

GAHC010073322021



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

Case No. : WP(C)/2816/2021

RIMJHIM DAS (BORA)
W/O- LT. RANJAN KUMAR DAS, R/O- VILL- KUNDERBARI, P.S.
DEKARGAON, P.S. TEZPUR, DIST.- SONITPUR, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMM. AND SECY., TO THE GOVT. OF ASSAM, PWD DEPTT.,
DISPUR, GHY-06

2:THE STATE LEVEL COMMITTEE FOR COMPASSIONATE APPOINTMENT
REP. BY ITS CHAIRMAN
THE CHIEF SECRETARY
TO THE GOVT. OF ASSAM
DISPUR
GHY-06

3:THE DY. SECRETARY
TO THE GOVT. OF ASSAM
PUBLIC WORKS (ROADS) DEPTT.
ESTT-B BRANCH
ASSAM SECRETARIAT
DISPUR
GHY-06

4:THE CHIEF ENGINEER
PWD (ROADS)
ASSAM
CHANDMARI
GHY-03

5:THE DISTRICT LEVEL COMMITTEE FOR COMPASSIONATE
APPOINTMENT
SONITPUR
REP. BY ITS CHAIRMAN
DY. COMMISSIONER
SONITPUR
TEZPUR
DIST.- SONITPUR
ASSAM

6:THE EXECUTIVE ENGINEER
PWD
SONITPUR RURAL ROAD DIVISION
BISWANATH CHARIALI
DIST.- BISWANATH
ASSA

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocate for the petitioner : Shri S.C. Biswas, Advocate

Advocate for respondents : Shri R. Dhar, SC, PWD.

Date of hearing : 03.05.2024

Date of judgment : 03.05.2024

The issue raised in this petition is towards a claim for appointment on compassionate ground.

2. The facts projected in this petition is that the husband of the petitioner, late Ranjan Kr. Das, was working as a Grade-IV employee in the Public Works Department (PWD) at Tezpur who had died in harness on 31.12.2006.

3. The petitioner who claims to be eligible and qualified had accordingly applied for appointment on compassionate ground on 04.04.2007. As the said application was not duly considered, the petitioner had earlier approached this Court by filing WP(C)/7473/2013. In the said case, the apprehension of the petitioner was that the lack of consideration might have been on the ground that the husband was working on work charge basis and not on a regular employee. The said writ petition was disposed of by this Court vide order dated 28.03.2014 wherein it has been held that for the purposes of consideration for appointment on compassionate ground, no distinction should be carved out between a regular employee and a work charge employee as such employee also gets the GPF and another benefits. In spite of the said judgment, no action was taken and accordingly, the present writ petition has been instituted.

4. I have heard Shri S.C. Biswas, learned counsel for the petitioner whereas the PWD is represented by Shri R. Dhar, learned Standing Counsel.

5. Shri Biswas, the learned counsel for the petitioner has submitted that on persistent approach by the petitioner, a communication was issued to her on 06.07.2019 whereby the ground of rejection was stated that the deceased - Government Servant was on work charge basis. It is submitted that the aforesaid ground was already taken care of by this Court while disposing of the earlier WP(C)/7473/2013 vide judgment and order dated 28.03.2014. He accordingly submits that necessary directions be issued for a fair consideration and appointment of the petitioner on compassionate ground.

6. *Per contra*, Shri Dhar, the learned Standing Counsel of the Department, by

referring to the affidavit-in-opposition filed on 10.01.2022 has submitted that the case of the petitioner was indeed considered by the State Level Committee on 19.06.2018. Upon such consideration, the case of the petitioner was rejected on the grounds of lack of vacancy within the 5% quota as well as the delay in such consideration. In this connection, the averments made in paragraph 4 of the affidavit-in-opposition dated 10.01.2022 have been pressed into service.

7. The learned Standing Counsel further submits that the writ petition has been filed only in the year 2021 and the death of the Government Servant was in the year 2006. Therefore, any direction for consideration of the case of the petitioner at this stage would not be in consonance with the objective of the Scheme. Shri Dhar, the learned Standing Counsel has relied upon a recent judgment of the Hon'ble Supreme Court in the case of ***State of West Bengal vs. Debabrata Tiwari & Ors.*** reported in ***AIR 2023 SC 1467***.

8. The rival contentions have been duly considered and the materials placed before this Court have been carefully examined.

9. The stand taken by the respondents in the affidavit filed on 10.01.2022 is that the consideration of the petitioner by the SLC was indeed done on 19.06.2018 and on the grounds of lack of vacancies within the 5% quota and the period which has elapsed in the meantime were taken as grounds for the rejection of the candidature of the petitioner.

10. Though apparently, the said grounds which have been placed on record by way of an affidavit does not appear to be consistent with the reply dated 06.07.2019, the aspect of the long intervening period of about 2 decades from the date of death

cannot be ignored or overlooked. The first writ petition was disposed of in March, 2014 and the present writ petition itself has been filed on 08.04.2021.

11. The Hon'ble Supreme Court in the aforesaid case of **Debabrata Tiwari** (supra) has laid down as follows:

“ 7.2. On consideration of the aforesaid decisions of this Court, the following principles emerge:

(i) *That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must be resorted to only in order to achieve the stated objectives, i.e. to enable the family of the deceased to get over the sudden financial crisis.*

(ii) *Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependants of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.*

(iii) *Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over.*

(iv) *That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.*

(v) *In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits if any, received by the family, the age, dependency and marital status of its members together with the income from any other source.*

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."

12. The objective of the scheme of compassionate appointment which is an exception to the General Rules of recruitment is to give immediate succour to a bereaved family which has lost its sole breadwinner and the same cannot be a matter of right. In any case, the entire objective would lose its essence in case of elapse of a considerable period of time. In the aforesaid case, the Hon'ble Supreme Court, as indicated above had gone to the extent that even if the delay is on account of the respondent authorities, that would also be taken into account while considering the case for appointment on compassionate ground.

13. In the instance case, the period from 2006 to 2021 is a considerable period and therefore any further directions for consideration of the case for appointment on compassionate ground of the petitioner would not be in sync with the scheme of compassionate appointment.

14. Accordingly this Court is of the opinion that no relief can be granted to the petitioner in this case and accordingly the writ petition is dismissed.

JUDGE

Comparing Assistant