

GAHC010030352024



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

Case No. : WP(C)/922/2024

UZZAL BARMAN @ UJJAL BARMAN
SON OF LATE DIPAK KR. BARMAN, RESIDENT OF BILASIPARA WARD
NO.9, P.S. BILASIPARA, DISTRICT- DHUBRI, ASSAM, PIN- 783348

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, GENERAL ADMINISTRATION DEPARTMENT,
ASSAM, DISPUR, GUWAHATI-6

2:THE COMMISSIONER AND SPECIAL SECRETARY TO THE GOVERNMENT
OF ASSAM
PUBLIC WORKS (ROADS) DEPARTMENT
DISPUR
ASSAM
GUWAHATI-6

3:THE STATE LEVEL COMMITTEE FOR COMPASSIONATE APPOINTMENT
REPRESENTED BY ITS CHAIRMAN THE CHIEF SECRETARY TO THE
GOVERNMENT OF ASSAM
DISPUR
GUWAHATI-6

4:CHIEF ENGINEER
PWD (ROADS)
PUBLIC WORKS (ROADS) DEPARTMENT ASSAM
CHANDMARI
(ESSTT CELL-II) CHANDMARI
GUWAHATI- 781003

5:DISTRICT LEVEL COMMITTEE FOR COMPASSIONATE APPOINTMENT

REPRESENTED BY ITS CHAIRMAN
THE DEPUTY COMMISSIONER
DHUBRI
ASSAM
PIN- 783301

6:THE EXECUTIVE ENGINEER
PWD
DHUBRI RURAL ROAD DIVISION
DHUBRI
ASSAM
PIN- 78330

Advocate for the Petitioner : MS. P BHATTACHARYA

Advocate for the Respondent : SR. GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 07.06.2024

Heard Mrs. P. Bhattacharya, learned counsel for the petitioner. Also heard Mrs. M. Bhattacharjee, learned Additional Senior Govt. Advocate for the State respondents; and Mr. P. Nayak, learned standing counsel for the PWD.

2. In brief, the case of the petitioner is that his father, Late, Dipak Kumar Barman, who was then serving as Grade-IV employee in the capacity of Roller handyman in the establishment of Executive Engineer, PWD (R.R.) Division, Dhubri, had died-in-harness on 13.08.2014. Without any delay, on 07.11.2014, the petitioner had submitted an application for appointment on compassionate ground in any Grade-IV post as there was no earning member in the family.

3. The District Level Committee, in its meeting held on 11.03.2015 had recommended the name of the petitioner for appointment on compassionate ground. However, the petitioner did not receive any communication about his

application despite approaching the authorities on many occasions.

4. In the first week of February, 2024, the petitioner has collected a copy of the minutes of the meeting of the State Level Committee held on 31.12.2018 and came to know for the first time that the State level Committee had rejected the recommendation made by the District Level Committee, Dhubri on the ground that 5% quota had already been filled up.

5. The learned counsel for the petitioner has referred to the OM dated 01.06.2015 and it has been submitted that the rejection of the candidature of the petitioner is vitiated on account of the fact that the direction contained in Clause-15 of the OM dated 01.06.2015 was not considered. It is also submitted that because of the said error on part of the respondent authorities in the SLC while dealing with the matter, this Court by order dated 23.02.2024 had directed the learned standing counsel for the PWD to obtain instruction as to whether the decision of the SLC was communicated to the petitioner. The learned counsel for the petitioner has submitted that the non-communication of the said SLC decision to the petitioner has caused the delay, for which the petitioner is not responsible.

6. It is noted that the Supreme Court of India in the case of *State of West Bengal. Vs. Debabrata Tiwari, AIR 2023 SC 1467 : (2023) 0 Supreme (SC) 191* has held that the inadvertent delay even in part of the State to consider the application would make the petitioner disentitle for consideration for appointment on compassionate ground. The observation made in paragraph 7.4 and 7.5 of the said case is extracted 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."

7. In view of the above, we find that as the father of the petitioner had died 10 years ago, the said decision would be squarely applicable in the case of the petitioner. Moreover, as per Principle-10 of the OM dated 01.06.2015 read with Sub-Paragraph 10 of Paragraph-7 of the judgment of this Court rendered in the case of *Achyut Ranjan Das Vs. State of Assam & Ors., 2006 (4) GLT 674*, the Court is of the considered opinion that the claim of the petitioner would require no further consideration and must be understood to have spent its force.

8. In light of the ratio laid down in the judgments referred above, the Court is of the considered opinion that as the father of the petitioner had died on 13.08.2014, the petitioner is disentitled for consideration for appointment on compassionate ground.

9. Accordingly, the Court is inclined to dismiss this writ petition.
10. However, taking note of the fact that the petitioner has waited for 10 (ten) years, it is provided that in the event the petitioner makes application for any other post, he would be entitled to produce certified copy of this order before the competent authorities and make a prayer for condoning his age in terms of applicable OMs while applying in any post.
11. Accordingly, subject to observations as made in the foregoing paragraphs, this writ petition is dismissed.

JUDGE

Comparing Assistant