
(2024) 05 GAU CK 0007
In the Gauhati High Court
Case No : Writ Petition (C) No. 7398 Of 2021

Asha Kalita

APPELLANT

Vs

Union Of India And 4 Ors

RESPONDENT

Date of Decision : 15-05-2024

Acts Referred:

Citation : (2024) 05 GAU CK 0007

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : A. Bora, P. Baruah

Final Decision : Dismissed

Judgement

1. Heard Ms. A. Bora, learned counsel for the petitioner. Also heard Ms. P. Baruah, learned counsel appearing on instructions of Shri B. Deka, learned CGC.

2. Considering the subject matter and also the fact that pleadings have been exchanged, this writ petition filed in the year 2021 is taken up for disposal at the admission stage.

3. The facts projected are that the petitioner's father Prasanta Kalita was working as Junior Intelligence Officer (JIO-II/G) under SIB and posted at Itanagar. The said officer had however died in harness on 11.06.2004 leaving behind his wife (mother of the petitioner) and the petitioner who was aged about two years at that time. It has been projected that though the mother of the petitioner had applied for appointment on compassionate ground, she has also expired on 11.06.2010 when the petitioner was aged about 8 years. It is the case of the petitioner that she had attained the age of majority in 2020 and thereafter had made an application for appointment on compassionate ground on 05.11.2020. The respondent no. 5 had initially directed submission of the documents which the petitioner had done. However, vide the impugned order dated 09.04.2021, the case of the petitioner for appointment on compassionate ground was rejected. The petitioner had thereafter submitted an application for review of the

case which has also not been done.

4. Ms. Bora, learned counsel for the petitioner has submitted that the petitioner is the only surviving legal heir of the deceased Government servant and had attained majority in the year 2020 and therefore she could not have submitted any application for appointment on compassionate ground earlier. The learned counsel has also highlighted the aspect that her mother, during her lifetime had indeed applied for such appointment and unfortunately the mother of the petitioner had also expired in the year 2010. The learned counsel accordingly submits that appropriate directions be issued for consideration of the prayer of the petitioner.

5. Per contra, the learned counsel for the respondents has submitted that under the facts projected, no case for grant of appointment on compassionate ground is made out. The aspect of delay has also been highlighted.

6. It is a settled law that an appointment on compassionate ground is an exception to the general mode of recruitment and the entire objective is to give immediate succor to the members of the bereaved family which has lost the sole breadwinner who was a Government servant. The objective is to mitigate the immediate crisis suffered by such deaths. The entire essence of a claim for appointment on compassionate ground is defeated by reasons of delay.

7. The Hon'ble Supreme Court in the recent case of State of West Bengal Vs. Debabrata Tiwari & Ors., reported in AIR 2023 SC 1467 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."

8. 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."

9. In the case of Sanjay Kumar Vs. State of Bihar reported in (2000) 7 SCC 192. the Hon'ble Supreme Court has clarified that in a claim for appointment on compassionate ground when an incumbent is a minor, there is no requirement to wait till such incumbent attains majority. The relevant observations are extracted hereinbelow-

"3. We are unable to agree with the submissions of the learned Senior Counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the breadearner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education v. Pushpendra Kumar. It is also significant to notice that on the date when the first application was made by the petitioner on 2-6-1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the

petitioner becomes a major after a number of years, unless there are some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief.”

10. Under those facts and circumstances and the law laid down by the Hon’ble Supreme Court, this Court is of the considered opinion that no relief can be granted to the petitioner in the present case.

11. Accordingly, the writ petition stands dismissed.

12. Cost made easy.