

(2021) 08 GAU CK 0029

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4037, 5492 Of 2018, 3312 Of 2020

Dipul Ali Ahmed

APPELLANT

Vs

State Of Assam And 2 Ors

RESPONDENT

Date of Decision : 09-08-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 08 GAU CK 0029

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : B Sinha, Md Bora

Final Decision : Dismissed

Judgement

1. All the three writ petitions have been filed by the same petitioner successively one after the other in connection with the consideration and

appointment of the petitioner on compassionate ground. The question which has ultimately arisen for consideration in these writ petitions is whether an

appointee on compassionate ground can have the liberty to choose a particular post. The basic facts of the present writ petitions can be culled down in

the following manner:

2. The father of the petitioner, who was working in the Transport Department, as Assistant Enforcement Inspector, died in harness on 04.05.2015.

The petitioner, accordingly, applied for appointment on compassionate ground as he had possessed the necessary qualifications. The District Level

Committee, Barpeta (DLC), in its meeting held on 08.12.2015 duly considered the case of the petitioner which was forwarded by the District

Transport Officer, Barpeta (DTO). After such consideration, the DLC recommended the name of the petitioner for appointment on compassionate

ground in an existing vacancy in Grade-III by earmarking the post as Assistant Enforcement Inspector. Thereafter, the State Level Committee

(hereinafter SLC) considered the recommendation of the DLC and approved the case of the petitioner for appointment in any Grade-III post.

Accordingly, vide an order date 28.11.2017, the petitioner was appointed as an Enforcement Checker in the Scale of Pay (PB-2) Rs. 14,000/- to Rs.

49,000/- + Grade Pay Rs. 5,600/- with other allowances.

3. Being aggrieved by the fact that the petitioner was not offered the post of Assistant Enforcement Inspector, and was appointed only as an

Enforcement Checker, the petitioner had approached this Court by filing the first writ petition namely, WP (C) 4037/2018. This Court, while issuing

notice, had observed that pendency of the writ petition shall not be a bar to appoint the petitioner as Assistant Enforcement Inspector.

4. It was, at this stage that the authorities have published an advertisement for filling up various posts, including eight posts of Assistant Enforcement

Inspector. Confronted with the aforesaid advertisement published in the Assam Tribune in its issue dated 19.07.2018, the petitioner had again

approached this Court by filing the second writ petition, namely, WP(C)/5492/2018. This Court vide order dated 20.08.2018 had directed the

respondents to keep one post of Assistant Enforcement Inspector vacant. However, consequently, the same advertisement dated 19.07.2018 was

cancelled and a fresh advertisement dated 15.07.2020 was published for filling up various posts, including 30 nos. of posts of Assistant Enforcement

Inspector, constraining the petitioner to file the third writ petition, being, WP(C)/3312/2020 challenging the same move.

5. I have heard Shri R Islam, learned counsel for the petitioner whereas the contesting respondents are represented by Ms. MD Bora, learned

Standing Counsel, Transport Department, Assam.

6. Shri Islam, the learned counsel for the petitioner submits that at no point of time, the eligibility of the petitioner for appointment in the post of

Assistant Enforcement Inspector has been questioned. Rather, it is submitted that the DLC in its meeting dated 08.12.2015 had not only recommended

the case of the petitioner for appointment but had also mentioned the vacancy in the post of Assistant Enforcement Inspector in the Grade-III cadre.

The subsequent recommendation by the SLC was similar in nature by mentioning

Grade-III. However, the actual appointment was not done in the post of Assistant Enforcement Inspector but as Enforcement Checker vide order dated 28.11.2017. Though it is not disputed that the post of Enforcement Checker is a Grade-III post, there is a distinction in the scale of pay which is lower for Enforcement Checker. The learned counsel has drawn the attention of this Court to the scales of pay mentioned in the advertisement dated 15.07.2020 which reveals that for Assistant Enforcement Inspector, the scale of pay is Rs.14,000-49,000 + GP Rs. 6,200 (PB-2) whereas for Enforcement Checker, it is Rs.14,000-49,000 + GP Rs. 5,600 Pay Band 2. Thus, it is contended that prejudice has been caused to the petitioner by which he has been deprived of his legal entitlement.

7. Ms. MD Bora, learned Standing Counsel, Transport Department, however, contends that no enforceable right of the petitioner has been violated so as to enable him to invoke the extra-ordinary jurisdiction of this Court conferred by Article 226 of the Constitution of India. The learned Standing Counsel has contended that no prejudice, whatsoever has been caused to the petitioner by the appointment order and the same has been done by taking into account the actual vacancy position. By drawing the attention of this Court to the averments made in paragraph 5 of the affidavit-in-opposition dated 09.11.2020, Ms. Bora has submitted that vacancy position for the 5 % reserved category of compassionate appointment in the rank of Assistant Enforcement Inspector was one (1) whereas in the post of Enforcement Checker, it was two (2). The said vacancy was worked out from the total numbers of vacancies. That being the position, the action of the respondent authorities in offering the post of Enforcement Checker, which is also a Grade-III post, cannot be faulted with. It is further submitted that appointment on compassionate ground being confined to Grade-IV and Grade-III posts only, an incumbent, who is the beneficiary of such scheme, cannot have the luxury of choosing a particular post, more so when the post offered has been done after following the due process of law.

8. In support of her submission, Ms. Bora has relied upon a judgment of this Court in *Piklu Das Vs. Union of India & Ors.*, reported in (2005) 2 GLR

641. This Court in the aforesaid judgment after taking into consideration the leading judgment of the Hon'ble Supreme Court in the case of *Smti.*

Sushma Gosain and Ors. Vs. Union of India and Ors., reported in (1990) 1 LLJ

169 SC has laid down as follows :

8. In Smt. Sushma Gosain & Others (supra) the Hon'ble Supreme Court has observed that in all claims of appointment on compassionate

ground there should not be any delay in appointment as the purpose of providing appointment on compassionate ground is to mitigate the

hardship due to death of the bread earner in the family and therefore the appointment should be provided immediately to redeem the family

in distress. The Apex Court in a recent judgment in National Hydro Electric Power Corporation & Another v. Nanak Chand and Another,

reported in 2004 AIR SCW 6339, by taking into consideration of earlier decisions, has held that the very purpose of appointment on

compassionate ground is to mitigate the hardship caused due to death of bread earner in the family and no one can insist for appointment

to a particular post. If there is any undue delay in making the application, the same do not deserve consideration by the authority. The Apex

Court has further held that as a rule, in public service, appointment should be made strictly on the basis of the open invitation of

application and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the open

recruitment taking into account the fact of the death of the employee while in service leaving his family without any means of livelihood.

9. The object of appointment on compassionate ground is to mitigate the hardship due to the death of the bread earner in the family. In the

matter of compassionate appointment, there cannot be insistence of a particular posts. The scheme for appointment on compassionate

ground is formulated out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is

provided, the family would not be able to make both ends meet. The scheme is formulated to make provision for giving appointment to the

dependents of a deceased employee subject to the eligibility. In making appointment on compassionate ground the authority is also required

to see whether such appointment is really necessary.

9. The rival contentions of the learned counsel for the parties have been duly considered and the materials before this Court have also been duly

examined.

10. No doubt, the scales of pay of Enforcement Checker and Assistant Enforcement Inspector, though both the posts are Grade-III, are different, the said issue has to be considered from the angle of the case in hand. The present case is not pertaining to a normal recruitment process but a recruitment process under the scheme of compassionate ground within a reservation of 5 %. Under the said scheme, the recruitment process is relaxed to give immediate succour to the family of a deceased Govt. employee. The scheme further envisages that such appointment may be made in the posts of Grade-III and Grade-IV only keeping in view the efficiency factor in public service. When the scheme itself envisages restriction on such appointments in two particular cadres, the claim to be appointed to a particular post cannot be termed as reasonable or justified. The said claim to be appointed as Assistant Enforcement Inspector is also not justified in the facts of the instant case wherein the vacancy position has been clearly shown in the affidavit-in-opposition, to which there was no response filed by the petitioner.

11. This Court has noted that nowhere in the writ petition, any mala fide has been alleged. In absence of such allegation, the only ground which is open for examination is the aspect of legal malice. As has been observed above, though the DLC in its recommendation had mentioned the post of Assistant Enforcement Inspector, no such mention was made by the SLC. In any case, this Court is of the opinion that no indefeasible right would vest upon the petitioner by the recommendation of the DLC which is, admittedly, subject to further approval of the SLC and thereafter by the Department.

This Court has further observed that the offer of appointment to the post of Enforcement Checker has been done based upon the vacancy position which has been clearly and unambiguously projected in the affidavit-in-opposition, to which there was no denial in the form of any rejoinder-affidavit. In any case, vacancy positions are matters of record which is within the exclusive domain of the authorities and in absence of any overwhelming materials, this Court would generally accept the said position made on oath by filing the affidavit. Under the aforesaid facts and circumstances, the aspect of legal malice cannot be countenanced.

12. This Court also finds force in the submission of the learned Standing Counsel, Transport Department that an appointee, who is a beneficiary of the

scheme for compassionate appointment, cannot have the right to choose a particular post. This Court is of the view that when the entry into the service is by deviating from the rigours of a normal recruitment process wherein 5 % of the vacancies are reserved and the scheme itself having earmarked particular categories where such appointments can be made, the further privilege of allowing a beneficiary to choose a particular post cannot be a matter of right.

13. As laid down by the Honâ??ble Supreme Court in the case of Smti. Sushma Gosain (supra) as well as by this Court in the case of Piklu Das

(supra), insistence for appointment to a particular post cannot be countenanced as the object of appointment on compassionate ground is meant to

immediately mitigate the distress and hardships caused due to the death of the bread winner of the family while still in service.

14. Apart from the fact that the Scheme does not envisage any such kind of right to choose a post, the claim of the petitioner would be, in fact, wholly

against the object of the Scheme. The Honâ??ble Supreme Court in a number of cases has held that appointment on compassionate ground cannot

be claimed as a matter of right. It has further been clarified that such appointment has exception to the said Rule. It is held to be rather a concession

and not a right. This Court gets support from the decision rendered by Honâ??ble the Supreme Court in the case of Umesh Kumar Nagpal Vs. State

of Haryana & Ors., reported in (1994) 4 SCC 138, which reads as follows: -

â?? 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.â??

15. The Supreme Court in the case of Steel Authority of India Ltd. Vs. Madhusudhan Das & Ors., reported in AIR 2009 SC 1153 has also held as follows: -

â??7. Public employment is considered to be a wealth. It in terms of the constitutional scheme cannot be given on descent. When such an exception has been carved out by this Court, the same must be strictly complied with. Appointment on compassionate ground is given only for meeting the immediate hardship which is faced by the family by reason of the death of the breadearner. When an appointment is made on compassionate ground, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion.â??

16. In view of the aforesaid facts and circumstances, this Court is of the opinion that no enforceable right of the petitioner has been violated by offering him the post of Enforcement Checker in the Transport Department as per the recommendation by the DLC and SLC.

17. All the writ petitions accordingly stand dismissed. No order as to costs.