

GAHC010168002024



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

Case No. : WP(C)/4194/2024

PANCHALA MOHAN GIRI
WIFE OF LATE PARESH MOHAN, RESIDENT OF SARKARI BAGAN, P.O. AND
P.S. HAFLONG, DISTRICT- DIMA HASAO, (N.C. HILLS) ASSAM, PIN- 788819

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, ANIMAL HUSBANDRY AND VETERINARY DEPARTMENT,
DISPUR, GUWAHATI- 781006

2:THE STATE LEVEL COMMITTEE
REPRESENTED BYTHE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI- 781006

3:THE DEPUTY SECRETARY TO THE GOVT. OF ASSAM
ANIMAL HUSBANDRY AND VETERINARY DEPARTMENT
ASSAM
CHENIKUTHI
GUWAHATI- 781003
DISTRICT- KAMRUP (M)
ASSAM

4:THE DIRECTOR OF ANIMAL HUSBANDRY AND VETERINARY
DEPARTMENT
ASSAM
CHENIKUTHI
GUWAHATI- 781003
DISTRICT- KAMRUP (M)
ASSAM

5:THE ADDL. DIRECTOR
ANIMAL HUSBANDRY AND VETERINARY DEPARTMENT
(HILLS)
HAFLONG

6:THE DEPUTY COMMISSIONER CUM CHAIRMAN
DISTRICT LEVEL COMMITTEE
FOR SELECTION AND APPOINTMENT ON COMPASSIONATE GROUND FOR
DIMA HASAO DISTRICT
DISTRICT- DIMA HASAO
ASSAM

7:THE DISTRICT ANIMAL HUSBANDRY AND VETERINARY OFFICER
DIMA HASAO
ASSAM

8:THE COMMISSIONER AND SECRETARY TO THE PERSONAL (B)
DEPARTMENT
DISPUR
GUWAHATI- 781006
DISTRICT- KAMRUP (M)
ASSA

Advocate for the Petitioner : F K R AHMED, MRS. H THAKURIA

Advocate for the Respondent : GA, ASSAM,

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioner : Shri FKR Ahmed, Advocate.

For the Respondents : Ms. A Talukdar, Advocate.

Date of Hearing : 21.08.2024.

Date of Judgment : 21.08.2024.

JUDGMENT & ORDER

The claim in this petition pertains to compassionate appoint.

2. As per the facts projected, the husband of the petitioner, Paresh Mohan was a Lower Division Assistant (LDA) in the office of the Additional Director of Animal Husbandry & Veterinary Department (Hills), Haflong, who had expired on 15.08.2009 while in service.

3. The petitioner claims to have applied for appointment on compassionate ground. In this connection, the learned counsel has referred to a communication dated 23.08.2011 recommending the case of the petitioner. The matter was taken by the District Level Committee (DLC) and in its meeting held on 10.02.2011, the case of the petitioner was forwarded to the SLC. The case of the petitioner was, however, rejected by the SLC on 30.12.2015 which is the dispute in WP(C)/6077/2021. The said writ petition was disposed of by directing consideration of the case of the petitioner in terms of the Office Memorandum dated 01.06.2015. It is submitted that though the petitioner had approached the authorities by filing representations, the same has not been considered.

4. Shri Ahmed, learned counsel for the petitioner submits that the case of the petitioner has not been fairly treated inasmuch as the OM dated 01.06.2015 has opened further avenues for such consideration in other departments also where vacancies exist.

5. *Per contra*, Ms. A Talukdar, learned State Counsel, Assam has raised the issue of delay and laches in approaching this Court. It is submitted that the death was in the year 2009. It is submitted that the objective of the scheme for appointment on compassionate ground is only to give immediate relief to a bereaved family which has

lost the sole breadwinner. The learned State Counsel has also referred to the case of ***State of West Bengal Vs. Debabrata Tiwari & Ors.***, reported in **AIR 2023 SC 1467** and has submitted that after almost 15 years, no direction can be issued for appointment on compassionate ground.

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 2009. This Court has also noticed that though the earlier order of this Court is dated 17.11.2021, there was no petition filed alleging disobedience and rather, by the present petition, a similar claim has been made which already has been decided. As on today, more than 15 years have 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 case for interference is made out and accordingly, the writ petition is dismissed.

JUDGE

Comparing Assistant