

(2022) 05 GAU CK 0016

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 5053 Of 2020

Debajit Gogoi

APPELLANT

Vs

State Of Assam And 5 Ors

RESPONDENT

Date of Decision : 13-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 226
Assam Services (Pension) Rules, 1969 — Rule 82

Citation : (2022) 05 GAU CK 0016

Hon'ble Judges : K. Sema, J

Bench : Single Bench

Advocate : B P Borah

Final Decision : Dismissed

Judgement

1. Heard Mr. B.P. Borah, learned counsel for the petitioner and Mr. D. Bora, learned Government Advocate for the State respondents.
2. The writ petition has been filed by the petitioner under Article 226 of the Constitution of India for a direction to the State Level Committee to reconsider the claim of the petitioner for appointment on compassionate ground.
3. The petitioner's father late Dimbeswar Gogoi who was working as a constable in the 3rd Assam Police Task Force at Khajuabeel, under Udalguri, BTAD, Assam was allowed to go on voluntary retirement from service w.e.f. 31/12/2014 vide order dated 02/01/2015 issued by the Commandant 3rd APTF Battalion Khajuabeel. The petitioner's father expired on 30/05/2015. The petitioner being duly qualified, on 01/12/2015, submitted an application to the Director General of Police, Assam, Guwahati for appointment on compassionate ground. The petitioner case for compassionate appointment was placed before the District Level Committee (DLC) on 16/11/2016 and the DLC recommended the petitioner for appointment to the post of the constable in the Office of the Commandant 3rd APTF Battalion Khajuabeel subject to the ability of 5% vacancy position. The

petitioner case was however rejected by the State Level Committee (SLC) on 28/06/2018 on the ground that the petitioner's case for compassionate appointment cannot be considered as his father voluntarily retired from service.

4. Both the learned counsels for the petitioner as well as the State respondents are in unanimity that the case of the petitioner for compassionate appointment should be considered under the Office Memorandum dated 01/06/2015 (Annexure-G to the writ petition) which is the scheme laying down the principle and procedures to be followed while dealing with the issue of compassionate appointment to the dependant of a government servant.

5. The scheme inter-alia provides that compassionate appointment shall be provided to the eligible dependant family members of the government servant who either (i) die in harness, or (ii) retired prematurely on being permanently incapacitated as declare by a certificate issued by State Level Standing Medical Board and receives invalid pension under the provisions of Rule 82 of the Assam Services (Pension) Rules, 1969 or (iii) missing and whose whereabouts is not known for atleast seven years.

6. On enquiry from the learned counsel for the petitioner as to whether the petitioner fulfills the criteria prescribed in the O.M dated 01/06/2015 for appointment on compassionate ground, the learned counsel for the petitioner fairly submits that the petitioner case is not covered under the scheme. The petitioner's counsel has however taken this Court to the application dated Nil/08/2014 (Annexure-A to the writ petition) submitted by the petitioner's father to the Commandant 3rd APTF Battalion Khajuabeel for granting voluntary retirement from service and also to the Medical certificate dated 14/08/2016 issued by one Doctor Phanindar Sonawal MMBS, Deputy Superintendent, ----- Model Hospital, Dibrugarh, to substantiate that the petitioner's father voluntarily retired from service on medical ground and therefore, the petitioner is entitled to be considered for appointment on compassionate ground. It is the case of the petitioner that as the father of the petitioner applied for retirement on medical ground and the authorities had accepted the same it was not necessary to constitute the medical board as provided in the scheme. The learned counsel for the petitioner also submits that since the scheme for compassionate appointment has been framed by the State for a beneficial purpose the conditions prescribed in the scheme for compassionate appointment is only directory and strict adherence to the scheme cannot be insisted upon while considering compassionate appointment as in the present case.

7. In support of his submission, the learned counsel for the petitioner has referred to the case of Sharif-ud-din -versus- Abdul Gani Lone, reported in (1980) 1 SCC 403, Dove Investments (P) Ltd. & Others -versus- Gujarat Industrial Investment Cooperation & Another, reported in (2006) 2 SCC 619, AA Haja Muniddin -versus-Indian Railways, reported in (1992) 4 SCC 736 etc. The petitioner has also referred to judgment & order dated 22/02/2018 passed by the Hon'ble Division Bench of this Court in W.A No. 348/2017, the order dated

26/02/2019 passed in W.P.(C) No. 5773/2014 and the order dated 19/02/2020 passed in W.P.(C) No. 7839/2017 by the learned Co-ordinate Benches of this Court.

8. The learned Government Advocate on the other hand submits that as the petitioner does not qualify the conditions prescribed in the O.M dated 01/06/2015 his case for compassionate appointment has been rightly rejected by the SLC. The learned counsel submits that the conditions prescribed in the O.M dated 01/06/2015 is mandatory and has to be scrupulously followed and there cannot be any compromise of the conditions stipulated in the said O.M while considering the appointment of the petitioner on compassionate appointment.

9. This Court has perused the judgments of the Hon'ble Supreme Court referred to by the learned counsel for the petitioner and finds that none of the judgments has any relevance for deciding the case in hand. The petitioner has not been able to explain and satisfy this Court as to how the said decisions are relevant for the present case. The learned counsel for the petitioner has read few words and sentences from the judgments to support his contention that the scheme regulating the compassionate appointment is only directory and also that the view which advances the cause of justice must be preferred to the one which defeats it. This Court fails to see as to how by reading a few words or a line or two of the judgments, the same, can come to the aid of the petitioner's case without any further discussion as to how the said judgments are relevant in the context of the present case. The Hon'ble Supreme Court in the case of Commissioner of Income Tax -versus- Sun Engineering Works (P) Ltd., reported in (1992) 4 SCC 363 held that;

"39.....It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treated to be the complete 'law' declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court take its colour from the question involved in the case in which it is rendered and while applying the decision to a later case, the Courts must carefully tried to ascertain the true principle laid down by the decisions of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings. In Madhav Rao Scindia v. Union of India²⁴ this Court cautioned

"It is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be considered in that judgment."

So also the decisions of this Court cited by the petitioner though in relation to compassionate appointment has no relevance to the present case.

10. This Court has also carefully perused the criteria prescribed in the O.M dated 01/06/2015 which regulates compassionate appointment to the dependant of a government servant and is of the considered view that none of the conditions stand fulfilled for appointment of the petitioner on compassionate ground. The petitioner however by relying on the application dated Nil/08/2014 submitted by the petitioner's father for voluntary retirement has strenuously argued that the application by itself shows that the petitioner's father retired on medical ground and therefore, the petitioner can be appointed on compassionate ground by invoking the condition (ii) of the O.M dated 01/06/2015 by taking a sympathetic view.

11. In order to properly understand as to whether the conditions laid in the O.M dated 01/06/2015 stand fulfilled for appointment of the petitioner on compassionate ground, it will be necessary to peruse the application dated Nil/08/2014 and the order dated 02/01/2015 allowing the petitioner's father to go on voluntary retirement which are extracted under;

"To Date : /08/2014

The Commandant, 3rd Assam Police Task Force Headquarter at Khajuabeel District- Darrang, Assam

(Through proper channel)

Sub:- Prayer for acceptance/granting of voluntary retirement as a notice thereof.

Respected Sir,

With due respect and humble submission, I beg to inform you that I am constable of 3rd Assam Police Task Force presently at Headquarter Khajuabeel, Darrang district and has completed 29 years of my service life. Now I like to submit my letter (notice) of voluntary retirement before your Honour to consider my case sympathetically on the following circumstances and passed necessary order granting the same.

That Sir, (1) I have been suffering from various ailments since last 6 months specially my left hand becomes totally invalid for which it will become difficult for me to perform the duties sincerely and properly. A copy of medical certificate to that effect is enclosed herewith for your Honour's kind perusal.

(2) That I have a son and a daughter who have lost their mother long ago. Now my son Shriman Debajit Gogoi has passed LLB course of his study and like to practice in the court of law and for that reason he has to leave our village house and as such my daughter Smti. Bornali Gogoi become alone who is grown up girl studying Higher Secondary. On the other hand, there is none to look after my daughter in the village house. (enclosed supporting documents for your Honour's kind perusal).

Under the circumstances mentioned above, I pray before your honour to accept this letter of voluntary Retirement (notice) and granting my prayer by accepting

the same as early as possible.

I shall remain ever grateful for the act of your kindness etc etc.

Yours faithfully,

(Dimbeswar Gogoi)

C/N No. 211

Constable of 3rd APTF

Headquarter at Khajuabeel

District- Darrang, Assam

OFFICE OF THE COMMANDANT 3RD AP.T.F. BATTALION, KHAJUABEEL
UDALGURI ::: (BTAD) ::: ASSAM

/// ORDER ///

Const. 211 Dimbeswar Gogoi of this Unit is allowed to go on voluntary retirement w.e.f. 31.12.2014 P.M under F.R.56(C) of F.R's and S.R's and Govt. Circulars in force as there is no D/P court case, Govt. Dues etc. are pending against him.

He has been paid upto 31.12.2014 P.M.

Commandant

3rd A.P.T.F Battalion

Khajuabeel

Dated K/Beel the 2nd Jan.2015"

12. A reading of the application dated Nil/08/2014 and the order dated 02/01/2015 makes it amply clear that the petitioner's father was allowed to go on voluntary retirement under F.R. 56(C) which provides that "Any Government servant may, by giving notice of not less than three months in writing to the appropriate authority, retire from, service after he has attained the age of fifty years or has completed 25 years of service, whichever is earlier." The order dated 02/01/2015 nowhere states that the petitioner's father retired prematurely from service on health ground. The medical certificate relied on by the petitioner cannot be said to be a medical certificate issued by the State Level Standing Medical Board as prescribed in the scheme nor it is the case of the petitioner that his father was receiving invalid pension under Rule 82 of the Assam Services (Pension) Rules, 1969. None of the criteria prescribed in the O.M dated 01/06/2015 therefore supports the case of the petitioner to be appointed on compassionate ground. This Court is in agreement with the submission made by the State counsel that the conditions incorporated in the O.M dated 01/06/2015 has to be strictly complied with and the petitioner cannot be appointed dehors the scheme. The petitioner submission that the conditions projected in the

scheme must only be read as directory and a lenient view should be taken to consider the case of the petitioner cannot be accepted.

13. The Hon'ble Supreme Court in the case of State of Himachal Pradesh & Another -versus- Parkash Chand, reported in (2019) 4 SCC 285 has held as follows;

"9. The High Court has observed that the State should consider cases for appointment on compassionate basis by dealing with the applications submitted by sons, or as the case may be, daughters of the deceased government employees, even though, one member of the family is engaged in the service of the government or an autonomous board or corporation. This direction of the judgment of the High Court virtually amounts to a mandamus to the State Government to disregard the terms which have been stipulated in paragraph 5(c) of its policy dated 18-1-1990. The policy contains a limited exception which is available only to a widow of a deceased employee who seeks compassionate appointment even though one of the children of the deceased employee is gainfully employed with the State. The basis for this exception is to deal with cases where the widow is not being supported financially by her children.

10. In the exercise of judicial review under Article 226 of the Constitution, it was not open to the High Court to re-write the terms of the policy. It is well-settled that compassionate appointment is not a matter of right, but must be governed by the terms on which the State lays down the policy of offering employment assistance to a member of the family of a deceased government employee. [Umesh Kumar Nagpal v. State of Haryana³, SBI v. Kunti Tiwary⁴, Punjab National Bank v. Ashwani Kumar Teneja⁵, SBI v. Somvir Singh⁶, Mumtaz Yunus Mulani v. State of Maharashtra⁷, Union of India v. Shashank Goswami⁸, SBI v. Surya Narain Tripathi⁹ and Canara Bank v. M. Mahesh Kumar¹⁰]

11. For the above reasons, we are of the view that the judgment of the High Court is unsustainable. The High Court has virtually re-written the terms of the policy and has issued a direction to the State to consider applications which do not fulfill the terms of the policy. This is impermissible."

14. So also in the case of Union of India & Another -versus- Shashank Goswami & Another, reported in (2012) 11 SCC 307, it was held that;

"9. There can be no quarrel to the settled legal proposition that the claim for appointment on compassionate ground is based on the premises that the applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. Appointment on compassionate ground cannot be claimed as a matter of right.

10. As a rule public service appointment should be made strictly on the basis of

open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis and not to confer a status on the family. Thus, the applicant cannot claim appointment in a particular class/group of post. Appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.”

11.

15. Upon hearing the learned counsels for the parties and on perusal of the record and in the light of the decisions referred above, this Court is of the view that the conditions stipulated in the O.M dated 01/06/2015 for compassionate appointment are mandatory and has to be strictly complied with. The petitioner not having fulfilled the criteria incorporated in the O.M dated 01/06/2015 cannot be appointed on compassionate ground. There is no merit in the writ petition and the same is liable to be dismissed.

16. Writ petition dismissed. No cost.