

GAHC010238672023



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

Case No. : WP(C)/6916/2023

TAPAN SAIKIA
S/O LATE SOVAN SAIKIA, R/O KACHU GAON, P.O.-PULIBOR, DIST-JORHAT,
ASSAM

VERSUS

THE CHIEF SECRETARY CUM CHAIRMAN, STATE LEVEL COMMITTEE FOR
COMPASSIONATE APPOINTMENT AND 5 ORS
DISPUR, GUWAHATI-06

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT
DISPUR
GUWAHATI-06

3:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
JURIPAR
GUWAHATI-37
ASSAM

4:THE DISTRICT COMMISSIONER CUM CHAIRMAN OF DLC FOR
COMPASSIONATE APPOINTMENT
GOLAGHAT
P.O.-GOLAGHAT
ASSAM
PIN-785621

5:THE ADDITIONAL DEPUTY COMMISSINER
GOLAGHAT
(DEALING WITH THE P AND R.D. DEPARTMENT)
GOLAGHAT
DIST-GOLAGHAT

ASSAM

6:THE BLOCK DEVELOPMENT OFFICER
GOLAGHAT EAST DEVELOPMENT BLOCK
PODUMONI
P.O.-GOLAGHAT
DIST-GOLAGHAT
ASSA

Advocate for the Petitioner : MR A R BHUYAN

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 12-12-2023

Heard Mr. J. Barman, learned counsel for the writ petitioner. Also heard Mr. R. Dhar, learned Addl. Sr. Govt. Advocate, Assam appearing for the respondent Nos. 1 and 4 and Ms. N. Bora, learned standing counsel, P&RD Department, Assam appearing for the respondent Nos. 2, 3 and 6.

This writ petition is directed against the resolution adopted in the meeting of the State Level Committee (SLC) held on 02-08-2022 whereby, the application submitted by the petitioner, seeking appointment on compassionate ground, was rejected.

The facts of the case, in a nutshell, are that the mother of the petitioner, who was working as Gram Sevika, died-in-harness on 15-09-2000, leaving behind her son i.e. the petitioner. At the time of death of his mother the petitioner was a minor. However, upon attaining the age of majority, the petitioner had submitted an application in the year 2007, seeking appointment on compassionate ground. It is the pleaded stand of the petitioner

that his application was initially misplaced, as a result of which, he had to submit a fresh application, which was considered by the District Level Committee (DLC) of Golaghat in its meeting held on 31-12-2021 and recommended the case of the petitioner for appointment on compassionate ground. By the impugned resolution, the State Level Committee (SLC) had, however, rejected the case of the petitioner on the ground that his application was placed 21 years after the demise of his mother i.e. the Govt. employee.

Taking note of the facts and circumstances of the case, this Court had passed order dated 01-12-2023 requiring the learned departmental counsel to obtain instruction from the Chairman of the DLC as to the basis on which, the DLC of Golaghat had recommended the case of the petitioner for appointment on compassionate ground even after the expiry of 21 years since the death of his mother (Govt. employee).

Today when the matter is called up, Ms. Bora, learned standing counsel, P&RD Department, Assam submits that due to shifting of office, relevant records are misplaced, as a result of which complete instruction is not available. However, it is the contention of Ms. Bora that the DLC does not have any authority to reject the application submitted by the applicant on the ground of delay.

Be that as it may, responding to the petitioner's case, Mr. Dhar, learned Addl. Sr. Govt. Advocate, Assam has referred to a decision of the Supreme Court rendered in the case of ***State of Manipur Vs. Md. Rajaodin*** reported in ***2003 (7) SCC 511***, to submit that there is no circular in the State of Assam permitting a minor to submit application for appointment on compassionate ground upon attaining majority, several years after the death of the Govt. employee. Mr. Dhar further submits that since the purpose of

appointment on compassionate ground is to mitigate the immediate financial hardship of the deceased's family, an application of such nature cannot be considered favourably after the lapse of 21 years since the demise of the Govt. employee.

Mr. Barman, learned counsel for the writ petitioner has, however, submitted that since his client was a minor at the relevant point of time, there was no delay in submitting the application.

In the case of ***Md. Rajaodin (Supra)***, the Hon'ble Supreme Court has dealt with the above issue. The observations made in paragraph 11 of the judgment would be relevant for the purpose of this case and therefore, is being reproduced here-in-below for ready reference:-

“11. In Smt. Sushma Gosain and Ors. Vs. Union of India and Ors. [1989 (4) SCC 468] it was observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisage specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was reiterated in Phoolwati (Smt.) Vs. Union of India & Ors. [1991 Supp. (2) SCC 689] and Union of India and Ors. Vs. Bhagwan Singh [1995 (6) SCC 476]. In Director of Education (Secondary) and Anr. Vs. Pushpendra Kumar and Ors. [1998 (5) SCC 192] it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are

eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependent of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision."

There is no doubt or dispute about the fact that there is no Govt. circular in the State of Assam permitting a minor to submit belated application seeking appointment on compassionate ground upon attaining majority. Rather, the standing Govt. circulars, at the relevant point of time had laid down that such application should be filed in a time bound manner and consider as expeditiously as possible. It is to be noted that even if the age of the petitioner on the date of filing the original application in the year 2007 is taken into account, even then it is apparent that he had survived more than 16 years without any Govt. employment. Therefore, there is no justification for this Court to presume that element of compassion is still present in the case of the applicant/ writ petitioner.

For the aforesaid reasons and in view of the law laid down by the Supreme Court, as noted above, this Court is of opinion that there is no good ground to entertain this writ petition. The same is accordingly dismissed.

Parties to bear their own cost.

JUDGE

GS

Comparing Assistant