

GAHC010206332021



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

Case No. : WP(C)/6763/2021

MRINAL DAS
S/O LT. KARUNA DAS, R/O VILL. BOGRIBARI, P.S KHETRI, DIST. KAMRUP
(M) ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, IRRIGATION DEPTT.
DISPUR, GUWAHATI-6

2:THE STATE LEVEL COMMITTEE
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWHATI-6

3:THE DEPUTY COMMISSIONER
KAMRUP (M)
ASSAM

4:THE DISTRICT LEVEL COMMITTEE
HEADED BY THE DEPUTY COMMISSIONER
KAMRUP (M) ASSAM
CHARIMAN OF THE DIST LEVEL COMMITTEE KAMRUP (M)

5:THE CHIEF ENGINEER
IRRIGATION
ASSAM
CHANDMARI
GUWHATI-3 KAMRUP (M) ASSAM

6:THE EXECUTIVE ENGINEER
GUWAHATI DIVISIONAL (IRRIGATION) GUWAHATI-7

KAMRUP (M) ASSA

Advocate for the Petitioner : MR J I BARBHUIYA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

03.05.2024

Heard Shri L. Mohan, learned counsel for the petitioner. Also heard Shri N. Upadhyay, learned Standing Counsel, Irrigation Department whereas Shri CKS Baruah, learned State Counsel appears for the other official respondents.

2. The issue is towards a claim for appointment on compassionate ground.

3. The facts projected by the petitioner is that his father Karuna Das was working as a Khalashi in the establishment of the Executive Engineer, Guwahati Division (Irrigation), Guwahati, who had died in harness on 19.01.2013. The petitioner had accordingly applied for appointment on compassionate ground. The District Level Committee, Kamrup vide its minutes of meeting held on 14.11.2017 had recommended the case of the petitioner for consideration by the State Level Committee. However, the State Level Committee in its meeting held on 15.09.2021 has rejected the case of the petitioner on the ground that vacancy under Grade IV was already saturated in the concerned office. The petitioner having failed to get any relief from the respondents in spite of representation has filed this writ petition on 30.11.2021.

4. Shri Mohan, learned counsel for the petitioner has submitted that the ground of rejection of non-availability of 5% vacancy meant for appointment on compassionate ground is erroneous. By drawing the attention of this Court to

the staff position of Grade IV in the concerned office, the learned counsel has submitted that the total cadre strength is 50 and therefore, the reason assigned is not sustainable. It is submitted that the petitioner should have been easily accommodated, more so, when his case was duly recommended by the District Level Committee after consideration of all the facts and circumstances. The learned counsel accordingly submits that appropriate directions be issued for consideration and appointment of the petitioner on compassionate ground.

5. Shri Upadhyay, learned Standing Counsel, Irrigation Department, on the other hand, has submitted that even if the projection made by the petitioner regarding total cadre strength is accepted, the 5% vacancies could not be enough to accommodate the petitioner inasmuch as, two posts are already filled up by candidates on compassionate ground.

6. It is further submitted that the right for compassionate ground is not a vested right and such right would only extend for a fair consideration which has been done, as would reveal from the minutes of meeting of the State Level Committee.

7. Shri Baruah, learned State Counsel while endorsing the submission of the learned Standing Counsel of the Department has further submitted that the factors which was taken into consideration by the State Level Committee are relevant and germane and the same would not require any interference by this Court. The learned State Counsel has also raised objection that the selected candidate one Ratan Thakuria has not been made a party respondent and therefore, any orders that may be passed for consideration of the case of the petitioner would adversely affect the said incumbent without affording him an opportunity of hearing.

8. The learned counsel for the petitioner has however clarified that he is not against the consideration of the incumbent who has been appointed and only prays for a fair consideration of his candidature vis-à-vis the vacancies existing. He has also submitted that the affidavit filed by the respondents does not disclose the details of such consideration of the said incumbent.

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

10. The minutes of meeting dated 15.09.2021 of the State Level Committee would indicate the grounds of consideration of the case of the petitioner as well as that of the incumbent who has been given the benefit of such appointment. It is not a case where the case of the petitioner did not come up for consideration at all due to want of vacancies. In a given case wherein consideration cannot be made at all, this Court has been passing consistent orders holding that one time consideration is a mandate. The difference in the present case is however that a consideration was indeed made for available vacancy in which the *inter se* merits of the petitioner and the incumbent who has been appointed was made. The State Level Committee has cited reasons for giving the benefit of appointment to the incumbent who however has not been made a party and so far as petitioner is concerned, an observation has been made that the vacancy of 5% has already been saturated.

11. As regards the cadre strength of the Grade IV it is seen from the list annexed in this proceeding that the total cadre strength is 50 and 5% would be 2.5. Since two persons have already been appointed under the compassionate ground, a third appointment may not be permissible as the minimum vacancy for further consideration has to be more than 2.

12. This Court has also been apprised of a recent decision of the Hon'ble Supreme Court in the case of ***State of West Bengal Vs Debabrata Tiwari & Ors.*** reported in ***AIR 2023 SC 1467***. The following has been laid down:

“ 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."

13. 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 a bereaved family which has lost its sole breadwinner so as to enable the bereaved family to overcome the immediate crisis and the same loses its essence by efflux of time. Further, the right is only limited for a fair consideration and there cannot be an indefeasible right for such appointment.

14. In the instant case, this Court finds materials on record that a fair consideration was indeed made whereafter the candidature of the petitioner could not be accepted.

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

JUDGE

Comparing Assistant