

GAHC010183872021



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

Case No. : WP(C)/6581/2021

SABITA BRAHMA
W/O LT. DIPAK BRAHMA, R/O VILL. RONGMILI, WARD NO. 6 P.O. NAD P.S.
DIPHU KARBI ANGLONG-782482 ASSAM

VERSUS

ASSAM POWER DISTRIBUTION COMPANY LTD. AND 6 ORS.
REP BY THE CHAIRMAN APDCL 4TH FLOOR, BIJULEE BHAWAN PALTAN
BAZAR, GUWAHATI-781001

2:THE MANAGING DIRECTOR
ASSAM POWER DISTRIBUTION COMPANY LTD. 4TH FLOOR
BIJULEE BHAWAN PALTAN BAZAR GUWAHATI-781001

3:THE CHIEF GENERAL MANAGER (HRA)
ASSAM POWER DISTRIBUTION COMPANY LTD. 4TH FLOOR
BIJULEE BHAWAN PALTAN BAZAR GUWAHATI-781001

4:THE CHIEF GENERAL MANAGER (D)
ASSAM POWER DISTRIBUTION COMPANY LTD. (CAR) BIJULEE BHAWAN
PALTAN BAZAR GUWAHATI-781001

5:THE DEPUTY GENERAL MANAGER APDCL DIPHU KARBI ANGLONG

6:THE ASSISTANT GENERAL MANAGER T AND C DIVISION DIPHU
APDCL CAR

7:THE CHIEF EXECUTIVE OFFICER
KANCH ELECTRICAL CIRCLE APDCL
CAR DIPHU

Advocate for the Petitioner : MR B M DEKA
Advocate for the Respondent : SC, APDCL

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

Date of hearing : 26.06.2024

Date of Judgment : 26.06.2024

Judgment & order(Oral)

Heard Mr. B. M. Deka, learned counsel for the petitioner. Also heard Mr. B. Choudhury, learned standing counsel, Assam Power Distribution Company Ltd. (APDCL), appearing on behalf of all the respondents.

2. The petitioner, herein, by way of instituting this present proceeding, has prayed for a direction for consideration of her case for appointment against a Grade-IV vacancy under the Assam Power Distribution Company Ltd. (APDCL) and in this connection, has also assailed an order, dated 14.09.2021, by which her case for appointment on compassionate ground, was rejected.

3. The husband of the petitioner, a permanent employee under the Assam Power Distribution Company Ltd.(APDCL) had died in harness on 30.06.2016. The petitioner had submitted an application for consideration of her case for appointment on compassionate ground on 08.08.2016 under the Assam Power Distribution Company Ltd. (APDCL) Compassionate Appointment Scheme, 2014.

4. As projected in the writ petition, vide the impugned communication, dated 14.09.2021, while the case of 15 numbers of candidates were found eligible for appointment against Grade III and Grade-IV posts on compassionate ground, in

pursuance of an exercise carried-out as an one- time measure for consideration of all pending applications; the petitioner, herein, was not so recommended for appointment on compassionate ground under the provisions of the said Scheme of 2014.

5. The learned standing counsel, Assam Power Distribution Company Ltd. (APDCL), has brought to the notice of this Court, a decision of a co-ordinate Bench of this Court in the case of ***Sumit Wary v. Assam Power Distribution Company Ltd. (APDCL) & ors.*** [order, dated 03.05.2022, in WP(c)5899/2021], wherein, this Court, on consideration of an issue similar to the one as arising in the present proceeding, drew the following conclusions were arrived at:

"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."

6. The issue as arising in the present proceeding 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 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.

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 dependants 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 dependants 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 appointment 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 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.*

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."

7. From the writ petition, it is also seen that with effect from the date of the death of the husband of the petitioner which had occasioned on 30.06.2016; almost 8 years have since elapsed and accordingly, after lapse of such a considerable period of time, the purport for appointment on compassionate ground naturally stands diluted and lost.

8. The materials on record reveal that the family of the petitioner had sustained for the last about 8 years and as such, the immediate object behind the grant of appointment on compassionate ground being to mitigate the hardship caused to the family due to death of the bread earner in the family and also, it being a settled position of law that compassionate appointment cannot be claimed after considerable lapse of time from the date of the death of the government servant, the object being to enable the family to get over the financial crisis occasioning at the time of the death of the deceased of the Government servant; a direction for consideration of the case of the petitioner for appointment on compassionate ground, is not called for.

9. The claim of the petitioner as on date is a stale claim and the same if allowed to be considered at this distant point of time, would amount to treating compassionate appointment as though it were a matter of inheritance based on the line of succession.

10. In the case on hand, the family having survived for such a long period of time after the death of the husband of the petitioner had occasioned on 30.06.2016, the acceptance of the claim of the petitioner at this distant point of time, would not be in furtherance of the object behind the purport of a scheme for providing appointment on compassionate ground.

11. In the present proceeding, similar arguments having been so advanced; the conclusions as arrived by the coordinate Bench of this Court in the case of ***Sumit Wary***(supra) would squarely apply to the present proceeding also.

12. In view of the above position and also the decision as rendered by the Hon'ble Supreme Court in the case of ***State of W.B. v. Debabrata Tiwari***(supra) as well as the decision rendered by this Court in the case of ***Sumit Wary*** (supra); this Court finds that the rejection of the application as submitted by the petitioner, herein, in the matter, vide order, dated 14.09.2021, would not call for any interference from this Court in-as-much as the reasons based on which such application came to be rejected, cannot be said to be arbitrary or unreasonable.

13. As noticed by the Hon'ble Apex Court in ***Debabrata Tiwari***(supra), the operation of a policy/scheme for compassionate appointment is founded on consideration of immediacy.

14. In that view of the matter, the issue involved in the present proceeding, being a stale issue; this Court refrains from proceeding to issue any direction requiring consideration of the case of the petitioner for appointment on

compassionate ground in pursuance to the death of her husband in harness, occasioning in the year 2016; this writ petition is found to be devoid of merit and the writ petition accordingly stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant