

GAHC010115302024



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

Case No. : WP(C)/3010/2024

MD. FIRDUSH ALI
SON OF LATE FAIJUR RAHMAN, VILLAGE- JHALIMURA, P.O. KALAJOL P.S.
KAMALPUR, DIST- KAMRUP, ASSAM, PIN- 781382, MOBILE NO. 7663037785

VERSUS

THE STATE OF ASSAM AND 10 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM, DISPUR, GUWAHATI, PIN- 781006

2: THE STATE OF LEVEL COMMITTEE (SLC)
ASSAM DISPUR GUWAHATI PIN- 781006

3: THE CHIEF SECRETARY/CHAIRMAN OF THE STATE LEVEL COMMITTEE
(SLC)
DISPUR
GUWAHATI- 781006

4: THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL DEPARTMENT DISPUR GUWAHATI PIN- 781006

5: THE JOINT SECRETARY TO THE GOVT OF ASSAM
FINANCE DEPARTMENT (REPRESENTED ON BEHALF OF THE
COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI
PIN- 781006

6: THE SECRETARY TO THE GOVERNMENT OF ASSAM
DEPARTMENT OF PUBLIC HEALTH MISSION DIRECTOR JAL JEEVAN
MISSION ASSAM

DISPUR
GUWAHATI
PIN- 781006

7:THE CHIEF ENGINEER
PHED ASSAM AND ADDITIONAL MISSION DIRECTOR JAL JEEVAN
DIRECTOR MISSION HENGRABARI HEALTH COMPLEX
LICHUBAGAN
GUWAHATI-36

8:THE DISTRICT LEVEL SELECTION COMMITTEE (DLC)
KAMRUP
AMINGAON
PIN- 781031

9:THE DISTRICT COMMISSIONER
KAMRUP AMINGAON
GUWAHATI
P.O. AMINGAON
DIST- KAMRUP AMINGAON
ASSAM
PIN- 721031

10:THE EXECUTIVE ENGINEER
PHED RANGIA DIVISION RANGIA KAMRUP P.O.- RANGIA
DIST- KAMRUP
ASSAM
PIN- 781354

11:THE ASSISTANT EXECUTIVE ENGINEER
BAIHATA CHARIALI (PHE)
P.O. BAIHATA KAMRUP ASSAM
PIN- 78138

Advocate for the Petitioner : MD M S ALI

Advocate for the Respondent : GA, ASSAM

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

ORDER

Date : 12.06.2024

Heard Mr. M.S. Ali, learned counsel for the petitioner. Also heard Mr.

C.K.S. Baruah, learned Govt. Advocate for respondent nos.1 to 4, 8 and 9; Mr. P. Nayak, learned standing counsel for the Finance Department, respondent no.5; and Ms. M. Kalita, learned standing counsel for the PHE, respondent nos.6, 7, 10 and 11.

2. In brief, the case of the petitioner is that his father Late Faijur Rahman was serving in the PHE, Rangia Division as Grade-IV Khalasi and he died-in-harness on 03.07.2014 due to illness. The petitioner had applied for appointment on compassionate ground on 23.07.2014, which was forwarded to the concerned authorities along with a proposal for engagement of the petitioner on compassionate ground. However, the petitioner has not been informed about the status of his application as to whether his application has been considered or rejected. The petitioner claims that he has been regularly pursuing the matter and has also submitted a representation on 27.03.2023 followed by another representation dated 28.11.2023. It is also projected that since the year 2014, the petitioner has been engaged as a Jal Mitra at Deoduar PHSS and he has also undertaken training course of 10 (ten) days at ITI, Rangia for waterworks under the PHE Department. As the candidature of the petitioner has not been considered, the present writ petition has been filed under Article 226 of the Constitution of India.

3. In support of his contention, the learned counsel for the petitioner has referred to the decision of the High Court of Patna in the case of *Amrendra Kumar Vs. The State of Bihar & Ors., CWJ Case No. 16803 of 2012, decided on 02.05.2024.*

4. In connection with the relief claimed by the petitioner in this writ petition, the Court is of the considered opinion that due to inordinate delay in considering the application of the petitioner, the petitioner is disentitled to any

consideration for appointment on compassionate ground. In this regard, the Court finds support from the decision of the Supreme Court of India in the case of *State of West Bengal Vs. Debabrata Tiwari*, AIR 2023 SC 1467 : (2023) 0 Supreme (SC) 191 wherein it has been held that inadvertent delay even in part of the State to consider the application would make the petitioner disentitle for consideration for appointment on compassionate ground.

5. The observations made by the Supreme Court of India in paragraph 7.4 and 7.5 of the case of *Debabrata Tiwari (supra)* is 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.”*

6. The case of *Amrendra Kumar (supra)* cited by the learned counsel for

the petitioner would not help him in any way because of the distinguishable facts of the said case. As per the facts narrated in the said order, the Chief Engineer, who was the appointing authority had appointed the petitioner therein on compassionate ground by order dated 06.07.1996. The petitioner had joined on the same date and his service was confirmed vide memo dated 13.08.1996. Thereafter, the said appointment order was cancelled by the Secretary, Water Resource Department, Govt. of Bihar vide memo dated 17.02.1997. Thereafter, the petitioner therein was appointed afresh and his appointment was confirmed vide memo dated 09.04.1997. The State in response to the writ petition had submitted through their State Counsel that the District Compassionate Appointment Committee had recommended the name of the petitioner for appointment on compassionate ground to the post of Accounts Clerk and pursuant to the same, the petitioner had thereafter joined the Water Resources Department on 06.07.1996. It is under the said factual matrix, the High Court of Patna had found the petitioner to have been appointed on 06.07.1996, on the recommendation made by the District Compassionate Appointment Committee. Therefore, referring to the decision of the case of *Debabrata Tiwari (Supra)*, it was held that the order dated 11.02.2011, issued by the Principal Secretary to the Govt. of Bihar, Water Resources Department, by which the petitioner was removed from service, was not sustainable and thereupon, a direction was issued to the respondent authorities to consider the case of petitioner afresh and take a decision within 6 (six) months.

7. Hence, in light of the judgment of the Supreme Court of India in the case of *Debabrata Tiwari (supra)*, relevant part of which is quoted hereinbefore, the Court is of the considered opinion that as the father of the petitioner had died nearly 10 (ten) years ago, because of the delay, even by the State, and

because the application was filed belatedly, the petitioner is disentitled to a consideration for appointment on compassionate ground.

8. Moreover, this Court in the case of *Achyut Ranjan Das Vs. State of Assam & Ors., 2006 (4) GLT 674*, under sub-paragraph-X of paragraph-7 thereof has held that if any application remains pending for a period of 2 (two) years, shall require no further consideration. The said Principle has also been incorporated in the OM dated 01.06.2015, issued by the Govt. of Assam and under Principle-10 thereof, it is provided that the application which has remained pending for 2 (two) years require no further consideration.

9. Therefore, this writ petition fails and the same is dismissed.

10. This order shall not cause any prejudice to the petitioner while serving as Jal Mitra under the PHE schemes.

JUDGE

Comparing Assistant