

GAHC010204422017



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

Case No. : WP(C)/7271/2017

ZITENDRA CH. DAS
S/O LATE GIRISH CH. DAS, VILL- SOUTH SALMARA PART II, PO and PS-
SOURTH SALMARA, DIST. SOUTH SALMARA MANKACHAR, ASSAM

VERSUS

THE STATE OF ASSAM and 5 ORS.
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM, HEALTH
and FAMILY WELFARE A DEPTT., DISPUR, GUWAHATI-6

2:THE DIRECTOR OF HEALTH SERVICES

ASSAM
HENGARABARI
GUWAHATI-78136

3:THE JOINT DIRECTOR
HEALTH SERVICES MALARIA
ASSAM
GUWAHATI-781036

4:THE JOINT DIRECTOR
HEALTH SERVICES
DHUBRI
DIST. DHUBRI
ASSAM
PIN- 783301

5:THE DISTRICT MALARIA OFFICER
DHUBRI

DIST. DHUBRI
ASSAM
PIN-783301

6:JITENDRA BISWAS
C/O LATE PRATIMA BRAHMA
VILL- GAURIPUR WARD NO. 1
PO- GAURIPUR
DIST. DHUBRI
ASSAM
PIN- 78333

Advocate for the Petitioner : MR.S K MUKTAR

Advocate for the Respondent : SC, HEALTH

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

22.04.2024.

Heard Shri S Rahman, learned counsel for the petitioner. Also heard Ms. D Bora, learned Standing Counsel, Health & Family Welfare Department, Assam.

2. Shri P Mahanta, learned counsel, however, informed this Court that though he was engaged by the respondent no. 6, he has withdrawn the Vakalatnama.

3. The claim is with regard to the appointment on compassionate ground.

4. The facts projected is that the father of the petitioner, Girish Chandra Das, who was working as a Surveillance Worker under the Joint Director of Health Services, Dhubri, had died-in-harness on 30.11.2002. The petitioner, accordingly had submitted an application on 30.12.2002 for appointment on compassionate ground. The name of the petitioner was, accordingly forwarded by the Joint

Director of Health Services, Dhubri vide communication dated 13.08.2004. However, the petitioner was not appointed. On the other hand, the respondent no. 6 was appointed.

5. Shri Rahman, learned counsel for the petitioner has submitted that the petitioner had fulfilled all the requirements for such consideration and therefore, the appointment ought to have been offered to the petitioner. It is also submitted that the respondent no. 6 bears the same name of the petitioner and instead of the petitioner, the said respondent has been appointed. The learned counsel, accordingly submits that appropriate directions be issued to consider and appoint petitioner on compassionate ground.

6. *Per contra*, Ms. Bora, learned Standing Counsel, Health & Family Welfare Department submits that on the ground of delay itself, the petitioner is not entitled for any consideration. She contends that even on merits that no case for interference is made out as the consideration and subsequent appointment of the respondent no. 6 was on merits. She also points out that the names of the petitioner and the respondent no. 6 are clearly distinguishable, viz, the name of the petitioner is Zitendra Ch. Das whereas the respondent no. 6 is Jitendra Biswas.

7. On a specific query made by this Court, the learned counsel for the petitioner has, however, conceded that the respondent no. 6 was also a contender for appointment on compassionate ground due to the death of his mother who was a government servant. He however, clarifies that the mother of the respondent no. 6 was an Auxiliary Nurse and Midwife (ANM) and therefore,

the appointment could not have been offered to the respondent no. 6.

8. 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.

9. In the instant case, the death of the father of the petitioner was in the year 2002 and the writ petition itself has been filed after 15 years. There is no acceptable or cogent reasons explaining the delay and the mere submission of representation would not extend the time. As on today, more than two decades 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 recent case of ***State of West Bengal Vs. Debabrata Tiwari & Ors.***, reported in **AIR 2023 SC 1467** 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.”

10. 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."

11. 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