

GAHC010132642013



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

Case No. : WP(C)/7184/2013

MRIDUL CHANDRA BARUAH
S/O LT. ANANDA RAM BARUAH R/O GARAMUR PWD COLONEY, JEC
ROAD, P.O. GARAMUR JEC, P.S. JORHAT, DIST. JORHAT, ASSAM. PIN-
785007.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
PUBLIC WORKS DEPARTMENTROADS, DISPUR, GUWAHATI-781006.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PUBLIC WORKS DEPARTMENT ROADS
DISPUR GUWAHATI- 781006.

3:THE DEPUTY COMMISSIONER JORHAT DISTRICT JORHAT
ASSAM PIN- 785001.

4:THE EXECUTIVE ENGINEER PUBLIC WORKS DEPARTMENT
STATE ROAD DIVISION JORHAT DIST. JORHAT ASSAM PIN- 785001.

5:THE STATE LEVEL COMMITTEE FOR COMPASSIONATE APPOINTMENTS
REP. BY THE CHIEF SECRETARY DISPUR GUWAHATI- 785006

6:THE DISTRICT LEVEL COMMITTEE FOR COMPASSIONATE
APPOINTMENTS JORHAT DISTRICT
REP. BY THE DEPTUTY COMMISSIONER
JORHAT DISTRICT KARIMGANJ ASSAM PIN- 785001.

7:SMTI. NIRU SANGMAI
W/O LT. JATIN CHANGMAI R/O MAJULI GARMUR P.O. GARMUR
P.S. JORHAT DIST. JORHAT ASSAM PIN- 785104

Advocate for the Petitioner : MR.P D NAIR
Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 13.02.2024

Heard Mr. H. Rohman, learned counsel for the petitioner. Also heard Mr. P. Nayak, learned standing counsel, Public Works Department, appearing on behalf of Respondents No. 1, 2 & 5; and Ms. D. Das Barman, learned Addl. Senior Government Advocate, appearing on behalf of Respondents No. 4, 6 & 7. However, none appears for Respondent No. 8.

2. The petitioner by way of instituting the present proceedings, has prayed for the following reliefs:

(i). A writ in the nature of Mandamus and/or any other appropriate Writ, order or direction should not be issued directing the respondents to consider the appointment of the petitioner in Grade-IV vacancies in Public Works Department, State Road Division, Jorhat or any other post under the Government of Assam on compassionate ground;

(ii). A writ in the nature of Certiorari and/or any other appropriate Writ, order or direction should not be issued to set aside and quash the recommendations of the Respondent No. 7, District Level Committee, Jorhat District, adopted in its meeting held on 23.12.2009 (Annexure-7B) inasmuch as it relates to consideration and/or recommendation of private Respondent No. 8, Smt. Niru Changmai for compassionate appointment in Grade-IV vacancies in Public Works Department, State Roads Division, Jorhat, and;

(iii). A writ in the nature of Mandamus and/or any other appropriate Writ, order or direction should not be issued to forbear from giving effect to the recommendations of the Respondent No. 7, District Level Committee, Jorhat District, adopted in its meeting held on 23.12.2009 (Annexure-7B) inasmuch as it relates to consideration and/or recommendation of private Respondent No. 8, Smt. Niru Changmai for compassionate appointment in Grade-IV vacancies in Public Works Department, State Roads Division, Jorhat.

3. The facts requisite to be noticed for adjudication of the issues arising in the present proceedings, is noticed hereinbelow:

The father of the petitioner while working as Sub-Engineer(Grade-II) in the Public Works Department, State Road Division, Jorhat, died in harness on 07.03.2009. The petitioner, being eligible, submitted an application on 09.06.2009, in the prescribed format along with all requisite documents, for consideration of his case for appointment on compassionate ground. The petitioner, on not receiving any information with regard to the manner in which his case was not considered by the authorities, took recourse to the provisions of the RTI Act, 2005, and thereafter, on receipt of the reply after having approached the appellate authority, came to learn that the jurisdictional District Level Scrutiny Committee(DLSC) in its meeting held on 23.12.2009, had selected the private Respondent No. 8 for appointment against the Grade-IV post on compassionate ground and the case of the petitioner for appointment on compassionate ground was rejected. It is the contention of the petitioner that the Respondent No. 8 had not submitted her application for appointment

on compassionate ground within the time-frame prescribed, however, the same was ignored by the respondent authorities and her case was taken-up for consideration and thereafter, recommended for appointment on compassionate ground. The petitioner, accordingly, has instituted the present proceedings, praying for a direction for consideration of his case for appointment against any Grade-IV vacancy in the State Road Division, Jorhat, under the Public Works Department and also has presented a challenge to the recommendations of the Respondent No. 8 for appointment on compassionate ground in the State Road Division, Jorhat, under the Public Works Department.

4. The materials as available on record reveals that the case of the petitioner was duly considered by the District Level Scrutiny Committee(DLSC) in its meeting held on 23.12.2009 and the petitioner having claimed an appointment on compassionate ground against the Grade-III post, no vacant post being available; the case of the petitioner came to be rejected. The Respondent No. 8 had submitted an application for appointment on compassionate ground against the Grade-IV post and the said Committee on consideration of her case and finding her to be the most economically weakest candidate in the fray, recommended her case for appointment on compassionate ground in a Grade-IV post.

5. The minutes of the meeting of the District Level Scrutiny Committee(DLSC) held on 23.12.2009, reflects that in the establishment of Executive Engineer, State Road Division, Jorhat, under the Public Works Department; only 1(one) post of Grade-IV was under consideration and the Respondent No. 8 on being found to be the most economically weakest candidate, came to be

recommended for appointment on compassionate ground against the said post.

6. The respondents have by way of filing an affidavit, contended that the case of the petitioner for appointment on compassionate ground could not be considered at the relevant point of time on account of the fact that there was no vacant Grade-III post available in the establishment of the Executive Engineer, State Road Division, Jorhat.

7. The name of the petitioner was again submitted for appointment on compassionate ground and the same was considered by the jurisdictional District Level Scrutiny Committee(DLSC) in its meeting held on 09.07.2012 but the proposal as submitted, not being complete; the case of the petitioner could not be considered. Thereafter, the Executive Engineer, State Road Division, Jorhat, under the Public Works Department, had submitted a proposal containing the names of 4(four) persons for Grade-IV post and Grade-III post and the said names were duly considered by the District Level Scrutiny Committee(DLSC) in its meeting held on 13.03.2013 and thereafter, the names of Shri Madhurjya Bherua and Shri Majindra Nagtey was recommended for appointment against the Grade-III post and Grade-IV post, respectively, on compassionate ground.

8. At the outset, the challenge to the recommendations for appointment on compassionate ground made in favour of the Respondent No. 8, is being considered.

It is an admitted position that the case of the Respondent No. 8 was so considered after she was adjudged to be the most economically weakest candidate in the fray and accordingly, the Respondent No. 8 being found to be in need of an appointment on compassionate ground, the District Level Scrutiny Committee(DLSC) had recommended her case for such appointment.

There being only one vacant post of Grade-IV available at the relevant point of time when the cases of the petitioner and the Respondent No. 8 was considered by the District Level Scrutiny Committee(DLSC) in its meeting held on 23.12.2009; the case of the petitioner could not be recommended for want of a vacant post.

The recommendations as made in respect of the Respondent No. 8 being so made strictly on assessing her economic status; this Court, at this distant point of time, would not like to interfere with such recommendations made in favour of the Respondent No. 8.

9. This now brings this Court to a consideration with regard to the prayer being made by the petitioner for a consideration of his case for appointment against any Grade-IV vacancy in the Office of the Executive Engineer, State Road Division, Jorhat, under the Public Works Department.

10. The father of the petitioner had died in harness on 07.03.2009 and the petitioner although had applied for appointment on compassionate ground within the time-frame prescribed but for non-availability of the vacancy at the

initial point of time and thereafter, on account of the fact that his name was not put forward by the Executive Engineer, State Road Division, Jorhat, under the Public Works Department for consideration before the District Level Scrutiny Committee (DLSC) in its meeting held on 13.03.2013; the case of the petitioner could not be considered.

11. The petitioner in the present proceedings, has not assailed the minutes of the District Level Scrutiny Committee (DLSC) in its meeting held on 13.03.2013 although the instant writ petition was instituted before this Court on 05.12.2013.

12. It is a settled position of law that the petitioner having been able to eke out a living inspite of being not favoured with an appointment on compassionate ground; this Court after 15 years, since the death of the petitioner's father on 07.03.2009; would not be in a position to direct the respondent authorities to consider the case of the petitioner for appointment against any Grade-IV vacancy in the Office of the Executive Engineer, State Road Division, Jorhat, under the Public Works Department.

13. The issues arising herein is covered by the recent decision of the Hon'ble Apex Court rendered in the case of ***State of W.B. v. Debabrata Tiwari & ors.*** [reported in ***(2023) SCC Online SC 219***], wherein the Hon'ble Court upon considering the earlier decision available in the matter had concluded as follows:

“32. 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 dependents 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.

33. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis due to the death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be in a position to make both ends meet, a provision is made for giving gainful appointment to one of the dependents of the deceased who may be eligible for such appointment. Having regard to such an object, it would be of no avail to grant compassionate appointment to the dependents of the deceased employee, after the crisis which arose on account of death of a bread-winner, has been overcome. Thus, there is also a compelling need to act with a sense of immediacy in matters concerning compassionate appointment because on failure to do so, the object of the scheme of compassionate would be frustrated. Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and thus lose its significance and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out for consideration.

34. 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 dependents 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.

*35. 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.

36. Laches or undue delay, the blame-worthy conduct of a person in approaching a Court of Equity in England for obtaining discretionary relief which disentitled him for grant of such relief was explained succinctly by Sir Barnes Peacock, in *Lindsay Petroleum Co. v. Prosper Armstrong*, [1874] 3 P.C. 221 as under:

“Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation, in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute or limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of Justice or injustice in taking the one course or the other, so far as it relates to the remedy.”

37. Whether the above doctrine of laches which disentitled grant of relief to a party by Equity Court of England, could disentitle the grant of relief to a person by the High Court in the exercise of its power under Article 226 of our Constitution, came up for consideration before a Constitution Bench of this Court in *Moon Mills Ltd. v. M. R. Meher*, President, Industrial Court, Bombay, AIR 1967 SC 1450. In the said case, it was regarded as a principle that disentitled a party for grant of relief from a High Court in the exercise of its discretionary power under Article 226 of the Constitution.

38. In *State of M.P. v. Nandlal Jaiswal*, (1986) 4 SCC 566 this Court restated the principle articulated in earlier pronouncements in the following words:

“9. ... the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the Petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this Rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.”

39. While we are mindful of the fact that there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution, ordinarily, a writ petition should be filed within a reasonable time, vide *Jagdish Lal v. State of Haryana*, (1997) 6 SCC 538; *NDMC v. Pan Singh*, (2007) 9 SCC 278.

40. Further, simply because the Respondents-Writ Petitioners submitted their applications to the relevant authority in the year 2005- 2006, it cannot be said that they diligently perused the matter and had not slept over their rights. In this regard, it may be apposite to refer to the decision of this Court in *State of Uttaranchal v. Shiv Charan Singh Bhandari*, (2013) 12

SCC 179, wherein the following observations were made:

“19. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time.”

14. Applying the ratio as contained in the decision of the Hon'ble Supreme Court in the case of ***Debabrata Tiwari*** (supra) to the facts of the present case, it is found that the objective behind the scheme for grant of appointment on compassionate ground being to facilitate the family of the deceased government servant to tide over the sudden crisis occasioning on account of the death of the bread-earner which has left the family in penury and without any means of livelihood. Such appointments are to be effected with the sense of immediacy. The father of the petitioner had died in harness on 07.03.2009 and as on today i.e. after around 15 years with effect from the date of the father of the petitioner, the sense of immediacy for effecting the appointments on compassionate ground in the present proceedings, is lost and/or diluted. It is immaterial as to whether the delay occasioning in the appointment of the petitioner on compassionate ground had so occasioned on account of the inaction on the part of the respondent authorities in promptly deciding the claim of the petitioner or for any delay on the part of the petitioner himself.

15. Accordingly, in view of the above position, this Court is not inclined to direct the respondent authorities to now consider the case of the petitioner for appointment on compassionate ground again.

16. In that view of the matter, the petitioner and/or his family having been

able to eke out a living even though not favoured with an appointment on compassionate ground, this Court holds that this is not a fit case to direct the respondent authorities to again consider the case of the petitioner for appointment on compassionate ground and that too, after the sense of immediacy is lost and/or diluted.

17. Accordingly, the writ petition is found to be devoid of any merit and the same stands dismissed. There shall be no order as to costs.

JUDGE

Comparing Assistant