the file to his newly engaged legal counsel. The appeal memo was prepared on 25.08.2023, but the applicant could not come to Guwahati immediately as he and his daughter, contacted conjunctivitis. The applicant could file the application along with the accompanying writ appeal on 14.09.2023. There was no willful negligence on the part of the applicant. The reasons of delay of 221 days in filing the writ appeal is bonafide. He was precluded by the unavoidable circumstances in filing the appeal within the period of limitation.

8. Per contra the learned counsel for the respondents have submitted that there is indeed willful negligence and inertia on the part of the applicant. The reasons assigned, justifying the delay in filing the writ appeal are not worthy of credence. Moreover the writ appeal is devoid of merits and is liable to be dismissed. Proceeding with the appeal will be a futile exercise. The learned counsel for the respondents laid stress in their arguments that during the threadbare deliberation in connection with the WP(C) No. 6000 of 2022, the respondents have placed the communication of the DC, Lakhimpur vide LPE.41/2015/528 dated 05.12.2022 which was placed before the Court by the learned Government Advocate to clarify their stance that the applicant submitted his petition for compassionate appointment which was received by the DC on 16.06.2009 and the same was placed before the DLC of

compassionate appointment. The DLC in its meeting dated 10.08.2009 could not consider the applicant's prayer due to lack of vacancy. It was also submitted on behalf of the respondents that the applicant's case was further forwarded by the District Adult Education Officer vide communication dated 23.02.2010 but the DLC did not recommend the applicant's case for compassionate appointment as a "*spent force*" application.

9. We have given our thoughtful consideration to the submissions at the Bar. We find force in the submission of the learned counsel for the respondents that the delay in filing the application u/s 5 of the Limitation Act as well as the inertia on the part of the applicant in filing his petition for appointment on compassionate ground are not amenable to condonation. The averments depict that the applicant's father died in harness on 31.10.2007 and he submitted his application after more than a year i.e. on 02.09.2008 and later on 14.06.2009 the applicant again submitted an application before the DC, Lakhimpur for compassionate appointment on any Grade-III post. This letter is marked as Annexure-V of the WP(C) No. 6000 of 2022. However there is no seal or any proof of receipt of the application by the office of the DC, Lakhimpur. The applicant was intimated vide letter dated 23.02.2010 (Annexure-A) issued by the District Adult Education Officer that his application for appointment on compassionate ground has been returned due to expiry of more than two years.

10. Thus it is manifest that the application for appointment on compassionate ground was submitted by the applicant beyond the stipulated period within which it is mandatory to file an application for appointment on compassionate ground. From 14.06.2009 upto 05.07.2021 the applicant slumbered over his rights and waited for the results of the workshop which was held as late as 05.07.2021. When the applicant's case was not considered in the

workshop, chaired by the Chief Minister of Assam with senior government officials on 05.07.2021 the applicant moved the WP(C) No. 6000 of 2022. Thus the learned Single Judge appositely dismissed the writ petition. The applicant had made a futile attempt to justify the reasons of delay in filing his application for compassionate appointment as well as the reasons of delay of 221 days in filing the accompanying writ appeal. However, the willful negligence of the applicant is writ at large.

11. The applicant has stated that he filed his application for compassionate appointment on 12.06.2009, but he was not aware of the outcome of his application and he relentlessly and ceaselessly pursued the matter with the respondent authorities. The Annexure-A submitted by the respondents in connection with WP(C) No. 6000/2022 however reveals that an information was forwarded to him vide letter dated 23.02.2010 that his application for compassionate appointment was returned due to the expiry of more than two years. The Annexure-A thus belies the applicant's claim that he was continuously pursuing his goal of compassionate appointment.

12. The applicant has failed to assign valid reasons for his delay in preferring the WP(C) No. 6000 of 2022 after his prayer for appointment on compassionate ground was not considered. Nothing has been brought on record to show that after the Annexure-A was forwarded to him on 22.03.2010 the applicant approached the respondent authorities relentlessly and ceaselessly upto 14.09.2023 when the writ petition was filed by the applicant. In a tacit manner the policies and the scheme for appointment of a candidate on compassionate ground has also not been put forth by the applicant.

13. In the wake of the foregoing discussions it is thereby held that the appeal is devoid of merits. Admittedly the applicant is deriving the benefits of

family pension. Compassionate appointment is provided immediately to redeem a family in distress. The applicant and his family members have been able to tide over the crisis since 31.10.2007.

14. The decision of Hon'ble the Supreme Court in *Basawaraj and Another vs. Special Land Acquisition Officer*, reported in (2013) 14 SCC 81 can be gainfully referred to when the discretion to condone delay has to be exercised judicially based on facts and circumstances of a case. It is observed and held by Hon'ble the Supreme Court in Basawaraj's case (supra) that the discretion to condone the delay has to be exercised judicially based on facts and circumstances of each case. It is further observed that the expression "*sufficient cause*" cannot be liberally interpreted if negligence, inaction or lack of bonafides is attributed to the parties. Even though limitation may harshly affect rights of a party but it has to be applied with all its rigour when prescribed by statute.

15. In the instant case, there is lack of bonafides and the applicant had acted with negligence and laches. The reasons assigned by the applicant in justifying the delay in preferring the accompanying writ appeal appears to be farfetched. Sufficient and convincing cause was not shown by the applicant. The grounds set out in the application are specious and unsatisfactory. Even if the submission that in the month of March, 2023 the applicant took ill and underwent traditional village treatment is taken into consideration, his vague submission regarding the flood situation cannot be accepted. The applicant further submits that after the floods, he came to Guwahati in the month of August, 2023 and he contacted his Advocate and returned to Lakhimpur. In the interregnum the applicant again contacted conjunctivitis and finally he was able to file a writ petition on 14.09.2023. Thus the reasons set out in the application seeking condonation of delay appears to be totally flimsy and unacceptable.

16. Hence the instant interlocutory application and the writ appeal, which is yet to be numbered, lack merits and is hereby dismissed as such.

17. No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant