

(2023) 01 GAU CK 0022
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 71 Of 2023

Amrul Haque Mazumder

APPELLANT

Vs

State Of Assam And 5 Ors

RESPONDENT

Date of Decision : 06-01-2023

Acts Referred:

Citation : (2023) 01 GAU CK 0022

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : H I Choudhury

Final Decision : Disposed Of

Judgement

1. Heard Mr. M Sarma, learned counsel for the petitioner, Mr. SM Hasan, learned counsel for the respondents No. 1, 2, 3, 4 and 5 being the authorities in the Environment and Forest Department of the Government of Assam and Mr. CS Hazarika, learned counsel for the respondent No. 6 being the Deputy Commissioner, Cachar.

2. The father of the petitioner Montazir Ali Mazumdar, who was a Forest Guard in the Divisional Forest Office, Cachar, died in harness on 01.01.1986 and on his death, an application for compassionate was made by the mother of the petitioner on behalf of the petitioner on 16.06.1999. It is also stated that the application of the mother of the petitioner did not result in any favourable order. The application of the petitioner was given a due consideration by the DLC of Cachar district which is discernible from the order dated 10.05.2022 of the Deputy Commissioner, Cachar and there was a recommendation in favour of the petitioner against a Grade-III post. When the recommendation was placed before the SLC in its meeting of 17.09.2022, it stood rejected by providing that there was a late submission and the application was made after a gap of thirteen years after the death of the concerned employee.

3. There are several judgments of the Hon'ble Supreme Court that a post for

compassionate appointment cannot be kept reserved till a person attains majority to be eligible for making application. There is also a contrary Judgment of the Hon'ble Supreme Court rendered Syed Khadim Hussain vs State of Bihar, reported in (2006) 9 SCC 195, wherein it is provided that in the event an applicant is a minor at the time of death and makes an application after attaining majority, the same can also be given its consideration.

4. From the aforesaid point of view, both the DLC in recommending the petitioner and the SLC in rejecting the application for a delay of thirteen years in making the application appears to be correct. However, we go by the core aspect of the concept of compassionate appointment i.e. a family if it is unable to tied over the financial hardship caused due to the death of an employee, may be entitled for compassionate appointment.

5. No material is made available before the Court as to what kind of financial situation the family of the petitioner had to undergo after the death i.e. whether in spite of the petitioner being a minor and the application being made subsequent to thirteen years of death, the family continued to be in a precarious financial condition or the family had better financial resources to carry through.

6. The provision of avoiding late submission of application is on the principle that if the family could survive for a particular period of time, there is also a corresponding presumption that the family does not need any further compassionate appointment. The said principle is correct if it is looked from a particular point of view. But again, a further question would remain as to in what manner the family survived for the intervening period in a circumstance where no competent person was available for seeking compassionate appointment for the intervening period.

7. From such point of view, we remand the matter back to the DLC of Cachar district and require the DLC to make a through enquiry as to in what manner and under what circumstance the family of the petitioner had survived for the intervening period and whether such survival can still be considered to be a state of adverse financial situation or the facts of the present case shows that the family of the petitioner survived in an acceptable financial condition.

8. The DLC to make further consideration after embarking into the aforesaid enquiry as indicated above. The enquiry be made through any competent officer within the Cachar district administration and its report may be acted upon by the DLC while considering the case of the petitioner afresh.

The writ petition is disposed of accordingly.