

GAHC010085012024



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

Case No. : WP(C)/2277/2024

TAPASH KUMAR PAUL
S/O LATE KAJAL MOHAN PAUL, R/O WARD NO-4, RAMKRISHNA NAGAR,
DIST- KARIMGANJ, ASSAM, PIN-788166

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, HOME DEPARTMENT, DISPUR, GUWAHATI-6

2:THE SECRETARY OF THE GOVT. OF ASSAM
DEPARTMENT OF PERSONNEL (B)
DISPUR
GUWAHATI-6

3:THE 14TH STATE LEVEL SELECTION COMMITTEE
HEADED BY ITS CHAIRMAN
DISPUR
GUWAHATI-6

4:THE DISTRICT LEVEL SELECTION COMMITTEE
HEADED BY ITS CHAIRMAN CUM DEPUTY COMMISSIONER
DIST- HAILAKANDI
ASSAM
PIN-788163

5:THE SUPERINTENDENT OF POLICE
HAILAKANDI
DIST- HAILAKANDI
ASSAM
PIN-78816

Advocate for the Petitioner : MR S N ADHYAPAK

Advocate for the Respondent : GA, ASSAM

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

ORDER

Date : 15-05-2024

Heard Mr. S.N. Adhyapak, learned counsel for the petitioner as well as Mr. T.C. Chutia, learned Addl. Senior Govt. Advocate appearing for the respondents.

2. The case of the petitioner is that his father Late Kajal Mohan Paul had died-in-harness on 20.07.2010. Without any delay, the petitioner had applied for appointment on compassionate ground on 07.06.2011. The District Level Committee, Hailakandi district in its meeting held on 30.11.2012, recommended the name of the petitioner for appointment on compassionate ground. As per the procedure prescribed, the DLC recommendation was taken up for consideration by the State Level Committee (SLC) after more than 9 years on 10.02.2022 and the proposal was rejected on the ground that the deceased had a service period of less than 3 years.

3. The learned counsel for the petitioner had submitted that the petitioner had earlier approached this Court by filing a writ petition which was registered as WP(C) 6424/2023, but due to certain reasons, the writ petition was allowed to be withdrawn with liberty vide order dated 03.04.2024. It is also submitted that clause 1 of the office memorandum dated 01.06.2015 which

excluded the consideration of appointment on compassionate ground if the deceased person had less than 3 years of service was struck down by this Court by order dated 30.01.2023 passed in WP(C) 1646 of 2021. In this regard the learned Addl. Senior Govt. Advocate has submitted that against the said judgment dated 30.01.2023 passed in WP(C) 1646 of 2021, a writ appeal has been filed and the said order has been stayed.

4. In support of this writ petition, the learned counsel for the petitioner has placed reliance on the case of *N.C. Santhosh v. State of Karnataka and ors.*, (2020) 7 SCC 617.

5. The learned Addl. Senior Govt. Advocate has placed reliance on the case of *State of West Bengal v. Debabrata Tiwari and ors.*, AIR 2023 SC 1467: (2023) 0 Supreme (SC) 191, wherein it has been held that even if the State has caused any delay, the delay itself will disentitle the consideration of appointment on compassionate ground.

6. In the present case in hand, it cannot be said that the application of the petitioner submitted on 07.06.2011 was within a period of 1 year from the death of his father. The DLC, Hailakandi district had made their recommendation in its meeting on 30.11.2012. However, the SLC, an authority which is mandatorily required to take up consideration of the applications forwarded by the DLC and give its approval for appointment of persons on compassionate ground, took up the application of the petitioner in its meeting held on 10.02.2022 at 10:30 a.m. in the conference hall of the Chief Secretary, Assam.

7. In the minutes of the meeting of the 14th SLC pertaining to Home and Political Department for appointment on compassionate ground, which is annexed to this writ petition as Annexure-5, there is no explanation as to why the recommendation of DLC made on 30.11.2012 was taken up for consideration after more than 9 years 3 months on 10.02.2022.

8. This Court in the case of *Achyut Ranjan Das v. State of Assam, 2006 (4) GLT 674*, which was decided on 03.08.2006, the principles governing the compassionate appointment was laid down by directing that henceforth claims relating to compassionate appointment will have to be considered on those parameters.

9. Principle nos. II to X are reiterated below:

- “II. The District Head of each Department will intimate the vacancies as and when such vacancies occur, to the Court Appointed District Level Committees for its scrutiny. There will be no delay in such intimation.*
- III. The District Level Committee will be constituted by the Deputy Commissioner of the District and the Superintendent of Police. The Deputy Commissioner himself will sit in the Committee. The District Head(s) of such departments in which vacancies are available shall be co-opted as the Additional Members of the Committee.*
- IV. The District Level Committee will meet once every 2 (two) months on the last Saturday of the second month.*
- V. The District Level Committee will decide as to who amongst the eligible candidates is entitled to compassionate appointment. To the extent possible such appointments will be recommended to be made within the District. In making the recommendations for appointments, the District Level Committee will take into account the financial condition of the family of the deceased and on a relative consideration of the cases will make its recommendation. There will be no selection and "seniority of the claim" will not be resorted to unless*

two or more eligible candidates are at par.

VI. *To decide on the question of financial status of the family of a claimant regard will be had to the following factors as laid down in G.M. v. Kunti Tiwari (supra)*

(a) Gratuity amount received/receivable.

(b) Family pension payable.

(c) Provident Fund Amount received/receivable.

(d) Any ex-gratia payment made or payable.

(e) Proceeds of LIC Policy and other investments of the deceased.

(f) Income of the family from other sources.

(g) Employment of other family members.

(h) Size of the family and liabilities, if any.

VII. *The recommendations of the District Level Committee will be considered by a State Level Committee consisting of the Chief Secretary and the Senior Financial Commissioner of the State. The Commissioner and Secretary of the Department(s) in which vacancies are available will be co-opted as Additional Members of the State Level Committee.*

VIII. *The State Level Committee will meet once every 3 (three) months.*

IX. *All vacancies available against the quota of compassionate appointment must be filled up within a period of 6 (six) months from the date of occurrence of the vacancy in accordance with the present directions.*

X. *If the applications of eligible candidates remain pending and cannot be considered due to want of vacancies for a period of 2 (two) years from the date of making such applications, all such applications will require no further consideration and must be understood to have spent their force."*

10. From the above, principles as laid down in the case of *Achyut Ranjan Das (supra)*, the DLC was directed to meet once every two months on the last Saturday of the second month and the SLC was directed to meet once every three months with a further direction that all vacancies available against the quota of compassionate appointment must be filled up within a period of 6

months from the date of occurrence of the vacancy in accordance with the directions. The O.M. dated 01.06.2015 also contains similar provisions.

11. It may be mentioned that the law laid down in the case of *Achyut Ranjan Das (supra)* as has attained finality and is being followed till date.

12. The OM dated 01.06.2015, issued by the Govt. Of Assam in the matter of compassionate appointment contains, amongst others, the following provisions:

“Principle-1: All pending applications against existing vacancies as per the quota earmarked including the cases of the petitioners in the present cases and all others, who may not be before the Court, shall be decided in accordance with the proposed directions to be laid down in the present order and also in accordance with the principles noted in the preceding paragraphs of this order. This will be done within a period of 4 (four) months from today. The present direction naturally has to be considered as a one time measure in view of the subsequent directions as laid down in the succeeding paragraphs.

Principle-4: The District Level Committee will meet once in every 2 (two) months on the last Saturday of the second month.

Principle-8: The State Level Committee will meet once every 3 (three) months.”

13. Therefore, the non-adherence of the SLC to hold its meeting on time as mandate by the decision of this Court in the case of *Achyut Ranjan Das (supra)* as well as Principle-VIII of O.M. dated 01.06.2015, has shocked the conscience of the Court because of the inordinate delay of 9 years 3 months on part of the SLC to take up the DLC recommendation made on 30.11.2012, which contains recommendation of the name of the petitioner.

14. In the considered opinion of the Court, the case of *N.C. Santosh*

(*supra*) does not help the petitioner in any manner because of the fact that the application of the petitioner was considered by the DLC and his name was recommended in the minutes of the DLC meeting held on 30.11.2012. It is for the inordinate delay in the final decision by the SLC, a situation has come up whereby the delay was on the part of the State administration to have the DLC recommendation dated 30.11.2012, taken up by the SLC, which has disentitled the petitioner for consideration for compassionate appointment.

15. The relevant paragraph 7.4 and 7.5 of the decision of the Supreme Court of India in the case of *State of West Bengal v. Debabrata Tiwari (supra)*, are 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."

16. From the above it is clear that after considering all the aspects of the matter, the Supreme Court of India has authoritatively opined that even delay on part of the respondent authority in the disposal of the application for appointment on compassionate appointment would disentitle such an application for a consideration as the immediacy is diluted or lost.

17. In the case of *N.C. Santhosh (supra)*, it has been held that the policy in force at the time of consideration would govern the application for compassionate appointment. Therefore at the present juncture in view of the pending application of the petitioner, the OM dated 01.06.2015 would be applicable in the case of the petitioner. Moreover, under Principle-10 of the said Office Memorandum, it is provided that the application of the eligible candidates remained pending and cannot be considered due to want of vacancies within a period of 2 (two) years from the date of making such application would require no further consideration and must be understood that it has spent their force.

18. Moreover, in view of the ratio laid down in the case of *Debabrata Tiwari (supra)*, the Court is of the considered opinion that the said case will disentitle the petitioner for appointment on compassionate ground.

19. This Court upon consideration of the inordinate delay has already held that the delay on part of the SLC to take up the DLC recommendation of the petitioner on compassionate ground within the time prescribed by the law laid

down in the case of *Achyut Ranjan Das (supra)* as well as under Principle-10 of the O.M. dated 01.06.2015, has already held that the said delay of about 9 (nine) years 3 (three) months has shocked by the conscience of the Court.

20. In view of that the Court finds that the petitioner would be entitled to a common law remedy of monetary cost/compensation on delay on part of the SLC to take up the DLC recommendation made on 30.11.2012 within the time prescribed in the case of *Achyut Ranjan Das (supra)* as well as Principle-10 of O.M. dated 01.06.2015, to a compensation of Rs.5.00 lakh which shall be paid by the State to the petitioner within a outer period of 2 months from the date of receipt of a certified copy of the order in the office of the Chief Secretary to the Govt. of Assam.

21. However, the State is granted liberty to recover such amount from any of those persons who are found, after inquiry, that they are responsible in the delay.

22. Having noted that the present case has been taken up after 9 years 3 months from the date of DLC recommendation, the Chief Secretary to the Govt. of Assam, being the head of the SLC, is directed to do whatever is required so as to ensure that all pending DLC recommendation are placed before the SLC within a month from the date of receipt of the certified copy of the order and in all event the SLC shall mandatorily be held within a period of 2 months from the date of receipt of a certified copy of this order, as has been directed by this Court in the case of *Achyut Ranjan Das (supra)*.

23. Along with the certified copy of this order, the petitioner shall provide his e-mail or Whatsapp mobile number through which communication shall be made by the office of the Chief Secretary to the petitioner.

24. With the above aforesaid directions and granting of cost/compensation to the petitioner, this writ petition stands disposed of.

JUDGE

Comparing Assistant