

GAHC010089602024



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

Case No. : WP(C)/2386/2024

SABIR AHMED BARBHUIYA
S/O- LATE NASIR UDDIN BARBHUIYA,
R/O- VILLAGE BHAIRAB NAGAR,
P.O- KRISHNAPUR (RANIGHAT),
DIST- CACHAR, ASSAM,
PIN-788025

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE CHIEF SECRETARY TO THE GOVERNMENT OF ASSAM CUM
CHAIRMAN, STATE LEVEL COMMITTEE FOR COMPASSIONATE
APPOINTMENT, DISPUR, GUWAHATI-06

2:THE PRINCIPAL SECRETARY
TO THE GOVERNMENT OF ASSAM
TRANSPORT DEPARTMENT
DISPUR
GUWAHATI-781006.

3:THE DIRECTOR
OF INLAND WATER TRANSPORT DEPARTMENT
ULUBARI
GUWAHATI-07
KAMRUP(M)
ASSAM.

4:THE DISTRICT LEVEL COMMITTEE FOR COMPASSIONATE APPOINTMENT
REP. BY ITS CHAIRMAN CUM DISTRICT COMMISSIONER
CACHAR
SILCHAR
PIN-788001

5:THE EXECUTIVE ENGINEER
INLAND WATER DIVISION
SILCHAR-0

Advocate for the Petitioner : MR. N H BARBHUIYA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 10-05-2024

10.05.2024

Heard Mr. N.H. Barbhuiya, learned counsel for the petitioner. Also heard Mr. A. Chakraborty, learned Govt. Advocate appearing for the respondent nos.1 and 4; and Ms. M.D. Bora, learned standing counsel for the Transport Department appearing for the respondent nos.2, 3 and 5

2. The father of the petitioner had died-in-harness on 15.10.1998, leaving behind his widow and three minor children including the petitioner. At the time of death, the petitioner claims to be of 4 years of age. It is projected that the mother of the petitioner applied for appointment on compassionate ground on 05.11.1998, but her candidature was never considered despite correspondence in the matter.

3. The petitioner claims that he had cleared his Higher Secondary Education on 20.05.2013 and on 11.12.2014, the mother of the petitioner had made a prayer for compassionate appointment of the petitioner, which was forwarded by another letter dated 05.08.2023 sent by registered post with A/D. As the candidature of the petitioner was not considered, the present writ

petition has been filed under Article 226 of the Constitution of India.

4. The question as to whether the minor legal heir of the deceased govt. employee has a right to apply for appointment on compassionate ground on attaining majority has already been decided by this Court in the case of *Madhumita Bhattacharjee v. State of Assam*, (2022) 2 GLT 974 and *Latika Goala v. State Level Committee*, (2022) 2 GLT 965, wherein by relying on the decision of the Supreme Court of India in the case of *Sanjay Kumar v. State of Bihar*, (2000) 7 SCC 192, this Court had held that there cannot be a reservation of vacancy till such time the claimant becomes a major after a number of years unless there is some specific provision in the scheme of compassionate appointment.

5. In view of the above discussions and by referring to various case laws as already been made in the hereinbefore referred two writ petitions, the Court does not see any reason to burden this order with a replication of the decisions rendered in those cases.

6. We may only say that in the case of *State of Himachal Pradesh and another v. Shashi Kumar*, (2019) 3 SCC 653, after discussing various decisions in the matter of compassionate appointment, the Supreme Court of India had reiterated that appointment to any public post in the service of the State has to be made on the basis of principles in accordance with Articles 14 and 16 of the Constitution of India and that compassionate appointment is an exception to the General Rule and that the dependents of a deceased govt. employee are made eligible by virtue of policy on compassionate appointment and they must fulfill the norms laid down by the State policy.

7. In the State of Assam, the appointment of persons on compassionate

ground has been discontinued vide notification dated 31.03.2017 vide OM no.FEG.28/2017/26 dated 14.09.2017, issued by the Govt. of Assam, Finance (Estt-A) Department, by which scheme for "Compassionate Family Pension in lieu of Compassionate Appointment," in short Compassionate Family Pension (CFP) scheme has been notified.

8. It is well settled that the policy of compassionate appointment which is in vogue would apply. Therefore, in the present case in hand, if we consider the application of the petitioner for appointment on compassionate ground made on 11.12.2014, the said application would be hit by principle No.10 of the Office Memorandum dated 01.06.2015 on compassionate appointment.

9. However, if the application of the petitioner, which was made on 11.12.2014 by his mother is considered, then the application would be hopelessly barred by limitation as the father of the petitioner had died in the year 1998.

10. Therefore on all grounds, the writ petition is found devoid of any merit and the same is dismissed.

JUDGE

Comparing Assistant