

GAHC010116322024



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

Case No. : WP(C)/3033/2024

SANKAR DAS
SON OF LATE PROMOD DAS, RESIDENT OF VILLAGE- UPPER KURUA, P.O.
KURUA, P.S. SIPAJHAR, DISTRICT- DARRANG, ASSAM, PIN- 784145

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY CHIEF SECRETARY TO THE GOVT. OF ASSAM, ASSAM
SECRETARIATE, DISPUR, GUWAHATI, PIN- 781006

2:THE CHIEF ENGINEER
IRRIGATION DEPARTMENT
ASSAM
2ND BLOCK
KRISHNA NAGAR
CHANDMARI
GUWAHATI
ASSAM
PIN- 781003

3:THE DISTRICT COMMISSIONER
DARRANG
MANGALDAI

4:THE EXECUTIVE ENGINEER
IRRIGATION DEPARTMENT
MANGALDAI DIVISION SANTIPUR
MANGALDAI
PIN- 78412

Advocate for the Petitioner : MR. D SAIKIA

Advocate for the Respondent : GA, ASSAM

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

ORDER

Date : 14.06.2024

Heard Mr. Mr. D. Saikia, learned counsel for the petitioner. Also heard Mr. T.C. Chutia, learned Additional Senior Govt. for respondent nos.1 and 3; and Mr. N. Upadhyay, learned standing counsel for the respondent nos.2 and 4.

2. The case of the petitioner is that his father, who was then working as Grade-IV employee in the establishment of the Executive Engineer, Mangaldai Irrigation Division had died-in-harness on 15.07.2014, leaving behind his wife, the petitioner and 3 (three) minor daughters. It is projected that due to sudden demise of his father at the age of 47 (forty seven) years, the family of the petitioner has become poverty-stricken. On 31.08.2014, the mother of the petitioner had submitted an application before the Minister of Fishery and Public Relations, Govt. of Assam for granting appointment to the petitioner on compassionate ground. The petitioner had submitted a letter dated 31.08.2014 to the Executive Engineer, Mangaldai Division (Irrigation) (respondent no.4) as well as MLA of No.68 Sipajhar LAC for appointing him on compassionate ground. The letter dated 31.08.2014 was served to the concerned Executive Engineer on 11.11.2014.

3. Thereafter, the Chief Engineer, Irrigation, Assam by letter dated 06.11.2020, had asked the respondent no.4 to submit a formal proposal to the concerned DLC for considering the appointment of the petitioner on compassionate ground. The DLC, Darrang in its meeting held on 20.01.2022,

had recommended the case of the petitioner for appointment in Grade-IV post. Thereafter, the SLC in its meeting held on 06.12.2023 had rejected the application of the petitioner. Accordingly, the decision of the SLC taken in its meeting dated 06.12.2023 is assailed in this writ petition filed under Article 226 of the Constitution of India.

4. At the outset, we find that the ground on which the application of the petitioner was rejected by the SLC is not sustainable. The SLC had arrived at a conclusion that as the father of the petitioner had died before issuance of OM dated 01.06.2015, so the OM dated 20.12.2012 could be applicable in this case, where the requirement was to fill up only 5% quota of the vacancies as per the cadre strength for appointment on compassionate ground. The said legal position is well settled by the Supreme Court of India in the case of *N.C. Santosh Vs. State of Karnataka, (2020) 7 SCC 617*, wherein the Three Judge Bench of the Supreme Court of India had categorically held that the norms prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. Thus, *ex facie*, the decision of the SLC taken in its meeting dated 06.12.2023 is not found sustainable.

5. However, as in this case, the father of the petitioner had died-in-harness on 15.07.2014 and though he had applied for appointment on compassionate ground on 11.11.2014, which is well within time, but there has been a delay in considering the application for appointment on compassionate ground.

6. 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 disentitled for consideration for appointment on compassionate ground.

7. The observations made by the Supreme Court of India in paragraph 7.4 and 7.5 of the case of *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.”*

8. Accordingly, as the father of the petitioner had died on 15.07.2014,

which is 9 (nine) years 11 (eleven) months ago, the decision of the case of *Debabrata Tiwari (supra)* would clearly apply in the present case in hand.

9. The submissions made by the learned counsel for the petitioner is that the Principles-I to IX as laid down in the case of *Achyut Ranjan Das Vs. State of Assam & Ors., 2006 (4) GLT 674*, would not apply and accordingly, the Principle-X as laid down in the said judgment would have no application in the present case in hand.

10. The Court does not find that the Principle-X propounded in the case was made subservient to Principle-I to IX of paragraph-7 of the said judgment. Therefore, in light of the decision rendered in the case of *Debabrata Tiwari (supra)*, the Court is of the considered opinion that the claim of the petitioner would require no further consideration and must be understood to have spent its force. The Principle-10 of OM dated 01.06.2015 also provides so.

11. Accordingly, the Court does not find any merit in this writ petition. Hence, this writ petition is dismissed.

JUDGE

Comparing Assistant