

GAHC010239392023



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

Case No. : WP(C)/6374/2023

MEENA KUMARI SINGH @ MEENA DEVI SINGH
W/O- LATE UMESH PRASAD SINGH,
R/O- CID GOVT QTR NO. 11,
BASISTHA, GUWAHATI,
P.O/ P.S.- BASISTHA,
DISTRICT- KAMRUP(M), ASSAM,
PIN- 781029.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM,
DISPUR, GUWAHATI- 781006.

2:THE SECRETARY
GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE DIRECTOR GENERAL OF POLICE

ULUBARI GUWAHATI
DISTRICT- KAMRUP(M)

ASSAM
PIN- 781007.

4:THE ADDL. DIRECTOR GENERAL OF POLICE (BORDER)
SRIMANTAPUR
BHANGAGARH

GUWAHATI
DISTRICT- KAMRUP(M)

ASSAM
PIN- 781032.

5:THE DEPUTY INSPECTOR OF POLICE (ADM)
ULUBARI
GUWAHATI

DISTRICT- KAMRUP(M)
ASSAM

PIN- 781007.

6:THE DEPUTY COMMISSIONER
KAMRUP(M)
AT GUWAHATI
ASSAM
PIN- 781001.

7:THE COMMISSIONER OF POLICE
PANBAZAR
GUWAHATI

DISTRICT- KAMRUP(M)
ASSAM

PIN- 781001.

8:THE SUPERINTENDENT OF POLICE (BORDER)
SRIMANTAPUR
BHANGAGARH

DISTRICT- KAMRUP(M)
ASSAM

PIN- 781032

Advocate for the Petitioner : MR. N K MURRY

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 06-05-2024

06.05.2024

Heard Mr. NK Murray, learned counsel for the petitioner as well as Mr. R. Dhar, learned Addl. Senior Govt. Advocate appearing for all the respondents.

2. The rejection of the candidature of the petitioner for appointment on compassionate ground by the State Level Committee (SLC for short) in the meeting of the 15th SLC dated 02.03.2023, which was communicated to the petitioner by letter dated 06.04.2022, issued by the Superintendent of Police (B), Assam has been assailed by the petitioner by filing this writ petition under Article 226 of the Constitution of India.

3. The husband of the petitioner had died-in-harness on 13.11.2005, while serving as a driver/constable under the establishment of Superintendent of Police (B), Assam (respondent no.8). Apart from the petitioner, he left behind two children. The petitioner had applied for appointment on compassionate ground on 25.11.2005, before the concerned respondents.

4. The claim of the petitioner was taken up in the District Level Committee (DLC for short) meeting held on 29.08.2008, and though no remark was made against the candidature of the petitioner, the claim of the petitioner was rejected. Accordingly the petitioner had approached this Court by filing a writ petition before this Court and this Court, by order dated 07.01.2022, passed in WP(C) 7363/2019 had directed to consider the case of the petitioner. The said relevant paragraph nos.6 to 8 thereof are quoted herein below:

“6. The learned Additional Senior Govt. Advocate has submitted that at the present point of time, the OM dated 01.06.2015 is in force as the earlier office memorandum which was then prevailing by which the petitioner had applied, has been overridden by the present OM and accordingly, it is submitted that as per the current OM dated 01.06.2015, the case of the petitioner cannot be considered. In this regard the Court is of the considered opinion that as the DLC took up the case of the petitioner in its meeting held on 29.08.2008 but no remark was made against the candidature of the petitioner, the rejection of the candidature of the petitioner is not found sustainable. Therefore, the petitioner cannot be punished for lack of the wisdom of the District Level Committee to put any remark against the candidature of the petitioner in its DLC meeting held on 29.08.2008.

7. Therefore, in view of the discussions above, the petitioner has been able to make out a case that her candidature for the appointment on compassionate ground requires to be revisited by the DLC on compassionate ground. Accordingly, the writ petition stands allowed by providing that the case of the petitioner shall be taken up and considered in the next meeting of the DLC on compassionate appointment in respect of the establishment of the office of the Superintendent of Police (Border) (respondent no.8), to be taken up on the basis of OM which was prevailing on 25.09.2007, the date when the respondents claim that the petitioner had applied for appointment on compassionate ground. It is further provided that while considering the candidature of the petitioner, the DLC/ SLC would not reject the candidature of the petitioner on the ground that the application of the petitioner has spent force, or on any other technical ground that no posts are available because as per DLC minutes dated 29.08.2008, sufficient unfilled vacancies had existed.

8. The exercise for reconsideration of the candidature of the petitioner shall be carried out within 31.03.2022 with intimation to the petitioner about the result of such consideration.”

5. Thereafter the candidature of the petitioner was recommended by the DLC on 26.09.2022. However, the SLC in its meeting held on 02.03.2023, had rejected the candidature of the petitioner. The learned counsel for the petitioner, by referring to the SLC minutes of 02.03.2023, had submitted that against the name of the petitioner, the name of the father was referred to as the husband of the petitioner and accordingly, it is submitted that the claim of the petitioner was not properly considered. It is also submitted that this Court by the hereinbefore referred order dated 07.01.2022 passed in WP(C) 7363/2019, had categorically directed that the DLC/SLC would not reject the candidature of the

petitioner on the ground that the application of the petitioner has spent force, or on any other technical ground that no posts are available because as per the DLC minutes dated 29.08.2008, sufficient unfilled vacancies had existed.

6. Opposing the prayer made in this writ petition, Mr. R. Dhar, learned Addl. senior Govt. Advocate has cited the case of *the State of West Bengal v. Debabrata Tiwari and ors.*, AIR 2023 SC 1467: (2023) 0 Supreme (SC) 191, and by referring to paragraph 7.5 thereof, it is submitted that the delay on part of consideration by the authorities is also included for disentitlement for consideration because as a result of delay, the immediacy of such compassionate appointment is diluted and lost and the entertainment of the belated consideration long time after the death was deprecated.

7. It is not in dispute that as per the decision of the Supreme Court of India in the case of *NC Santhosh v. State of Karnataka*, (2020) 7 SCC 617, the Supreme Court of India has laid down that the scheme currently in force shall govern the procedure for appointment on compassionate ground. Under Principle-10 of the Office Memorandum No.ABP.50/2006/Pt/182 dated 01.06.2015, it is provided that if the applications of eligible candidates remain pending and cannot be considered due to want of vacancies for a period of two years from the date of making such applications will require no further consideration and must be understood to have spent their force, which is also reiterated by the Supreme Court of India in the case *Malaya Nanda Sethy v. State of Orissa and ors.*, AIR 2022 SC 2836.

8. In the case of *Debabrata Tiwari and ors. (supra)*, it is noticed that the delay in applying for appointment on compassionate ground as well as delay in

consideration are both acceptable as a ground for disentitlement for consideration of appointment on compassionate ground. The relevant paragraphs 7.4 and para-7.5 of the said judgment are quoted below:

"7.4. 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.

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."

9. Although this Court by previous order dated 07.01.2022 passed by in WP(C) 7363/2019, had issued a direction for consideration of the candidature of the petitioner with a direction that the candidature should not be rejected on the ground that the application has spent force or any other technical ground, but in view of the law laid down by the Supreme Court of India in the case of *Debabrata Tiwari and ors. (supra)*, the said order of this Court cannot be a

ground for this Court to entertain a belated claim as on date.

10. Therefore, having noted that the husband of the petitioner died-in-harness on 13.11.2005, and about $18\frac{1}{2}$ years approximately has gone by, in light of the directions contained in paragraph-7.5 of the case of *Debabrata Tiwari and ors. (supra)*, the candidature of the petitioner cannot be ordered to be reconsidered.

11. Accordingly, this writ petition fails and the same is dismissed.

JUDGE

Comparing Assistant