

GAHC010235852023



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

Case No. : WP(C)/6386/2023

DIPEN BAGLARI
S/O LATE BANESWAR BAGLARI, R/O VILL-JALAKIA BORI, P.O.-JALAKIA
BORI, P.S.-LAHARIGHAT, DIST-MORIGAON, PIN-782127, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, PWD DEPTT., DISPUR, GUWAHATI-781006

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GUWAHATI-781006

3:THE SECRETARY TO THE CHIEF MINISTER OF ASSAM
DISPUR
GUWAHATI-6

4:THE CHIEF ENGINEER
PW (ROADS) DEPTT.
CHANDMARI
ASSAM
PIN-781003

5:THE EXECUTIVE ENGINEER
PWD RURAL (ROAD)
LAHARIGHAT DIVISION
MORIGAON
ASSAM
PIN-782105

6:THE DEPUTY COMMISSIONER

MORIGAON
DIST-MORIGAON
ASSAM
PIN-782105

7:THE STATE LEVEL COMMITTEE

REPRESENTED BY ITS CHIEF SECRETARY
DISPUR
ASSAM
PIN-781006

Advocate for the Petitioner : MR. B RAMCHIARY, MS T RAMCHIARY

Advocate for the Respondent : SC, PWD, GA, ASSAM, SC, FINANCE

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Ms. T. Ramchiary

Advocate for the respondents : Shri JK Goswami, GA, Assam.
Shri R. Dhar, SC, PWD

Date of hearing : **18.12.2024**

Date of judgment : **18.12.2024**

JUDGMENT & ORDER

Heard Ms. T. Ramchiary, learned counsel for the petitioner. Also heard Shri JK Goswami, learned State Counsel as well as Shri R. Dhar, learned Standing Counsel, PWD.

2. The matter pertains to a claim for appointment on compassionate ground.

It is the projected case of the petitioner that his father Baneswar Baglari, was serving as a regular permanent labour in the Public Works Department (PWD), who had died in harness on 06.10.2014. The petitioner who claims to be eligible had duly applied for appointment on compassionate ground. However, as no action was taken, the petitioner had filed WP(C)/1303/2017 in which this Court vide order dated 09.02.2018 had disposed of the said writ petition with a direction to place the case of the petitioner before the District Level Committee (DLC). As nothing substantial was done, the petitioner had again filed a writ petition being WP(C)/2598/2022 before this Court. The same was disposed of with a direction to place his case before the next available DLC, Morigaon District for consideration as per law.

3. After the aforesaid direction, the case of the petitioner was taken up for consideration by the DLC, Morigaon in its meeting dated 22.01.2022 and his case was recommended for consideration by the State Level Committee (SLC). The SLC in its meeting held on 16.08.2022 after consideration of the case of the petitioner had rejected his application mainly on the grounds that he was under qualified and had applied after 4 years from the date of death of the deceased father.

4. The learned counsel for the petitioner has submitted that after the aforesaid rejection by the SLC is not sustainable in law as the petitioner had indeed applied for compassionate appointment within the prescribed period and not after 4 years from the death. In this connection, she has drawn the attention of this Court to the writ petition filed in the year 2017 which was disposed of by this Court vide order dated 09.02.2018. She has also submitted that the petitioner had applied for the post of Grade – IV and therefore, was not under qualified.

5. *Per contra*, both Shri Goswami, the learned State Counsel and Shri Dhar, the learned Standing Counsel, PWD have raised the issue of delay and *laches* in consideration for appointment on compassionate ground. It is submitted that the death was in the year 2014 and the objective of giving appointment on compassionate ground is only to enable the bereaved family to overcome the sudden crisis faced. They have also cited the case of ***State of West Bengal vs. Debabrata Tiwari & Ors.***, reported in ***AIR 2023 SC 1467*** and have submitted that after 10 years, no direction can be issued for appointment on compassionate ground.

6. The rival submissions have been duly considered.

7. The objective of offering an appointment on compassionate ground is only to give immediate succour to the bereaved family which has lost the sole breadwinner and in this case, admittedly more than a decade has passed.

8. In the instant case, it is not in dispute that the death of the deceased father was in the year 2014 and in the meantime, more than a decade have passed. Though, the grounds for rejection of the case of the petitioner cited by the SLC in its meeting dated 16.08.2022 are two-fold, namely, delay in applying and under qualified, the said grounds do not appear to be in consonance with the records. The aspect of being under qualified is also slightly ambiguous. However, the documents annexed to the writ petition does not make it clear in which category of post the application for compassionate appointment was made. In fact, the application has not been annexed to the writ petition and it is only certain communications subsequent to order passed by this Court which have been enclosed.

9. Having said that, this Court ultimately has to look into the objective of the

Scheme for appointment on compassionate ground and the aspect of delay in this regard cannot be ignored or overlooked. As on today, more than 10 years have passed since the death of the father of the petitioner 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.”

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 thought 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 relief can be granted to the petitioner and accordingly, the writ petition is dismissed.

JUDGE

Comparing Assistant