

GAHC010124842024



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

Case No. : WP(C)/3449/2024

JUGAMAYA DAS
D/O- LATE PURNAKANTA DAS, ADDRESS- CHETIA KAIBORTA GAON,
MITHA PUKHURI, P.O. BETBARI, P.S. SIVASAGAR, DIST. SIVASAGAR,
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
ENVIRONMENT AND FOREST DEPARTMENT, DISPUR, GUWAHATI-781006.

2:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST AND HEAD OF
FOREST FORCE
ASSAM
PANJABARI
GUWAHATI-781006.

3:THE CONSERVATOR OF FOREST
EASTERN
ASSAM CIRCLE
JORHAT.

4:THE DISTRICT LEVEL COMMITTEE
SIVASAGAR
REPRESENTED BY ITS CHAIRMAN
DEPUTY COMMISSIONER
SIVASAGAR
ASSA

Advocate for the Petitioner : MR S SARMAH

Advocate for the Respondent : GA, ASSAM

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

ORDER

Date : 15-07-2024

Heard Mr. S. Sarmah, learned counsel for the petitioner as well as Ms. M. Kalita, learned standing counsel for the Forest Department appearing for the respondent nos.1 to 4 and Mr. J.K. Goswami, learned Addl. Senior Govt. Advocate appearing for the respondent no.5.

2. The father of the petitioner namely, Late Purna Kt. Das, Ex-Forester-II, a Grade-III employee had died-in-harness on 26.08.1999, leaving behind his wife and two daughters. The date on which the petitioner had applied for appointment on compassionate ground is not pleaded in the writ petition. However, on 26.02.2004, the Divisional Forest Officer has forwarded the petition of the petitioner for appointing her in any post in the Forest Department to the Conservator of Forest, Eastern Assam Circle, Jorhat.

3. The Conservator of Forest, Eastern Assam Circle forwarded the petition of the petitioner to the PCCF by a letter dated 16.03.2004. On 07.08.2022, the petitioner had filed a representation before the concerned MLA for appointing her on compassionate ground. Thereafter on 21.03.2023, the District Level Committee (DLC for short), Sivasagar is stated to have forwarded the minutes of the DLC meeting held on 04.02.2023 along with recommendation by the DLC for appointment of the petitioner on compassionate ground. The Conservator of Forest, Eastern, Assam Circle by a letter dated 10.04.2023, requested the PCCF and HoFF, Assam for appointing the petitioner on

compassionate ground. However, the name of the petitioner was not placed before the SLC for consideration till date. Accordingly the petitioner has approached this Court by filing this writ petition under Article 226 of the Constitution of India.

4. The learned counsel for the petitioner has placed reliance in the judgment of this Court in the case of *Dipak Das v. State of Assam and ors., 2006 Supp GLT 95* to project that this Court had held that the application for appointment on compassionate ground should be considered with a pragmatic approach. It is submitted that one year period to apply for appointment should not be counted with arithmetic precision.

5. The learned Addl. Senior Govt. Advocate and the learned standing counsel for the respondents has opposed the prayer made in the writ petition.

6. Considering the contents of the Office Memorandum dated 01.06.2015 by which under Principle-10, it has been provided that if the application of the eligible candidates remain pending and cannot be considered due to lack of vacancies for a period of 2(two) years from the date of making such application, he will require more further consideration and must be understood to have spent their force. We also take note of the judgment of the Supreme Court of India in the case of *State of West Bengal v. Debabrata Tiwari, (2023) 0 Supreme SC 191*, wherein it is held that that inordinate delay even on part of the State to consider their application would make the petitioner disentitled for consideration for appointment on compassionate ground.

7. Para 7.4 and 7.5 of the said judgment 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.”

8. The case of the petitioner is that her father had expired on 26.08.1999 which is almost 25 years back.

9. In light of the Principle-10 of the Office Memorandum dated 01.06.2015, read with para-7(X) of the decision of this Court in the case of *Achyut Ranjan Das & Ors. v. State of Assam & Ors., 2005 (4) GLT 674* as well as in light of the decision of the Supreme Court in the case of *Debabrata Tiwari (supra)*, the Court is of the considered opinion that the petitioner is found to be disentitled for consideration of appointment on compassionate ground

notwithstanding the projection made by the petitioner that the DLC has recommended the name of the petitioner for appointment on compassionate ground.

10. In light of the decision of the Supreme Court of India in the case of *Debabrata Tiwari (supra)*, the decision of this Court in the case of *Dipak Das (supra)* would not have force.

11. Accordingly this writ petition stands dismissed.

JUDGE

Comparing Assistant