

(2003) 07 GAU CK 0067
In the Gauhati High Court
Case No : Civil Rule No. 6212 of 1998

Renu Saikia

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 23-07-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (2003) 3 GLT 168

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : P.K. Goswami, for the Appellant; R.K. Bora, for the Respondent

Judgement

Ranjan Gogoi, J.—The Petitioner's father who was a School Teacher died in the year 1986. After becoming eligible and qualified, the Petitioner sought appointment on compassionate ground in accordance with the prevailing Govt Policy. The claim of the Petitioner was answered in her favour by the State Government who approved her case for compassionate appointment. Such approval is contained in a letter dated 22.9.95 issued by the Under Secretary to the Govt, of Assam, Education Department to the Director of Elementary " Education, Assam. On receipt of the said communication, the Director, in turn by letter dated 9.11.95 directed the Deputy Inspector of Schools, North Lakhimpur to appoint the Petitioner and to send the appointment letter to the office of the Director for counter signature. What happened thereafter, is not known. But as it appears from another letter dated 22.5.98 (Annexure-5 to the writ petition), the State Govt again enquired from the Director of Elementary Education as to the present position of the case of the Petitioner. Eventually, not having been appointed, the instant writ petition has been filed seeking appropriate directions for the appointment of the Petitioner on compassionate ground in accordance with the approval accorded by the State Government.

2. The idea underlying judicial recognition of compassionate appointment as legally valid, notwithstanding the provisions under Article 14 of the Constitution,

is that such appointments are required to be made as the nomenclature suggests, on compassionate ground. This is precisely why judicial opinion has held the concept of compassionate to be consistent with Article 14 of the Constitution, Compassionate appointments are made to enable family members of a deceased Government servant to tide over the immediate crisis faced by the family members on account of the untimely death of the Government servant. Long efflux of time and the ability of the affected family to survive the various odds faced by it, substantially erodes the need/necessity for making the appointment on compassionate grounds. No inflexible time frame can be fixed for such determination; everything would depend on the facts of a given case. In the present case, the Petitioner's father died in the year 1986 and almost two decades have elapsed, in the meantime. That apart, in terms of the policy in force, appointment on compassionate ground is required to be made, against a 5% quota of available vacancies. The vacancy earlier identified for the appointment must have been filled up; whether any other vacancy exists in the concerned establishment is not known. In such circumstances any order of appointment of the Petitioner may have an adverse effect on the rights of persons not before the Court. For all the said reasons, I do not consider the present to be a fit case for grant of a positive direction for appointment of the Petitioner.

3. However, what cannot be overlooked is the wrong done to the Petitioner. Notwithstanding the approval granted by the State Government and the affirmative direction issued by the Director of elementary Education to the jurisdictional Deputy Inspector of Schools to issue the appointment letter, nothing was done. Though the present case has remained pending for nearly 5 years now, nothing has been brought on record by the Respondents to enable the Court to appreciate the reasons for not appointing the Petitioner. In such a situation, it would be legitimate for the Court to infer that there was no valid ground for actions of the Respondents in not appointing the Petitioner at the time when such appointment was required to be made and the refusal to appoint is a highly arbitrary action disclosing no acceptable basis in law.

4. Remedial measures to repair the damage done on account of the wrongs committed by public functionaries is an integral part of the judicial process. In the instant case, it would not only be logical to infer and assume but it has also been specially pleaded that the Petitioner has suffered and suffered on account of the lapse of the concerned officials of the State Government. The appointment to which the writ Petitioner was entitled to, if made, would have provided succour and much needed relief to the family. The facts reveal a dismal picture. Appointment was refused arbitrarily, Court's notices were ignored and at every step the concerned functionaries have acted as if recognize no law. The right to live with dignity, by earning an income, which was vested in the Petitioner by the orders passed have been trampled; the inviolable rights guaranteed by Article 21 have been infringed. Accountability, a basic feature of the Rule of law, seems to have been lost sight of. The wrong done, undoubtedly, has to be remedied and

accountability must be enforced to ensure that public faith in a Government by laws and not by whims, is retained. Retributive jurisprudence has recognized grant of monetary compensation/costs as an appropriate remedial measure and for the present judicial conscience remains satisfied.

5. The next question, therefore, that has to be engaged the attention of the Court is the quantum for compensation that should be awarded to mitigate the wrongs done to the Petitioner. Determination of the quantum of compensation, in the last resort, does bring in the element of subjective opinion. However, the quantum is not relevant. What is important is the indictment and the State machinery has been sufficiently indicted in the present case.

6. In my considered view, on an overall consideration of the entire of the facts and circumstances of the case, a compensation of Rs. 1.00 Lakh (Rupees one lakh) will meet the ends of justice. The amount of Rs. 1.00 lakh will be paid by the Secretary to the Government of Assam, Education Department to the Petitioner within a period of 2 (two) months from today and if the Secretary is of the view that this amount should be recovered from whatsoever was responsible for the lapse, it will be open for the Secretary to proceed to recover the compensation amount from such person/ persons by following the procedure prescribed in law. Such recovery may be made from the pension of the wrong doer, if such person has, in the meantime, retired.

7. The writ petition stands answered accordingly.