

GAHC010008372024



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

Case No. : WP(C)/395/2024

JUSHNA DEURI
D/O- LATE NIRON SING DEURI
VILL- SANKARPUR,
P.O.- MADHUPUR B.O.,
P.S.- NARAYANPUR,
DIST. NORTH LAKHIMPUR,
ASSAM, PIN- 784165.

VERSUS

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

2:THE DISTRICT COMMISSIONER
LAKHIMPUR
PIN- 787001.

3:THE EXECUTIVE ENGINEER
DHAKUAKHANA DIVISION (IRRIGATION)
DHAKUAKHANA
LAKHIMPUR

PIN- 784164

Advocate for the Petitioner : MR. A BORO

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 15-07-2024

Heard Mr. S. Biswas, learned counsel for the petitioner as well as Ms. A. Talukdar, learned Govt. Advocate for the respondent nos.1 and 2 and Mr. N. Upadhyay, learned standing counsel for the respondent no.3.

2. The father of the petitioner, namely, Late Niransing Deuri had died-in-harness on 04.08.2016 while working as Chowkidar in the establishment of respondent no.3, leaving behind his wife who is suffering from cancer and four children out of which two were minor. The petitioner is the eldest daughter of her father and it is projected that she had applied for appointment on compassionate ground on 04.01.2017.

3. It is projected that in the meanwhile the mother of the petitioner had died on 30.11.2022. The petitioner submitted her representation dated 05.01.2023 to the Chief Minister of the State and resultantly, the Guardian Minister (Irrigation) was asked to take up the issue personally. The candidature of the petitioner was placed in the DLC meeting dated 07.07.2023, where the petitioner's application was rejected on the ground of its late submission. Accordingly, by filing this writ petition under Article 226 of the Constitution of India, the petitioner is seeking a direction upon the respondents to place the matter before the next DLC for reconsideration.

4. The learned counsel for the petitioner has cited the decision of this Court dated 21.09.2022 passed in the case of *Rintu Kakati v. State of Assam and ors., WP(C) 4486/2022* to project that the one year prescription of submitting an application is directory in nature rather than mandatory and therefore the said one year period should not be considered in arithmetical precision, notwithstanding that the case of the petitioner is that she applied on 04.01.2017 which is within the period of limitation.

5. Upon instructions, the learned standing counsel for the Irrigation Department has submitted that there is no application filed on 04.01.2017 on record. Be that as it may as the respondents have not filed any affidavit to that effect, we do not intend to take cognizance of the submission in that regard.

6. The Supreme Court of India in the case of *State of West Bengal v. Debabrata Tiwari, (2023) 0 Supreme SC 191*, has held, amongst other that inordinate delay even on part of the State to consider the application would make the petitioner disentitled for consideration of appointment on compassionate ground.

7. Para-7.4 and 7.5 of *Debabrata Tiwari (supra)* is quoted below:

“7.4. As noted above, the *sine qua non* for entertaining a claim for compassionate appointment is that the family of the deceased employee would be unable to make two ends meet without one of the dependants of the deceased employee being employed on compassionate grounds. The financial condition of the family of the deceased, at the time of the death of the deceased, is the primary consideration that ought to guide the authorities’ decision in the matter.

7.5. Considering the second question [referred to above](#), in the first instance, regarding whether applications for compassionate appointment could be considered

after a delay of several years, we are of the view that, in a case where, for reasons of prolonged delay, either on the part of the applicant in claiming compassionate appointment or the authorities in deciding such claim, the sense of immediacy is diluted and lost. Further, the financial circumstances of the family of the deceased, may have changed, for the better, since the time of the death of the government employee. In such circumstances, Courts or other relevant authorities are to be guided by the fact that for such prolonged period of delay, the family of the deceased was able to sustain themselves, most probably by availing gainful employment from some other source. Granting compassionate appointment in such a case, as noted by this Court in Hakim Singh would amount to treating a claim for compassionate appointment as though it were a matter of inheritance based on a line of succession which is contrary to the Constitution. Since compassionate appointment is not a vested right and the same is relative to the financial condition and hardship faced by the dependents of the deceased government employee as a consequence of his death, a claim for compassionate appointment may not be entertained after lapse of a considerable period of time since the death of the government employee."

8. In view of the decision of the Supreme Court of India in the case of *Debabrata Tiwari (supra)* the order dated 21.09.2022 passed by this Court in the case of *Rintu Kakati (supra)* will not have a binding force.

9. The Court is inclined to follow the decision of the Supreme Court of India in the case of *Debabrata Tiwari (supra)* and as the father of the petitioner is stated to have died-in-harness on 04.08.2016, this is a case where Principle-10 of the Office Memorandum dated 01.06.2015 would make the petitioner disentitled for consideration of appointment on compassionate ground and accordingly the delay in considering the appointment of the petitioner on compassionate ground would also disentitle the petitioner for any further consideration of candidature in light of the decision rendered in the case of *Debabrata Tiwari (supra)*.

10. Accordingly, this writ petition fails and the same is dismissed.

JUDGE

Comparing Assistant