

GAHC010234542023



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

Case No. : WA/395/2023

AMIYA KR. DAS
S/O LATE BIRENDRA CH. DAS, R/O KHANAPARA, JAWAHAR NAGAR,
MANDIR PATH, HOUSE NO. 9, GUWAHATI-22, DIST- BISWANATH, KAMRUP
(M), ASSAM, PIN-78022

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, GENERAL ADMN. (B) DEPARTMENT, DISPUR, GUWAHATI-6

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
REVENUE AND DISASTER MANAGEMENT (L.R.) DEPTT.
DISPUR
GUWAHATI-6

3:THE DEPUTY COMMISSIONER AND CHAIRMAN
DISTRICT LEVEL COMMITTEE
KAMRUP (M)
ASSA

Advocate for the Petitioner : MR C GOSWAMI

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE KARDAK ETE

ORDER

Date : **16.10.2023**
(Kardak Ete, J)

Heard Mr. C. Goswami, learned counsel for the appellant. Also heard Mr. N. Das, learned Government Advocate appearing for the State respondents.

2. This intra-Court writ appeal is directed against the order dated 13.09.2023 passed by the learned Single Judge in WP(C) No. 5256/2023, whereby the writ petition of the appellant praying for a direction for appointment on compassionate ground has been dismissed on the ground of delay in instituting the writ petition.

3. The case projected by the appellant/writ petitioner is that the father of the appellant/writ petitioner Late Birendra Ch. Das, who was working as Kanango in the Office of the Deputy Commissioner Kamrup (M), had died-in-harness on 11.04.2009. The appellant/writ petitioner had applied for appointment on compassionate ground on 28.05.2009. The appellant/writ petitioner claims that the District Level Committee (DLC) had recommended his case in its meeting dated 16.07.2009 and forwarded to the Commissioner & Secretary to the Govt. of Assam, General Admn.(B) Department vide letter dated 18.09.2009. Thereafter, the Under Secretary to the Govt. of Assam, Revenue & D.M.(LR) Department, Dispur vide communication dated 23.04.2012 forwarded the application stated to be received from the appellant/writ petitioner on dated 21.03.2012 to the Deputy Commissioner Karmup (M) with a request to place the matter before the District Level Committee (DLC) and to resubmit the proposal to the Government with all other relevant information/documents after it is recommended by the District Level Committee(DLC).

4. It is the contention of the appellant/writ petitioner that till the filing of the writ petition no communication has been made to the appellant/writ petitioner by the respondent authorities whether the case of the writ petitioner has been recommended again by the District Level Committee (DLC) and approved by the State Level Committee (SLC).

5. Being aggrieved of non consideration, the appellant/writ petitioner has filed the writ petition being WP(C) No. 5256/2023 praying for a direction to the respondent State Selection Committee to reconsider the case of the petitioner afresh for appointment on compassionate ground in any Grade-III/IV post.

6. The learned Single Judge vide impugned order dated 13.09.2023 has dismissed the writ petition on the ground of delay which is more than 11 (eleven) years from the date of last communication dated 13.04.2012 and observed that there is apparent lack of due diligence and utter negligence on the part of writ petitioner. Hence, this present writ appeal.

7. Mr. C. Goswami, learned counsel for the appellant submits that the learned Single Judge has failed to consider the explanation of delay due to his financial problem for which the appellant could not approach the Court. The appellant has explained the delay in paragraph 10 of the writ petition. He submits that the appellant has submitted his application for appointment on compassionate ground on 28.05.2009 which is within one year of the death of his father who died-in-harness on 11.04.2009. He submits that initially the case of the petitioner was recommended by the District Level Committee (DLC) vide its meeting dated 16.07.2009 and forwarded to State Level Committee (SLC) vide letter dated 18.09.2009. Thereafter, vide letter dated 23.04.2012, the respondent No. 2 has requested the respondent No. 3 to place the matter before the District Level Committee (DLC) and to resubmit the proposal to the

Government which was pending till the filing of the present writ petition. Therefore, the delay caused, if any, is due to inaction on the part of respondent authorities, which is beyond the control of the petitioner and as such, the cause of delay ought not to have been attributed to the appellant/writ petitioner. Thus, the impugned order dated 13.09.2023 is liable to be set aside and quashed.

8. Mr. N. Das, learned Government Advocate appearing on behalf of the State respondents submits that the appellant/writ petitioner's Late father had died in the year 2009 and the writ petition has been filed in the month of August, 2023 after a delay of more than 11 years after the last communication dated 13.04.2012. Therefore, the learned Single Judge has rightly dismissed the writ petition on the ground of delay in filing the writ petition.

9. We have considered the submissions advanced by the learned counsel for the parties and the materials available on record.

10. It transpires that the father of the appellant Late Birendra Ch. Das, while working as Kanango in the Office of the respondent No. 3, had died-in-harness on 11.04.2009. The appellant had applied for appointment on compassionate ground on 28.05.2009. The case of the appellant was recommended by the District Level Committee (DLC) in its meeting dated 16.07.2009. However, the petitioner could not be accommodated due to lack of vacancy. Vide letter dated 23.04.2012, the Under Secretary to the Government of Assam Revenue D.M. (LR) Department, Dispur has forwarded the appellant's application dated 21.03.2012 to the respondent No. 3 and requested the respondent No. 3 to place the matter before the District Level Committee (DLC) and to resubmit the proposal to the Government after it is recommended by the District Level Committee (DLC).

11. We find that after the letter dated 21.03.2012 there is nothing on record to show that the appellant/writ petitioner had pursued the matter diligently. As noted above, the writ petition has come to be filed only in the month of August, 2023 which is more than 11 years from the last communication towards consideration of the case of the appellant dated 13.04.2012. We take note that the writ petitioner/appellant in his writ petition has averred that he could not approach this Court within a reasonable time due to his financial problem to which, in our considered view, cannot be a cogent explanation for delay in approaching the Court.

12. The appellant writ petitioner has approached this Court for a direction for consideration of his case for appointment on compassionate ground after lapse of more than 11 years from the last communication dated 13.04.2012 and 14 years after the death of his father. In our view, the appellant has miserably failed to explain the delay of more than 11 years in filing the writ petition pursuant to alleged non consideration of his application dated 21.03.2012. Therefore, the learned Single Judge has rightly observed that there is an apparent lack of due diligence and delay in filing the writ petition.

13. This Court in the case of *Dhanjit Das Vs. State of Assam and Ors, in Writ Appeal No. 120/2023* held that the family of the employee having survived for 14 (fourteen) years without difficulty, the highly belated claim for compassionate appointment made by the writ appellant could not have been entertained. Furthermore, the appellant therein had miserably failed to explain the delay of almost 8 (eight) years in filing the writ petition pursuant to alleged non consideration of her application dated 13.09.2013.

14. Law is well settled by catena of judgments rendered by the Hon'ble Supreme Court that compassionate appointment is a means of providing relief

from immediate financial distress to the family of Government employee, who being the sole bread earner, dies-in-harness. This is a means to prevent the dependents of the employee from penury and to provide them immediate relief to tide over the sudden crisis that has befallen on the family due to demise of sole bread earner in the family.

15. In the present case also, as we have observed above, the appellant has approached the Court after 14 (fourteen) years from the death of his father and more than 11 (eleven) years from the last communication towards consideration of the case of the appellant dated 13.04.2012 alleging non consideration of his case. The appellant has failed to explain the delay.

16. In view of the discussions made herein above and the settled position of law, we find no infirmity in the impugned order dated 13.09.2023 passed by the learned Single Judge in WP(C) No. 5256/2023.

17. In the result, writ appeal fails and is dismissed.

No order as to costs.

JUDGE

JUDGE

Comparing Assistant