
(2018) 03 GAU CK 0113
In the Gauhati High Court
Case No : WP(C) 7408 of 2017

NAZRUL ISLAM

APPELLANT

Vs

THE STATE OF ASSAM and 4 ORS.

RESPONDENT

Date of Decision : 28-03-2018

Acts Referred:

Citation : (2018) 03 GAU CK 0113

Hon'ble Judges : L.S. JAMIR

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. The petitioner's father late Saha Hussain Mia while serving as Grade-IV (Khalasi) in the Water Resource Division, Silchar died in harness on 19.01.2010. The petitioner thereafter made an application on 09.04.2010 for appointment on compassionate grounds before the respondent No. 4. The DLC which held its meeting on 31.07.2012 recommended the case of the petitioner for compassionate appointment. In the said minutes, the DLC had calculated that 5 % of posts to be reserved for compassionate appointment out of 69 posts would be 3 posts. Thereafter, the SLC held its meeting on 11.05.2015 and rejected the case of the petitioner on the ground that there was only one vacancy of Grade-IV post. The SLC therefore recommended only one person as Grade-IV (Khalasi) and not the petitioner. Being aggrieved with the rejection by the SLC, the petitioner approached this Court by way of WP(C) 5846/2016 which was disposed of by order dated 28.09.2016 observing that the SLC has committed mistake in coming to the conclusion that there was only one vacant post available for filling up on compassionate appointment and that the DLC had categorically stated that

there were 69 vacancies and accordingly 5 % of the total 69 vacancies comes to 3 vacancies for filling up a compassionate basis. Accordingly, the

rejection of the petitioner's application by the SLC was set aside and the petitioner's case was sent back to the SLC for consideration in its

next meeting as these are two other vacancies to be filled up for compassionate appointment.

2. Pursuant to the order dated 28.09.2016 passed by this Court in WP(C) 5846/2016, the SLC considered the case of the petitioner in its meeting held on

02.06.2017. In the said meeting the case of the petitioner was again not recommended on the ground that the case has lost its compassionate ground

condition as more than 7 (seven) years has lapsed after the death. Being aggrieved, the petitioner is before this Court by way of the present writ

petition.

3. Heard Mr. L.R. Mazumdar, learned counsel for the petitioner and Mr. N. Goswami, the learned Government Advocate for the respondents.

4. Mr. L.R. Mazumdar, learned counsel for the petitioner submits that the DLC in its meeting minutes held on 31.07.2012 had clearly projected that

there were 3 (three) vacant posts for filling up on compassionate grounds while recommending the case of the petitioner. However, the SLC in its

earlier meeting held on 11.05.2015 had rejected the case of the petitioner on coming to the conclusion that there was only one post to be filled up on

compassionate ground. This Court by the order dated 28.09.2016 after considering the matter had come to the conclusion that there were 3(three)

vacant posts reserved for compassionate appointment and that the SLC had come to a wrong conclusion and therefore, the rejection of the

petitioner's application was set aside and the matter was remanded back for consideration by the SLC again. It is submitted that the SLC pursuant

to the directions passed by this Court in the order dated 28.09.2016 held its meeting on 02.06.2017 where the case of the petitioner was again rejected

on a different ground without considering the case of the petitioner in terms of the observation made by this Court. He submits that the delay of 7

(seven) years cannot be attributed to the petitioner inasmuch as the petitioner had made his application well within time and if there is any delay the

same is attributable to the respondents inasmuch they had wrongly considered the case of the petitioner which had led to litigations and therefore the

SLC which held its meeting on 02.06.2017 could not have come to the conclusion that 7 years have lapsed after the death and therefore the case of

the petitioner had lost the compassionate ground condition. Learned counsel for the petitioner has also placed reliance in the judgment and order dated

22.02.2018 passed by a Division Bench of this Court in writ appeal No. 348/2017 (Ajij Jaman Barbhuiya âVs- The State of Assam and 4 Others).

5. Mr. N. Goswami, learned Government Advocate submits that when the petitioner initially applied on 09.04.2010, it appears, that the petitioner was

under age i.e., about 15 (fifteen) years. It is also submitted that the SLC in its meeting held on 02.06.2017 had come to the conclusion that the case of

the petitioner had lost its compassionate ground as 7 years have lapsed after the death was due to the long pendency of the application which was

made as early as on 09.04.2010. He however fairly submits that the case of the petitioner is covered by the judgment and order dated 22.02.2018

passed by the Division Bench of this Court in W.A. 348/2015.

6. I have considered the submissions forwarded by the learned counsel for the parties.

7. This Court in the earlier round of litigation in WP(C) 5846/2016 had clearly observed in the order dated 28.09.2016 that the DLC had categorically

stated that there are 69 (sixty nine) vacancies and accordingly 5 % of the said vacancies works out to 3 posts to be filled up on compassionate basis.

Further observation was also made that the SLC had committed a mistake that there was only one post for filling up on compassionate appointment.

Therefore, the rejection of the petitionerâs application by the SLC in its earlier meeting held on 11.05.2015 was set aside and the matter was

remanded back to the SLC.

8. While considering the case of the petitioner by the SLC in its meeting held on 02.06.2017, it was expected that the SLC would consider the case of

the petitioner in the context of the observation made by this Court in the order dated 28.09.2016. However, the SLC had proceeded on a different

context to come to the conclusion that the case of the petitioner had lost its compassionate ground as more than 7 years had lapsed after the death.

Considering the facts and circumstances of the case it is to be noted that the petitioner had already made his application as early as on 09.04.2010,

which was well within time inasmuch as his father expired on 19.01.2010. The

DLC held its meeting only on 31.07.2012. Thereafter, the SLC in its earlier meeting held on 11.05.2015 rejected the case of the petitioner. The petitioner was therefore left with no alternative but to approach this Court.

The sequence of facts would clearly indicate that if there was any delay the same is not attributable to the petitioner but the same was due to the

delay caused by the respondent inasmuch as the case of the petitioner was not considered in its proper prospective. The Division Bench of this Court

in the judgment and order dated 22.02.2018 passed in W.A. 348/2017 has also held as under:-

5. Application made by the appellant for appointment on compassionate ground well within time on 07.10.2009 was brought to an end only on

11.08.2017. The inordinate delay in the disposal of the application certainly cannot be attributed to the appellant. Further, non-application of mind is

also demonstrated by the State Level Committee in rejecting his case due to want of vacancy when an exercise had already been conducted by the

District Level Committee certifying the suitability of the appellant and existence of vacancies in the post of Forest Guards under the establishment of

the Divisional Forest Officer, Social Forestry Division, Silchar. Rejection of an application without due application of mind and as a matter of course

and by employing the expressions "want of vacancy" and "spent its force", are easy methods to deprive a candidate from his legitimate

entitlement. Such course of action would only go to frustrate and defeat the very object governing compassionate appointments. These shortcomings

finds best illustration in the present case where the candidature of the appellant was rejected for want of vacancy despite favourable recommendation

being made by the District Level Committee having regard to existence of vacancies and on ground of elapse of time, for which the appellant cannot

be found fault at. 6. On the facts above, we are of the considered view that the case of the appellant for appointment on compassionate grounds was

not handled judiciously and by going into the merits of his case. Rejection merely on technical grounds and on ground of want of vacancy does not find

support from available records. It also does not inspire the confidence of this Court.

9. Considering the facts of the present case, this Court is also of the considered opinion that the case of the petitioner is squarely covered by the

observation and directions made by the Honâ??ble Division Bench.

10. The submissions of the learned Government Advocate that when the petitioner made his application for appointment on compassionate ground i.e.,

09.04.2010, he was a minor, has also been considered by this Court. However, I am of the considered opinion that the respondents are debarred to

take this ground at this stage inasmuch as the same has not been taken in the first round of litigation. In any case, the petitioner at this stage is already

a major and therefore, the petitioner can be considered for appointment on compassionate grounds.

11. In view of the discussions made hereinabove, this writ petition is allowed and accordingly the meeting minutes of the SLC held on 02.06.2017 is set

aside and quashed in so far as the petitioner is concerned. The matter is remanded back to the SLC to reconsider the case of the petitioner in terms of

the observation made in its next immediate sitting.

12. Writ petition is accordingly disposed of.