

GAHC010111832024



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

**Case No. : WP(C)/2937/2024**

KANHAI BASFOR  
S/O- LATE RAM PRASAD BASFOR, VILL- RAILWAY COLONY, P.O. AND P.S.  
DIPHU, DIST.- KARBI ANGLONG, ASSAM, PIN- 782460

VERSUS

THE STATE OF ASSAM AND 6 ORS  
REPRESENTED BY THE COMMISSIONER AND SECRETARY, P.W.D.  
DEPARTMENT, GUWAHATI, DISPUR-06

2:KARBI ANGLONG AUTONOMOUS COUNCIL  
REPRESENTED BY ITS PRINCIPAL SECRETARY  
KARBI ANGLONG  
DIPHU- 782460

3:THE PRINCIPAL SECRETARY  
KARBI ANGLONG AUTONOMOUS COUNCIL  
DIPHU- 782460

4:THE SECRETARY  
I/C- P.W.D (R AND B)  
KARBI ANGLONG AUTONOMOUS COUNCIL  
DIPHU  
PIN- 782460

5:THE DEPUTY SECRETARY  
DEPARTMENT OF PUBLIC WORK DEPARTMENT (R AND B)  
KARBI ANGLONG  
DIPHU- 782460

6:THE EXECUTIVE ENGINEER  
PUBLIC WORK DEPARTMENT (R AND B)

DOKMOKA DIVISION  
KARBI ANGLONG  
PIN- 782441

7:DISTRICT LEVEL COMMITTEE (DLC)  
REPRESENTED BY ITS CHAIRMAN KARBI ANGLONG  
DIPH

**Advocate for the Petitioner** : MR B P BORAH

**Advocate for the Respondent** : SC, K A A C

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

**ORDER**

**Date : 07-06-2024**

Heard Ms. Junmoni Gogoi, learned counsel for the petitioner. Also heard Mr. P. Nayak, learned standing counsel for the PWD, representing respondent nos. 1 and Mr. J. Chutia, learned standing counsel for the Karbi Anglong Autonomous Council (KAAC for short), representing respondent nos. 2 to 7.

2) The mother of the petitioner was working as a regular Grade-IV employee (sweeper) in the Office of the Executive Engineer, PWD (R&B), Diphu Division, Diphu in the district of Karbi Anglong. She had died-in- harness on 27.07.2015. The petitioner had applied for appointing him in any Grade-IV post on compassionate ground. The claim of the petitioner was considered by the District Level Committee (DLC for short) on 28.08.2019 and recommended the name of the petitioner for appointment on compassionate ground. The State Level Committee (SLC for short), whose approval is mandatory, has not yet considered the DLC minutes dated 28.08.2019. Therefore, this writ petition has been filed under Article 226 of the Constitution of India, whereby the petitioner has prayed for a direction upon the respondents to appoint the petitioner in any

Grade-IV post on compassionate ground.

3) The learned counsel for the petitioner has submitted that the non-consideration of the application of the petitioner by the SLC is in utter violation of the directives issued by the State in the case of *Achyut Ranjan Das & Ors. v. State of Assam & Ors., 2005 (4) GLT 674*.

4) Moreover, it has been submitted that the co-ordinate Bench of this Court vide order dated 07.09.2016, passed in W.P.(C) 5310/2016, took note of the DLC recommendation dated 09.02.2015, and directed the authorities of KAAC to identify the total number of vacant posts in Grade- III and Grade-IV, in the district of Karbi Anglong for the year 2014-15 within a period of 2 (two) months and should make provisions for appointment of 5% out of those vacant posts and consider the case of the petitioner for compassionate appointment.

5) It was also submitted that another co-ordinate Bench of this Court, by order dated 21.11.2017, passed in W.P.(C) 1105/2017, directed that the case of the petitioner be again placed before the DLC of Karbi Anglong District and the DLC shall give due consideration to the claim of the petitioner as per his earlier application and as per law against any vacant post that may be available.

6) It was submitted that the respondents may raise the point that delay would disentitle the petitioner for consideration of his case and in the said regard, by referring to the decision of the Supreme Court of India in the case of *Malaya Nanda Sethy v. State of Orissa & Ors., (2022) 0 Supreme(SC) 503*, it was submitted that if there was no fault on part of the petitioner, then delay would not be a ground to refuse relief to the petitioner.

7) The learned counsel for the PWD and KAAC have opposed this

writ petition and have placed reliance on the case of *State of West Bengal v. Debabrata Tiwari*, AIR 2023 SC 1467: (2023) 0 Supreme(SC) 191, and it is submitted that delay would disentitle the petitioner for consideration of appointment on compassionate ground.

8) In the present case, there is no pleading in the writ petition regarding the date when he had applied for appointment on compassionate ground. The said date is also not mentioned in the synopsis or in the list of dates. However, an illegible date is available in the copy of application (Annexure-B to the writ petition). However, the learned standing counsel for the KAAC, by referring to the "format", enclosed to the forwarding letter dated 12.03.2024 issued by the Addl. Chief Engineer, PWD (R&B), Hills, Assam, Diphu (Annexure-G to the writ petition), has pointed out before the Court that the date of submission of application by the petitioner was 01.12.2017.

9) It is no longer *res integra* that the policy in force on the date of consideration of application for appointment on compassionate ground should be considered. If one needs any authority on the point, the decision of the Supreme Court of India in the case of *N.C. Santhosh v. State of Karnataka & Ors.*, (2020) 7 SCC 617: AIR 2020 SC 1401. The OM dated 01.06.2015 was in force on 28.08.2019, the date when DLC meeting was held and the case of the petitioner was taken up.

10) The said OM dated 01.06.2015, under Principle 10, has laid down that the application which remains not considered for a period of 2 years, shall not require any consideration. It appears that the said prescription contained in OM dated 01.06.2015, is almost a replication of the directions contained in sub-para (x) of para 7 of the case of *Achyut Ranjan Das (supra)*. Under clause 3 of the OM dated 01.06.2015, the application for appointment on compassionate

ground must be made within 1 (one) year from the date of death of the deceased government servant. Therefore, considering that the mother of the petitioner had died on 27.07.2015, in terms of the prescription of the said OM dated 01.06.2015, the application filed by the petitioner on 01.12.2017, was clearly barred by efflux of the prescribed time. It is for this reason that the learned standing counsel for KAAC had submitted that the application of the petitioner was barred by limitation.

11) The relevant directions contained in the case of *Achyut Ranjan Das (supra)*, are quoted below:-

*“7. Having understood the principles governing compassionate appointment as deducible from the pronouncements of the Apex Court and in the light of what has been discussed above, this Court is of the view that it will only be just and appropriate to lay down the under noted principles on the basis of which, henceforth, claims relating to compassionate appointment will have to be considered:*

*I. All pending applications against existing and available 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 direction as laid down in the succeeding paragraphs.*

*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."*

12) Therefore, the cases cited by the learned counsel for the petitioner would not be applicable under the distinguishable facts of this case.

13) Moreover, the learned counsel for the petitioner had placed forceful reliance on the case of *Malaya Nanda Sethy (supra)*. The said case was considered by the Supreme Court of India in the case of *Debabrata Tiwari*

(*supra*). The relevant para 11 thereof is quoted below, which is self explanatory:-

**11.** *It may be apposite at this juncture to refer to the following observations of this Court in Malaya Nanda Sethy v. State of Orissa, AIR 2022 SC 2836, as to the manner in which the authorities must consider and decide applications for appointment on compassionate grounds:*

*“9. Before parting with the present order, we are constrained to observe that considering the object and purpose of appointment on compassionate grounds, i.e., a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service and the basis or policy is immediacy in rendering of financial assistance to the family of the deceased consequent upon his untimely death, the authorities must consider and decide such applications for appointment on compassionate grounds as per the policy prevalent, at the earliest, but not beyond a period of six months from the date of submission of such completed applications.*

*We are constrained to direct as above as we have found that in several cases, applications for appointment on compassionate grounds are not attended in time and are kept pending for years together. As a result, the applicants in several cases have to approach the concerned High Courts seeking a writ of Mandamus for the consideration of their applications. Even after such a direction is issued, frivolous or vexatious reasons are given for rejecting the applications. Once again, the applicants have to challenge the order of rejection before the High Court which leads to pendency of litigation and passage of time, leaving the family of the employee who died in harness in the lurch and in financial difficulty. Further, for reasons best known to the authorities and on irrelevant considerations, applications made for compassionate appointment are rejected. After several years or are not considered at all as in the instant case.*

*If the object and purpose of appointment on compassionate grounds as envisaged under the relevant policies or the rules have to be achieved then it is just and necessary that such applications are considered well in time and not in a tardy way. We have come across cases where for nearly two decades the controversy regarding the application made for compassionate appointment is not resolved. This consequently leads to the frustration of the very policy of granting compassionate appointment on the death of the employee while in service. We have, therefore, directed that such applications must be considered at an earliest point of time. The consideration must be*

*fair, reasonable and based on relevant consideration. The application cannot be rejected on the basis of frivolous and for reasons extraneous to the facts of the case. Then and then only the object and purpose of appointment on compassionate grounds can be achieved.” (emphasis by us)*

*In the said case, the claim of the appellant-applicant therein for compassionate appointment was directed by this Court to be considered by the competent authority. This Court noted that in the said case, there was no lapse on the part of the appellant-applicant therein in diligently pursuing the matter. The delay in considering the application of the appellant therein was held to be solely attributable to the authorities of the State, and no part of it was occasioned by the appellant-applicant. Further, in the said case, the appellant-applicant was prejudiced not only because of the prolonged delay in considering his application but also by the fact that in the interim, the policy of the State governing compassionate appointment had changed to his detriment. Therefore, the facts of the said case were distinct from the facts involved herein. In the present case, the conduct of the Respondents-Writ Petitioners cannot be said to be blameless in that they did not pursue their matter with sufficient diligence. However, the observations made in the said case as to the manner in which applications for compassionate appointment are to be considered and disposed of are relevant to the present case.*

*As noted in the said case, the operation of a policy/scheme for compassionate appointment is founded on considerations of immediacy. A sense of immediacy is called for not only in the manner in which the applications are processed by the concerned authorities but also in the conduct of the applicant in pursuing his case, before the authorities and if needed before the Courts.*

14) The observations of the Supreme Court of India in the said case of *Debabrata Tiwari (supra)* in para 7.4 and 7.5 thereof are extracted 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.*

15) Thus, it is seen that the Supreme Court of India, in the case of *Debabrata Tiwari (supra)*, had considered the decision in the case of *Malaya Nanda Sethy (supra)*, had held that the "*claim for compassionate appointment may not be entertained after lapse of a considerable period of time since the death of the government employee.*"

16) This Court had earlier in point of time in the case of *Achyut Ranjan Das (supra)*, had laid down the same principle. The Court finds no reason to take a view contrary to the decision of the co-ordinate Bench of this Court in the said case of *Achyut Ranjan Das (supra)*.

17) Therefore, in light of the ratio laid down in the case of *Debabrata Tiwari (supra)*, which is binding on this Court, the forceful submissions of the learned counsel for the petitioner has to be rejected.

18) It has come to the notice of the Court that there is a defect in the writ petition. In the affidavit filed in support of the statement made in the writ petition, the space for age of the petitioner is left unfilled and/or left blank.

However, the said defect is not the reason for dismissing this writ petition.

19) Resultantly, in light of the discussions above, the petitioner is not found entitled to any relief and therefore, this writ petition is dismissed.

20) Before parting with the records, we put on record the appreciation for the preparedness of learned counsel for the petitioner, though she was enrolled only in the year 2021.

**JUDGE**

**Comparing Assistant**