

GAHC010071162024



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

Case No. : WP(C)/2008/2024

TRAILUKYA DEORI
SON OF LATE MOTIRAM DEORI,
VILL- BORPATHER,
P.O.- TENGAPANI,
DIST.- SIVASAGAR, ASSAM,
PIN- 785671.

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
SIVASAGAR
PIN- 785640.

3:THE EXECUTIVE ENGINEER (PHE)
SIVASAGAR SUB-DIVISION
SIVASAGAR
PIN- 785640

Advocate for the Petitioner : MR. A BORO

Advocate for the Respondent : SC, GAD

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

ORDER

Date : 24.06.2024

Heard Mr. A. Boro, learned counsel for the petitioner as well as Mr. A. Phukan, learned standing counsel for respondent no.1, Mr. D. Borah, learned Govt. advocate for State respondent no.2 and Ms. N. Kalita, learned standing counsel for respondent no.3.

2. The case of the petitioner is that his father Late Motiram Deori had died in harness on 01.05.2013 while working as Khalashi in the office of the Executive Engineer (PHE), Sivasagar Sub-Division, Sivasagar, leaving behind petitioner and three other legal heirs. The petitioner had applied for appointment on compassionate ground on 13.06.2013, which was forwarded to the DLC, Sivasagar. In the DLC meeting held on 27.04.2015, the name of the petitioner was recommended for the post of Junior Assistant (Grade-III) against one vacancy for the year 2013-14. The matter was then taken up by the SLC in its meeting held on 14.05.2020. However, the SLC had rejected the candidature of the petitioner on the ground that the total cadre strength of Junior Assistant (Grade-III) in the establishment of the Executive Engineer (PHE), Sivasagar Sub-Division, Sivasagar was seven and therefore, there would be no post under 5% quota for appointment on the compassionate ground.

3. The learned counsel for the petitioner submits that the rejection of the candidature of the petitioner by the SLC on the ground that the post does not fall under 5% of total cadre strength is arbitrary. It is also submitted that the petitioner belongs to ST(P) category and therefore, he is entitled to be considered for appointment under the said category. Accordingly, the learned

counsel for the petitioner submits that the candidature of the petitioner shall be directed to be reconsidered by the SLC and his application should not be rejected on the ground that no 5% vacancy exists in respect of the Grade-III post in the establishment of the Executive Engineer (PHE), Sivasagar Sub-Division, Sivasagar (respondent no.3).

4. The learned counsel for the petitioner has submitted that a representation has been submitted by the petitioner before the Executive Engineer (PHE), Sivasagar Sub-Division, Sivasagar (respondent no.3) on 16.11.2021.

5. The learned Govt. advocate has opposed the prayer made in this writ petition and places reliance on the decision of the Supreme Court of India in the case of *State of West Bengal & Ors. Vs. Debabrata Tiwari, 2023 0 Supreme(SC) 191*.

6. From the SLC minutes dated 14.05.2020, it is seen that the Grade-III post of Junior Assistant in the establishment of the Executive Engineer (PHE), Sivasagar Sub-Division, Sivasagar (respondent no.3) is seven and therefore, the availability of cadre strength of seven in the Grade-III post in the said establishment does not entitle any appointment under compassionate ground as it would require a minimum of 20 cadre strength to have one post earmarked for appointment on compassionate ground under the 5% quota based on cadre strength. Therefore, when the cadre is seven, no post will be available for appointment under compassionate ground.

7. It would be appropriate to refer to para 7.4 and 7.5 of the case of the *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 this case, the father of the petitioner had died in harness on 01.05.2013, by this more than 11 years time from the date of death of father of the petitioner has gone by. The candidature of the petitioner was rejected by the SLC in its meeting held on 14.05.2020 and in this case the challenge is made almost after four years. Therefore, by the time this writ petition has been

taken up, the immediacy of the requirement of appointment on compassionate ground is already lost as per ratio laid down in the case of *Debabrata Tiwari (supra)*.

9. Under such circumstances, the principle 10 of the OM dated 01.06.2015, which requires that applications which cannot be considered due to want of vacancies for a period of two years from the date of making such application, all such application require no further consideration, would become applicable.

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

JUDGE

Comparing Assistant