

GAHC010166862024



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

Case No. : WP(C)/4174/2024

JONALI BORUAH

D/O- LATE ARUN BORUAH, VILL.- DEODHAIGAON, P.O. MORABAZAR, P.S.
AMGURI, DIST. SIVASAGAR, ASSAM, PIN- 785680.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, HANDLOOM TEXTILES AND SERICULTURE DEPARTMENT,
DISPUR, GUWAHATI-781006.

2:THE DIRECTOR
SERICULTURE
ASSAM
PIR AJAN FAKIR RD
NEAR SCIENCE MUSEUM
JAYA NAGAR
KHANAPARA
GUWAHATI
ASSAM-781022.

3:THE ASSISTANT DIRECTOR OF SERICULTURE
SIVASAGAR
JOYSAGAR
DIST. SIVASAGAR
ASSAM
PIN- 785680.

4:THE STATE LEVEL SELECTION COMMITTEE (SLC)
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI

ASSAM
PIN- 781006.

5:THE DISTRICT LEVEL COMMITTEE
SIVASAGAR DISTRICT
REPRESENTED BY CHAIRMAN AND DISTRICT COMMISSIONER
DIST. SIVASAGAR
ASSAM-785640

Advocate for the Petitioner : MR. C BORUAH, MR. R BORO,MR A BORUAH

Advocate for the Respondent : GA, ASSAM, SC, HANDLOOM AND TEXTILE

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

21.08.2024

Heard Shri C. Boruah, learned counsel for the petitioner. Also heard Shri R. Dhar, learned Standing Counsel, Handloom and Textile Department and Ms. A. Talukdar, learned State Counsel.

2. The matter pertains to a claim for appointment on compassionate ground.

3. As per the facts projected, the father of the petitioner Arun Boruah was the Driver in the Office of the Assistant Director of Sericulture, Sivasagar, who had died-in-harness on 16.12.2014. The petitioner claims to have filed an application for appointment on compassionate ground and the District Level Committee in its meeting held on 27.04.2015 had recommended her name along with two others against the existing vacancies. It is also averred that the same was forwarded to the Administrative Department vide letter dated 11.06.2015. However, no communication has been received from the State Level Committee till now. The petitioner claims to have filed a representation on 18.03.2016, which has not been replied to.

4. Shri Boruah, learned counsel for the petitioner has submitted that the petitioner has not been dealt in a fair manner as the outcome of her case in the State Level Committee has not been communicated. It is also averred that the petitioner comes from a remote area and therefore could not approach the Court earlier.

5. *Per contra*, Shri Dhar, learned Standing Counsel of the Department has, at the outset, submitted that any direction for consideration of appointment on compassionate ground after about a decade would not meet the objective of the scheme of compassionate appointment. He has also submitted that as per instructions received, the case of the petitioner was indeed taken up by the State Level Committee and was rejected on 11.08.2017. He has also cited the recent case of the Hon'ble Supreme Court in ***State of West Bengal Vs Debabrata Tiwari*** reported in ***(2023) SCC Online SC 219***.

6. The rival contentions have been duly considered. The law relating to compassionate appointment is well settled. Such appointment is an exception to general mode/method of recruitment wherein an exception is carved out to give immediate succour to a bereaved family which has lost the sole breadwinner who was a Government servant. The essence of such appointment is of immediate nature and the said essence would be lost by efflux of time.

7. In the instant case, it is not in dispute that the death of the government employee was in the year 2014 and in the meantime, almost one decade has passed and any direction towards consideration of the claim of the petitioner further would not be in sync with the claim of compassionate appointment. The Hon'ble Supreme Court in the case of ***Debabrata Tiwari*** (*supra*) has laid down as follows:

“7.2. 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 dependants 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.”

8. This Court has noticed that on the aspect of delay, the Hon'ble Supreme Court, in the aforesaid case while examining the said aspect from the context of the scheme has also laid down that even if the delay is on account of the authorities, the sense of immediacy is diluted and lost. The relevant part as observed in paragraph 7.5 of the aforesaid judgment is extracted herein below:-

“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."

9. In view of the aforesaid discussions and the law laid down by the Hon'ble Supreme Court in the case of ***Debabrata Tiwari*** (supra), no relief can be granted to the petitioner and accordingly, the writ petition is dismissed.

JUDGE

Comparing Assistant