

GAHC010105782024



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

Case No. : WP(C)/2811/2024

MD. FAZMUL ALI
S/O- LATE FARMUD ALI,
R/O- VILLAGE MAROI, BIJULIBARI, DARRANG, ASSAM, PIN-784145

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM, ANIMAL HUSBANDRY AND VETERINATRY DEPTT.
DISPUR, GUWAHATI-06.

2:THE DIRECTOR
OF ANIMAL HUSBANDRY AND VETERINARY DEPARTMENT
GOVT. OF ASSAM
CHENIKUTHI
GUWAHATI-03
ASSAM

3:THE DISTRICT LEVEL COMMITTEE
DARRANG DISTRICT
MANGALDAI
REP. BY THE DEPUTY COMMISSIONER
DARRANG DISTRICT
MANGALDAI
ASSAM
PIN-784125

4:DISTRICT VETERINARY OFFICER
NILAKANTHA PATH SANTIPUR
MANGALDAI
ASSAM
PIN-78412

Advocate for the Petitioner : MR. M SAIKIA, MR. H HAZARIKA
Advocate for the Respondent : GA, ASSAM,

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

12-08-2024

Heard Shri M. Saikia, learned counsel for the petitioner. Also heard Ms. M. Bhattacharya, learned Addl. Senior Govt. Advocate, Assam.

2. Considering the subject matter, this writ petition is taken up for disposal at the motion stage itself.

3. The claim in this writ petition is regarding an appointment on compassionate ground.

4. As per the facts projected, the father of the petitioner Farmud Ali, who was serving as a Driver in the Animal Husbandry and Veterinary Department at Mongaldoi and died-in-harness on 18.03.2005. It is claimed that initially the mother of the petitioner had submitted an application for appointment of the petitioner on compassionate ground which was not taken into consideration. Such application has been stated to be submitted on 24.03.2005.

5. Shri Saikia, the learned counsel has submitted that there were some communications in the aforesaid matter and he has drawn the attention of this Court to Annexure-5 which is a letter from the Deputy Director to the Director. The said communication is however dated 21.06.2005. The learned counsel submits that the petitioner possesses the requisite qualification for consideration for appointment on compassionate ground.

6. *Per contra*, Ms. Bhattacharya, learned Addl. Senior Govt. Advocate has submitted that the death was in the year 2005 and the claim has been made after more than 19 years. It is submitted that any direction for consideration would be against the objective of the scheme for appointment on compassionate ground. She has also referred to the case of the Hon'ble Supreme Court in ***State of West Bengal Vs Debabrata Tiwari*** reported in ***(2023) SCC Online SC 219***.

7. The rival contentions have been duly considered. The law relating to compassionate appointment is well settled. Such appointment is an exception to general mode/method of recruitment wherein an exception is carved out to give immediate succour to a bereaved family which has lost the sole breadwinner who was a government servant. The essence of such appointment is of immediate nature and the said essence would be lost by efflux of time.

8. In the instant case, it is not in dispute that the death of the government employee was in the year 2005 and in the meantime, almost 2 decades have passed and any direction towards consideration of the claim of the petitioner further would not be in sync with the claim of compassionate appointment. The Hon'ble Supreme Court in the 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.”

9. This Court has noticed that on the aspect of delay, the Hon’ble Supreme Court, in the aforesaid case while examining the said aspect from the context of the scheme has also laid down that even if the delay is on account of the authorities, the sense of immediacy is diluted and lost. The relevant part as observed in paragraph 7.5 of the aforesaid judgment is extracted herein below:-

“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.”

10. In view of the aforesaid discussions and the law laid down by the Hon'ble Supreme Court in the case of **Debabrata Tiwari** (supra), no relief can be granted to the petitioner and accordingly, the writ petition is dismissed.

JUDGE

Comparing Assistant