



GAHC010215732022



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

Case No. : WP(C)/6883/2022

MANU GURUNG
S/O- LATE GAU PRASAD GURUNG, R/O- VILL.- SANTI NAGAR (NEPALI
BASTI), P.O. BALADMARI, P.S. AND DIST. GOALPARA, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE SECRETARY, WATER RESOURCE DEPARTMENT,
DISPUR, GUWAHATI-06.

2:THE CHIEF ENGINEER
WATER RESOURCE DEPARTMENT
CHANDMARI
GUWAHATI-03.

3:THE ADDITIONAL CHIEF ENGINEER
MECHANICAL ZONE
WATER RESOURCE DEPARTMENT
GUWAHATI-29.

4:THE EXECUTIVE ENGINEER
GUWAHATI MECHANICAL DIVISION
WATER RESOURCE DEPARTMENT
GUWAHATI-29.

5:THE DISTRICT LEVEL SELECTION COMMITTEE
REPRESENTED BY THE DEPUTY COMMISSIONER
KAMRUP(M)
GUWAHATI-36



BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri M. M. Zaman, Advocate.
Advocate for the respondents : Shri. A. Chakraborty, GA.
Shri C. Sarma, Advocate, Water Resources Department.
Date of hearing : **16.07.2024**
Date of Judgment : **16.07.2024**

JUDGMENT & ORDER

Heard Shri M. M. Zaman, learned counsel for the petitioner. Also heard Shri A. Chakraborty, learned State Counsel and Shri C. Sarma, learned counsel representing the Water Resources Department.

2. The writ petition has been instituted with a claim for appointment on compassionate ground.

3. The facts projected in the petition is that the father of the petitioner, Gau Prasad Gurung, who was working as a Grade-IV employee in the Water Resources Department at Goalpara had died-in-harness on 14.01.2003 leaving behind his family including the petitioner. The petitioner claims to have applied for appointment on compassionate ground on 27.06.2003. However, the petitioner could come to learn that his candidature was rejected. The petitioner had accordingly filed WP(C) No. 6424/2017 before this Court in which there was an order dated 27.02.2019 to consider the case of the petitioner within a period of 3 months. As according to the petitioner, no action was taken, he had filed Contempt Cas(C) No. 154/2021. In the said proceeding, it was however revealed that a minutes of meeting was held on 30.10.2021 in which the case of



the petitioner was rejected. The contempt case was accordingly closed on 06.04.2022. It is the order of rejection dated 30.10.2021 which is the subject matter of challenge in this petition.

4. Shri Zaman, the learned counsel for the petitioner has submitted that the rejection though based on the ground that the post of Bhandari is a single cadre post, there were other vacancies in Gr-IV where the petitioner could have been considered. In this connection, he has drawn the attention of this Court to a document annexed as Annexure-8 which is a part of certain replies obtained by the RTI and has contended that as on 21.06.2022, 58 numbers of vacancies were existing in the Gr-IV under the Office of the Gauhati Mechanical Division. He has also submitted that under the notification holding the field, there is a provision to consider such appointment in the vacancies existing any other office and that exercise has not been done.

5. Shri Chakraborty, the learned State Counsel has however submitted that the death of the government servant being in the year 2003, any consideration for appointment on compassionate ground after about two decades would not be in consonance with the objectives of the scheme. He submits that though the contention of the petitioner is that vacancies are existing, the mere existence of vacancies would not be crucial and what would be crucial is whether vacancies under the 5% quota is available. The learned counsel submits that in any case the claim for appointment is a stale one and cannot be considered at this point of time. The learned State Counsel has also defended the order dated 30.10.2021 by submitting that the reasons assigned are in accordance with law as the post of Bhandari is a single cadre post.

6. Shri Chakraborty, the learned State Counsel in support of his submission



has relied upon the recent judgment of the Hon'ble Supreme Court in the case of ***State of West Bengal Vs Debabrata Tiwari*** reported in ***(2023) SCC Online SC 219***.

7. Shri Sarma, the learned counsel representing the Department has endorsed the submission of the learned State Counsel.

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, it is not in dispute that the death of the government employee was in the year 2003 and in the meantime, two decades have passed. The first approach of the petitioner to this Court was also after the period of about 14 years in the year 2017. 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 20 years 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 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 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 relief can be granted to the petitioner and accordingly, the writ petition is dismissed.

JUDGE

Comparing Assistant