

(2022) 12 GAU CK 0020
In the Gauhati High Court
Case No : Writ Appeal No. 325 Of 2021

Abdus Shohid Choudhury

APPELLANT

Vs

State Of Assam And 4 Ors.

RESPONDENT

Date of Decision : 09-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2022) 12 GAU CK 0020

Hon'ble Judges : R.M. Chhaya, CJ;Soumitra Saikia, J

Bench : Division Bench

Advocate : R.A. Choudhury, D. Nath

Final Decision : Dismissed

Judgement

R.M. Chhaya, CJ

1. Heard Mr. R.A. Choudhury, learned counsel for the appellant. Also heard Mr. D. Nath, learned Senior Government Advocate, Assam appearing for the respondents.

2. Feeling aggrieved and dissatisfied by the judgment and order dated 10.09.2021 passed by the learned Single Judge in WP(C) 4472/2021 whereby the learned Single Judge was pleased to dismiss the writ petition and being aggrieved, the original writ petitioner has preferred this intra-Court appeal.

3. The following facts emerge from the record of the appeal;

The appellant's father Late Abdul Basith Choudhury was working as Section Assistant in PWD (Roads) in Karimganj sub-division in the district of Karimganj, Assam. It is the case of the appellant that the services of his father came to be regularised vide order dated 04.03.1993 against the sanctioned post. As the record unfolds the father of the appellant/original petitioner died in harness on 01.05.1993. It is the case of the appellant/original petitioner that his father was the only source of livelihood for the family and after his death, the appellant/

original petitioner filed representation before the Assistant Executive Engineer, PWD (Roads), Karimganj with a prayer for compassionate ground under die-in-harness scheme which was reserved for sons/unmarried daughters/widows/near relative of the government employee. It is the say of the appellant/original petitioner that the Executive Engineer concerned forwarded the representation filed by the appellant to the Deputy Commissioner, Karimganj and the Chairman of the District Level Committee for appointment on compassionate ground. It is the case of the petitioner that the case of the appellant/original petitioner was considered by the District Level Committee on 20.01.2007 and on recommendation, the application of the appellant was forwarded to the State Level Committee. It is the case of the appellant/original petitioner that his application was considered in the meeting of the State Level Committee held on 13.02.2014 and the same came to be rejected on the ground that the post held by the father of the appellant was a personal post and therefore, the same cannot be treated as a vacant post. After the said rejection of the case of the appellant/original petitioner on 13.02.2014, the petitioner approached this Court by way of filing the present writ petition in the year 2021, i.e. after a lapse of 7 years. The learned Single Judge was pleased to dismiss the same on the ground of delay and observed that the claim of the petitioner is a stale claim and the same cannot be entertained. Being aggrieved by the same, the present appeal is filed.

4. Mr. R.A. Choudhury, learned counsel for the appellant has contended that the learned Single Judge committed an error in dismissing the petition merely on the ground of delay and has contended that the appeal be considered and appropriate direction be issued to the respondent authorities to appoint the appellant on compassionate ground.

5. Mr. D. Nath, learned senior Government Advocate, Assam has opposed this appeal and has contended that the appeal being meritless deserves to be dismissed. Mr. Nath has contended that the element of die-in-harness does not exist in the present case as the father of the appellant expired more than ten years back and therefore, no case for interference is made out and the appeal be dismissed. Mr. Nath has also relied upon the affidavit-in-opposition filed by the respondent authorities.

6. No other or further contentions/submissions or grounds have been raised by the learned counsel appearing for both the parties.

7. Upon considering the submissions made and on perusal of the impugned judgment and order as well as the record of the appeal, the following admitted facts emerge;

i) that the father of the petitioner expired on 01.05.2003;

ii) that the State Level Committee rejected the application of the petitioner on 13.02.2014 and the present writ petition was filed in the year 2021, i.e. after a lapse of more than seven years.

Though it is the case of the appellant that he had approached this Court earlier in the year 2010 by filing writ petition being WP(C) 3500/2010 and this Court was pleased to dispose of the writ petition vide order dated 21.06.2010 observing that the case of the petitioner would be governed by earlier judgment and order of this Court passed in Achyut Ranjan Das vs. State of Assam & Ors. reported in 2006 (4) GLT 674. However, the same would not take the case of the appellant any further as after the said order of 21.06.2010, the State Level Committee considered the case of the appellant and rejected the case of the appellant on 13.02.2014. The respondents have also disputed the fact that the post occupied by the father of the appellant was a personal post which is automatically abolished after retirement/expiry of the person holding the same.

8. Be that it may be so, the fact remains that the petitioner challenged the decision of the State Level Committee taken on 13.02.2014 for the first time before this Court by filing the present writ petition in the year 2021, admittedly after a period of seven years. Considering the fact that the father of the petitioner expired on 01.05.2003, the period of ten years has passed by and therefore, the element of die-in-harness does not exist after ten years in the case at hand.

9. We are fortified in our view by the ratio laid down by the Hon'ble Apex Court in the case of Fertilizers and Chemicals Travancore Ltd. & Ors. vs. Anusree K.B., reported in 2022 LiveLaw (SC) 819 wherein the Apex Court has observed in paragraphs 7, 8 and 9 as under;

7. While considering the issue involved in the present appeal, the law laid down by this Court on compassionate ground on the death of the deceased employee are required to be referred to and considered. In the recent decision, this Court in the case of Director of Treasuries in Karnataka and Anr. Vs. V. Somyashree, 2021 SCC Online SC 704, had occasion to consider the principle governing the grant of appointment on compassionate ground. After referring to the decision of this Court in N.C. Santhosh Vs. State of Karnataka, (2020) 7 SCC 617, this Court has summarised the principle governing the grant of appointment on compassionate ground as under:-

(i) that the compassionate appointment is an exception to the general rule;

(ii) that no aspirant has a right to compassionate appointment;

(iii) the appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;

(iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of the eligibility criteria as per the policy;

(v) the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.

8. As per the law laid down by this Court in catena of decisions on the appointment on compassionate ground, for all the government vacancies equal opportunity should be provided to all aspirants as mandated under Articles 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norms. The compassionate ground is a concession and not a right.

8.1 In the case of State of Himachal Pradesh and Anr. Vs. Shashi Kumar reported in (2019) 3 SCC 653, this Court had an occasion to consider the object and purpose of appointment on compassionate ground and considered the decision of this Court in the 4 case of Govind Prakash Verma Vs. LIC, reported in (2005) 10 SCC 289, in paras 21 and 26, it is observed and held as under:-

"21. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289, has been considered subsequently in several decisions. But, before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in Umesh Kumar Nagpal v. State of Haryana [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138]. The principles which have been laid down in Umesh Kumar Nagpal [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138] have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract: (Umesh Kumar Nagpal case [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138], SCC pp. 139-40, para 2)

"2. ... As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be

offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in nonmanual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

26. The judgment of a Bench of two Judges in *Mumtaz Yunus Mulani v. State of Maharashtra* [(2008) 11 SCC 384] has adopted the principle that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis. The financial position of the family would need to be evaluated on the basis of the provisions contained in the scheme. The decision in *Govind Prakash Verma v. LIC*, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] has been duly considered, but the Court observed that it did not appear that the earlier binding precedents of this Court have been taken note of in that case."

9. Thus, as per the law laid down by this Court in the aforesaid decisions, compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependents of a deceased dying in harness and leaving his family in penury and without any means of livelihood, and in such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give such family a post much less a post held by the deceased.

9.1 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the observations made hereinabove and the object and purpose for which the appointment on compassionate ground is provided, the respondent shall not be entitled to the appointment on compassionate ground on the death of her father, who died in the year 1995. After a period of 24 years from the death of the deceased employee, the respondent shall not be entitled to the appointment on compassionate ground. If

such an appointment is made now and/or after a period of 14/24 years, the same shall be against the object and purpose for which the appointment on compassionate ground is provided.

9.2 Under the circumstances, both, the learned Single Judge as well as the Division Bench of the High Court have committed a serious error in directing the appellants to reconsider the case of the respondent for appointment on compassionate ground. The impugned judgment and order passed by the High Court is unsustainable.”

10. In case at hand also, the father of the appellant as aforesaid expired on 01.05.2003 and hence, if appointment on compassionate ground is now made after a period of ten years, the same shall be de hors the very objects of principles of die-in-harness scheme. As held by the Hon’ble Apex Court in catena of decisions, the compassionate appointment is not an alternative mode of recruitment but it is granted in cases where the bereaved family who has lost the sole bread-earner comes out of the financial crisis and can maintain the family. Even at the cost of repetition, it is not believable that even after ten years such conditions exist in case of the appellant.

11. We are in total agreement with the conclusion arrived at by the learned Single Judge. No case for interference is made out. The appeal being bereft of any merit, deserves to be dismissed and is hereby dismissed.

Parties to bear their own costs.