

GAHC010181962021



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

Case No. : WP(C)/5899/2021

SUMIT WARY
S/O- LT. SAILENDRA WARY, R/O- NO. 1 BASH BARI VILLAGE, P.O.
LANGHIN, P.S. DOKMOKA, KARBI ANGLONG- 782441, ASSAM

VERSUS

ASSAM POWER DISTRIBUTION COMPANY LIMITED AND 6 ORS
REP. BY THE CHAIRMAN, APDCL, 4TH FLOOR, BIJULEE BHAWAN, PALTAN
BAZAR, GHY-01

2:THE MANAGING DIRECTOR
ASSAM POWER DISTRIBUTION COMPANY LTD.
4TH FLOOR
BIJULEE BHAWAN
PALTAN BAZAR
GHY-01

3:THE CHIEF GENERAL MANAGER (HRA)
ASSAM POWER DISTRIBUTION COMPANY LTD.
4TH FLOOR
BIJULEE BHAWAN
PALTAN BAZAR
GHY-01

4:THE DY. GENERAL MANAGER (HRA)
ASSAM POWER DISTRIBUTION COMPANY LTD.
4TH FLOOR
BIJULEE BHAWAN
PALTAN BAZAR
GHY-01

5:THE ASSTT. GENERAL MANAGER

DIPHU ELECTRICAL DIVISION
APDCL
CAR
DIPHU

6:CHIEF EXECUTIVE OFFICER
KANCH ELECTRICAL CIRCLE
APDCL
CAR
DIPHU

7:SUB-DIVISIONAL ENGINEER
DESD-1
APDC
CAR
DIPH

Advocate for the Petitioner : MR B M DEKA

Advocate for the Respondent : SC, APDCL

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri BM Deka

Advocate for the respondents : Shri B. Choudhury, APDCL

Date of hearing : **03.05.2024**

Date of Judgment : **03.05.2024**

JUDGMENT & ORDER

The issue raised in this writ petition is towards a claim for appointment on compassionate ground. It is the case of the petitioner that his father Sailendra Wary was a Senior Sahayak in the APDCL, who however died in harness on 22.03.2017. The petitioner accordingly submitted an application on 01.11.2017

for appointment on compassionate ground. The application was duly forwarded on 07.12.2017 and as a part of an exercise for such consideration, a call letter was issued to the petitioner on 07.08.2020 for document verification towards such consideration.

2. However, vide the impugned communication dated 14.09.2021 while 15 nos. of candidates were said to have been selected as a onetime exercise, the petitioner was not selected.

3. Shri BM Deka, learned counsel for the petitioner, while assailing the aforesaid communication dated 14.09.2021 has submitted that the mode of selection / consideration has not been disclosed. The reasons however could be learnt after filing of the affidavit-in-opposition by the respondent – Company wherein certain documents have been enclosed. The learned counsel submits that though certain papers have been annexed, there is no authentication of the said papers where the reasons for not granting the benefit of compassionate appointment to the petitioner have been cited.

4. The learned counsel for the petitioner submits that even if the said documents are considered to be valid, the consideration of the petitioner which would appear against Sl. No. 18 would reveal that the rejection is mainly on the ground of payment of family pension and other benefits on the death of the father of the petitioner. It is submitted that such benefits would be irrelevant for the purpose of consideration of compassionate appointment. In this regard, the learned counsel has relied upon the decision of the Hon'ble Supreme Court in the case of **Bank of Baroda Vs. Baljit Singh** which is decided on 21.06.2023. In the said case, the Hon'ble Supreme Court has also referred the earlier case of **Balbir Kaur Vs. State of Karnataka** reported in **(2020) 7 SCC 617** wherein it has been clarified that the aforesaid two aspects are

distinct and payment of family pension should not be come into the way while considering the case for compassionate appointment.

5. Shri B. Choudhury, learned counsel representing the APDCL and the other official respondents has, on the other hand, submitted that there is no indefeasible right of an incumbent to claim appointment on compassionate ground and such right is only for a fair consideration. By refuting the allegations that the documents annexed to the affidavit-in-opposition filed on 02.08.2022 are not authenticated, the learned counsel has submitted that the said documents are compilation of the minutes of the meeting held on 14.09.2021.

6. Shri Choudhury, learned counsel for the Company further submits that a close perusal of the consideration of the candidates would show that an *inter se* comparison of the financial position of the respective families were taken which is a relevant consideration, more so, when the objective of the scheme is to enable a bereaved family which has lost the sole breadwinner to overcome the immediate crisis.

7. The learned counsel for the Company has also submitted that a perusal of the consideration would show that the petitioner was placed in a far better financial position vis-à-vis 15 nos. of candidates who were selected for such benefits. He further submits that the earlier scheme has now been discontinued and as per the new scheme, a family pension is paid in lieu of any compassionate appointment. The objection of non-joinder of necessary parties has also been taken by citing that the selected candidates have not been arrayed as party respondents. It is also pointed out that the averments made in the counter affidavit have not been denied by the petitioner by filing any rejoinder affidavit.

8. Shri Deka, learned counsel for the petitioner in his rejoinder has submitted that the consideration of the candidates was in view of a scheme which was in operation from the period from 18.02.2014 to 31.03.2017 and the action of clubbing of all the candidates itself was not proper. He reiterates that the financial position of a family should not be taken as a factor while deciding the entitlement for appointment on compassionate ground.

9. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

10. It is a settled law that an appointment on compassionate ground is an exception to the general Rules of recruitment wherein a benefit is given to an incumbent of a family which has lost its sole breadwinner. The objective of such appointment is to enable the bereaved family to overcome the immediate crisis.

11. In the instant case, it is not in dispute that the APDCL had a compassionate appointment scheme of 2014 which was for the period from 18.02.2014 to 31.03.2017. The death of the father of the petitioner being on 22.03.2017, his case was to be covered within the effective period. The question therefore arises as to whether there was a consideration of the case of the petitioner for such appointment at all and if so whether such consideration was made by taking into account all the relevant factors vis-à-vis the similarly situated other candidates.

12. Though the objection has been raised on the veracity of the authenticity of the documents which contains the consideration of all the candidates who were in the fray for appointment on compassionate ground, in view of the affidavit filed by the respondent - Company, such objection is not acceptable. The Court, is therefore left to examine the consideration done to the petitioner

vis-à-vis the other candidates. The column containing the remark of the Selection Committee for each of the candidates would reflect the factors which were taken into consideration. Though the learned counsel for the petitioner may be right in contending that the payment of family pension should not be a factor to a complete negation of an application for compassionate ground, the said factor cannot be held to be wholly irrelevant in such consideration, more so, when the financial position of the candidates in fray are to be assessed. In the instant case, the amounts received by the family of the candidates whose candidatures were considered would show that it is not only the petitioner but there are other candidates also who were held to be ineligible for such appointment and such finding was mainly on the ground of they being placed in a much better financial position than the other candidates. The aforesaid factor, in the considered opinion of this Court, cannot be said to be irrelevant or extraneous as some yardstick has to be taken, in view of the limited number of vacancies. If vacancies were existing to accommodate all the candidates, the matter would have been different.

13. This Court is of the opinion that the rejection of the petitioner of his claim for compassionate appointment on the grounds cited cannot be said to be arbitrary or unreasonable.

14. In view of the above, this Court is not in a position to grant any relief to the petitioner and accordingly, the writ petition is dismissed.

JUDGE

Comparing Assistant