
(2005) 09 GAU CK 0029
In the Gauhati High Court
Case No : Writ Petition (C) No. 4419 of 2004

Dipak Das

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 30-09-2005

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2006) GLT 95 Supp

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : K.P. Sarma, H. Das and D.P. Mandal, for the Appellant; S.C. for PWD, for the Respondent

Judgement

B.K. Sharma, J.—The challenge made in this writ petition is in respect of the intimation sent to the Petitioner rejecting his claim for appointment on compassionate ground. The facts narrated in the writ petition and consequential rejection of the prayer for compassionate appointment depicts total non-application of mind on the part of the Respondents. Although the Respondents themselves are guilty of delay in the matter, have attributed the same to the Petitioner, which is unbecoming of a model employer.

2. The father of the Petitioner while was serving as a Roller driver under the Respondents died on 7.9.1994 leaving behind the present Petitioner, his brother and their widow mother. The wife of the deceased employee who was only 34 years of age at the time of death of her husband, with the burden of her two minor sons aged 13 and 8 years respectively applied for her appointment on compassionate ground and her application was forwarded by the competent authority on 9.11.1995. The proposal was returned back by communication dated 24.7.1996 asking for vacancy position. Thereafter, interdepartmental correspondences were made. In view of the delay in appointing the mother of the Petitioner, she made a prayer for appointment of her son, the Petitioner. Making various correspondences, the Respondents processed the case of the

Petitioner.

3. By Annexure-H communication dated 22.12.1999 making a request for appointment of two Roller handymen, the case of the Petitioner was further processed by Annexure-I letter dated 28.6.2000 addressed to the Chief Engineer, PWD, (Roads) by the Executive Engineer, PWD, NH Division. Prior to that by Annexure-J letter dated 10.5.2000, the Additional Chief Engineer, PWD (Planning) intimated the Secretary to the Government of Assam, PWD about the vacant post of Roller Handyman and requested to convey approval for appointment of the Petitioner.

4. It appears that as per the request made by the Additional Chief Engineer, PWD (P), the proposal for appointment of the Petitioner was re-submitted by the Executive Engineer, PWD, NH Division vide his Annexure-K letter dated 18.3.2001 followed by the Annexure-L proposal dated 28.3.2001 submitted by the Additional Chief Engineer, PWD (P) to the Secretary to the Government of Assam, PWD. Thereafter, further correspondences were made and the Petitioner was made to resubmit his application for the posts of Roller Handyman vide Annexure-N letter dated 28.6.2001. Annexure-O to T documents annexed to the writ petition are all inter-departmental correspondences urging for appointment of the Petitioner on compassionate ground. However, by the impugned communication dated 16.4.2004 (Annexure-U), the request of the Petitioner has been turned down on the ground of being time barred. The letter reads as follows:

GOVERNMENT OF ASSAM PUBLIC WORKS DEPARTMENT (ESSTT-B) BRANCH
DISPUR: GUWAHATI

No. RDEB 179/98/115 dated Dispur, the 16th April, 2004

To

The Additional Chief Engineer, PWD (R) Assam Guwahati-3.

Sub: Proposal for appointment on compassionate ground.

Ref. Letter No. CEE/41/87/Pt./216 dt.28.3.01

Sir,

With reference to above, I am directed to say that the Government regrets to consider the proposal due to time barred.

Yours faithfully, Sd/-Illegible Under Secretary to the Government of Assam PWD (Esstt-B) Branch.

5. Mr. K.P. Sarma, learned Sr. Counsel, assisted by Mr. H. Das and Mr. D.P. Mandol, learned Counsel appearing for the Petitioner strenuously argued that the Petitioner has been meted out with injustice in the matter of compassionate appointment. He submitted that the delay could not have been attributed to the Petitioner.

6. Learned Standing Counsel for the Respondents on the other hand submitted that there being large number of cases pending consideration for compassionate appointment, the case of the Petitioner cannot be considered in isolation. She submitted that the father of the Petitioner having expired way back in 1994 the claim for compassionate appointment being time barred was rightly rejected.

7. I have given my anxious consideration to the submissions made by the learned Counsel for the parties and the materials on record. No counter affidavit has been filed to controvert the contentions raised by the Petitioner in the writ petition. It is on record that the mother of the Petitioner made her application in time and her application was processed. At that time she was only 34 years of age. However, since there was delay towards consideration of her case, she opted for appointment of her first son i.e. the present Petitioner. The Respondents also processed the case of the Petitioner. The vacancy position was also indicated. The various correspondences made in this regard have been indicated above. The Respondents instead of taking prompt action in the matter kept themselves busy in making internal correspondences and eventually by the impugned communication dated 16.4.2004 rejected the prayer of the Petitioner and for that matter the widow of the deceased employee, as being time barred.

8. The impugned communication dated 16.4.2004 reveals that the same was issued in reference to the letter dated 28.3.2001 of the Additional Chief Engineer, PWD. Thus even for responding to the letter, dated 28.3.2001, the Government took more than three years. In the letter, dated 28.3.2001, the Additional Chief Engineer clearly indicated the vacancy position to accommodate the Petitioner. Instead of acting on the proposal made, the Government made further query as to whether the post to be filled up through the Petitioner was within the permissible limit of 5% and whether the post was outside the purview of required curtailment of posts. Such query was made by Annexure-Q communication dated 1.10.2001. Same was replied to vide Annexure-R letter dated 7.11.2001 and both the queries were met in affirmation. By Annexure-S communication dated 22.11.2001 also the Government was intimated about the same position followed by further communication on 15.11.2003.

9. The Government in the department of PWD instead of showing its promptness in the matter and acting as a model and ideal employer rejected the claim of the Petitioner on the ground of being time barred. On perusal of the correspondences right from 1995, it cannot be said to a case of a belated claim made on behalf of the Petitioner. At the first instance, it was his mother who made the claim, but the Respondents sat over the matter and eventually forced the widow mother of the Petitioner to opt out from consideration for appointment on compassionate ground. The Respondents themselves took up the matter of the Petitioner and intimated the Government about the permissible limits for his appointment. The proposals were submitted and re-submitted at the behest of the Government. Thus, the Respondents themselves making the delay towards a meaningful consideration of the case of the Petitioner and for that matter his widow mother,

the wife of the deceased employee, have now rejected the prayer of the Petitioner on the ground of being time barred. Such a plea on the part of the Respondents is really unfortunate and unbecoming of a model employer. The Respondents themselves being guilty of inaction and apathy cannot take the plea of the case being time barred.

10. The case of the Petitioner needs special consideration, same being a case of compassionate appointment. However, the Respondents instead of adopting a pragmatic approach to the matter, played with the precarious predicament in which the family of the Petitioner had fallen after the sad demise of the sole bread earner of the family. It is in this context, the Apex Court in *Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others*, emphasized on the obligation on the part of Steel Authority of India, an authority under Article 12 of the Constitution of India, to act in terms of the avowed objective of social and economic justice as enshrined in the Constitution and to act as a model and ideal employer. The Apex Court in the said decision made the following observation:

The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by some lump-sum amount being made available to the family--this is rather unfortunate but this is a reality. The felling of security drops to zero on the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearner, but that would undoubtedly bring some solace to the situation.

11. The plight with which the widow mother of the Petitioner had to deal with after the sudden demise of her husband, the sole breadearner can well be imagined. The Respondents unnecessarily delayed consideration of her case for compassionate appointment and her case was buried amidst the correspondences over the years. When the query made by the Government as to whether the proposal for appointment of the Petitioner against the vacant post falls within the prescribed quota of compassionate appointment and also as to whether the post was outside the purview of requirement of curtailment of posts had been met with by the Departmental Head, the Government ought not to have delayed the matter any further. Unfortunately, they kept on sitting over the matter for more than three years leaving aside the earlier years right from 1995 and then came up with the idea of rejecting the claim of the Petitioner as being time barred. This does not behove of a model and ideal employer.

12. It is true that a compassionate appointment cannot be claimed as a matter of right. However, in the instant case even no consideration was given to the case of the Petitioner and the Respondents themselves delayed the matter and then closed the case of the Petitioner as being time barred, which is really unfortunate. While it is true that the writ court cannot confer benediction impelled by sympathetic consideration, but at the same time the writ Court

should endeavour to find out whether a particular case in which sympathetic consideration are to be weighed falls within the scope of law and to examine the case on the basis of the regulations and instructions governing the matter.

13. In the instant case, there is no dispute that the Government has formulated scheme for compassionate appointment. There is also no dispute that proper application was made by the widow of the deceased employee. It is also an admitted position that the Respondents themselves delayed the matter towards consideration of the case of the Petitioner. It is also on record that the case of the Petitioner was within the parameters laid down for appointment on compassionate ground and there was no impediment for his appointment. The father of the Petitioner was working as a Roller Driver and after his sad demise, the family had to face tremendous financial hardship. The Respondents instead of providing employment assistance to mitigate the hardship remained engaged in unnecessary correspondences over the years and then issued the impugned communication refusing to consider the case of the Petitioner on the ground of the case being time barred. Such conduct and attitude on the part of the Respondents depict callous, apathetic and arbitrary attitude.

14. In view of the above, the writ application stands allowed by setting aside and quashing the impugned communication dated 16.4.2064 (Annexure-U). The matter shall now go back to the Respondents for fresh consideration of the case of the Petitioner consistently with the observations made above and also the fact that there was no impediment towards appointment of the Petitioner on compassionate ground. The Respondents shall pass appropriate order within two months of receipt of the copy of this judgment and order.

15. Writ petition stands allowed awarding a cost of Rs. 1,500/- against the Respondents.