
(2005) 02 GAU CK 0016
In the Gauhati High Court

Sanjib Puzari

APPELLANT

Vs

Assam State Electricity Board and Others

RESPONDENT

Date of Decision : 22-02-2005

Acts Referred:

Citation : (2005) 105 FLR 1142 : (2005) 1 GLT 405

Hon'ble Judges : B. Biswas, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D. Biswas, J.—Heard Mr. N.K. Baruah, learned Counsel for the petitioner and Mr. D. Singh, learned Counsel for the respondent-Board.

Petitioner's father late Durge Nath Puzari was a grade IV employee (Black Smith) of the Jorhat Electrical Division-I under the Assam State Electricity Board. On 9.5.1998 while he was on duty, he suffered a heart attack and died. It is alleged that the incumbent died leaving his widow, the petitioner and two minor daughters. The family plunged into deep financial crisis on sudden death of the only bread earner of the family. The petitioner thereafter submitted an application on 2.6.1998 before the Administrative Officer (Electrical), Assam State Electricity Board for appointment on compassionate ground. The said application with other connected documents was forwarded to the Executive Engineer, Jorhat Electrical Division who in turn vide letter dated 3.6.1998 forwarded the same to the Personnel Manager, ASEB Guwahati-1 for taking necessary action. According to the writ petitioner, the Board had framed a scheme under the Assam State Electricity Board Employees' Service Regulation affording employment opportunity to the children of the Board's employees dying in harness and, therefore, his application for compassionate appointment ought to have been considered under the aforesaid scheme.

2. The learned Counsel appearing on behalf of the respondent-Board submitted that the scheme which was in force has been kept in abeyance since 1994 and at

the relevant time i.e. in the year 1998 there was no scheme in force for consideration of the applications submitted by the children of the deceased employees of the Board for appointment on compassionate ground. The learned Counsel further submitted that the Board is overstaffed and a decision has been taken to introduce V.R.S. to relieve the Board from its huge financial burden. In support of his argument, the learned Counsel has drawn the attention of the Court to the statements made in paras 7 and 9 of the affidavit-in-opposition filed by the Board.

3. It is noticed from the statements made in para 7 of the affidavit-in-opposition that the decision to keep in abeyance the scheme for compassionate appointment was taken in the year 1994 and there has been also a ban on appointment to the services of the Board since 1991 except specific need based recruitments. Para 9 which deals with the scheme of compassionate appointment being relevant for the purpose is quoted below:

9. That in the backdrop of above, ASEB's Board in its sitting on 20.11.2002 reviewed the scheme for compassionate appointment and the following points were noted:

(i) It was noted that recruitment in the; Board had been stopped in view of the excessive employees strength in place.

(ii) If the Scheme were to continue, the principle of merit would be curtailed in, future recruitment to the Board ns and when permissible.

(iii) The Board was already over-staffed resulting in high establishment costs, which would have the effect of increasing tariffs payable by customers.

Considering the above factors, the Board decided to abolish the earlier Scheme for compassionate appointment (which has been kept in abeyance since 1994) and to limit existing provision of appointment on compassionate ground prospectively and provide for compassionate appointment and financial relief to employees of ASEB only in the following cases:

Eligibility for compassionate appointment would be considered only for serving employees of the Board who are killed (a) due to extremist violence; (b) who die due to accident or mishap, in both situations while only on ASEB duty.

But the above appointment would be subject to eligibility and qualification of the person concerned and lifting of the ban on recruitment by the Board.

4. Obviously, there was no scheme for compassionate appointment in force in the year 1998 when the father of the writ petitioner died. Therefore, the question of consideration of his case for appointment on compassionate ground does not arise. The scheme prepared in the year 2002 and quoted hereinabove indicates that compassionate appointments have been made permissible only on two exigencies i.e. in case of employees of the Board who are killed due to extremist violence and who die due to accident or mishap while only on ASEB duty. In the

instant case, it appears that the petitioner's father died of heart attack while on duty. Therefore, in all probability the second clause of the scheme introduced in the year 2002 may attract the case of the petitioner. But a question would arise as to whether a scheme introduced in the year 2002 for compassionate appointment would have retrospective effect. The learned Counsel for the Board answered this question with reference to the Resolution No. 28 dated 20.11.2002 adopted by the Board. The portion of the resolution relevant for the issue at hand is discernible in Clause (iv) of the resolution which reads as follows:

Taking into consideration the above factors the Board decided to abolish the earlier scheme for compassionate appointment presently kept in abeyance and to limit the existing provision of appointment on compassionate grounds prospectively of the following cases only;

(a) Serving employees killed due to extremist violence while on Board duty,

(b) Death of the employee due to accident or mishap while on Board duty. It was noted that the above would be subject to eligibility and qualification of the person concerned and lifting of the ban on recruitment of the Board.

5. The above clarification given by the learned Standing Counsel with reference to the resolution of the Board is unambiguous and there is no scope for resiling from it rendering the resolution retrospective in operation.

6. The irresistible conclusion that follows from the discussion above is that the petitioner is not entitled to any direction for consideration of his case for compassionate appointment.

7. In the result, the writ petition is dismissed. No costs.