

(2018) 03 GAU CK 0162
In the Gauhati High Court
Case No : WP(C) 1454 of 2017

TAUFIQUE RAHMAN

APPELLANT

Vs

THE STATE OF ASSAM and 3 ORS.

RESPONDENT

Date of Decision : 28-03-2018

Acts Referred:

Citation : (2018) 03 GAU CK 0162

Hon'ble Judges : ACHINTYA MALLA BUJOR BARUA

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. Heard Mr. P. Saikia, learned counsel for the petitioner, Mr. D. Saikia, learned Senior Additional Advocate General, appearing for the State of

Assam assisted by Mr. N. Sarma, learned Standing Counsel for the Secondary Education Department, Ms. D. Das Barman, learned Additional Senior

Government Advocate and Mr. M. Choudhury, learned senior counsel, who was requested by the Court to act as an Amicus Curiae.

2. The father of the petitioner, who was working as an Assistant Teacher in the Mohkhuli Swahid Anil Bora Memorial High School, Nagaon died in

harness on 30.08.2016. On his death, the petitioner submitted an application for compassionate appointment on 22.09.2016. The said application was

placed before the DLC of Nagaon district held on 26.09.2016 and the DLC had rejected the claim of the petitioner on the ground of lack of vacancy.

From the minutes, it is noticed that the claim of the petitioner was considered against the post of LDA in the office of the Inspector of Schools,

Nagaon. One Babita Kalita was recommended for the post of LDA and all the other 15 applications considered thereof were rejected mainly on the

ground of want of vacancy although some of the applications were also rejected on some other grounds like over age, passage of time etc.

3. When the entire recommendation of the DLC is looked into, it is noticed that the considerations were given not only department wise, but in fact

also office wise, for example, for the office of the Inspector of Schools of Nagaon, a separate consideration was given whereas for the office of the

District Elementary Education Officer, Nagaon, another consideration was given. The result thereof is that the applications for compassionate

appointment are considered office wise/department wise and the basis for such consideration is the office where the concerned deceased had earlier

worked.

4. In other words, if the concerned deceased had worked in Department A, an application for compassionate appointment would be given a

consideration only against the available vacancies in the concerned Department A. Similarly, if the deceased worked in Department

B, in such cases, the application for compassionate appointment would be considered only against the available vacancies of Department

B. As a result, a situation had arisen where in the event there are more number of vacancies available in a given department, the applications

for compassionate appointment in respect of the deceased who worked in such department would be given a consideration against more number of

vacancies. On the other hand, if a department has no vacancies or a lesser number of vacancies, the consideration of the applications in respect of the

deceased who worked in such department would be given against the non-existent vacancies or lesser number of vacancies as the case may be.

Secondly, even if on a relative inter-se comparison, the financial status of the applicants in respect of the department having more vacancies would be

much better off than that of an applicant of another department, still the applicant of the concerned department alone would be recommended,

whereas the applicant from another department, whose financial condition may be worse off would be deprived of a recommendation, if in the event

there are no vacancies or the vacancies available in the other department is less. The said problem aggravates further if the department itself is again

divided into various offices under the said department, meaning thereby that as noticed, applications in respect of the office of the Inspector of

Schools, Nagaon, which is under the Education Department and the office under the District Elementary Education Officer, which is also under the same Education Department were given a separate consideration office wise.

5. On a perusal of the Office Memorandum dated 01.06.2015 providing for the scheme of compassionate appointment, it can be safely concluded that the purpose of giving compassionate appointment is to give immediate financial succour to the members of the family of a deceased Government employee.

6. In the instant case, the petitioner had applied for appointment to the post of LDA on compassionate ground, but the same was rejected by the DLC Nagaon on the ground of unavailability of vacancy of LDA in the department where the deceased had worked. Although the format also requires the post applied for to be stated, but the same in the view of this Court is a desire of the applicant and that by itself would not mean that the applicant will not be considered for any other post for compassionate appointment other than the post indicated in such application. Compassionate appointment is not a regular appointment and therefore, there cannot be any application for a given specific post. The entire scheme for compassionate appointment is based on the principle of providing immediate succour to the financial need of the family of the deceased employee of the Government of Assam.

7. In such view of the matter, this Court is of the view that the post applied for is a mere indication of the desire of the applicant and the same by itself would not confine the authorities to consider the applicant only for such post.

8. Considering the aforesaid aspect as to why compassionate appointments are being offered, this Court in Achyut Ranjan Das and others â??vs-

State of Assam and others, reported in 2006 (4) GLT 674, in paragraph -7 (V) had provided as follows:-

â??V. The District Level Committee will decide as to who amongst the eligible candidates is entitled to compassionate appointment. To the extent possible such appointments will be recommended to be made within the District. In making the recommendations for appointments, the District Level Committee will take into account the financial condition of the family of the deceased and on a relative consideration of the cases will make its recommendation. There will be no selection and â??seniority of the claimâ?? will not be resorted to unless two or more eligible candidates are at

par.â??

9. Paragraph-7 (VI) further provides as follows:-

â??VI. To decide on the question of financial status of the family of a claimant regard will be had to the following factors as laid down in G.M Vs.

Kunti Tiwari (supra) (a) Gratuity amount received/receivable. (b) Family pension payable. (c) Provident Fund Amount received/receivable. (d) Any

ex-gratia payment made or payable. (e) Proceeds of LIC Policy and other investments of the deceased. (f) Income of the family from other sources.

(g) Employment of other family members. (h) Size of the family and liabilities, if any.â??

10. When the provisions of paragraphs 7(V) and 7(VI) of the judgment of this Court in Achyut Ranjan Das (Supra) is taken note of, it is seen that the

only consideration for the DLC while making the recommendation for compassionate appointment is the inter-se comparison of the financial condition

of the family of the deceased and for the purpose of evaluating the financial condition, certain factors like gratuity, family pension, provident fund, ex-

gratia payment, LIC, income from other sources and employment of other family members etc are also to be taken into account.

11. Again in Faziron Nessa and others â?"vs- State of Assam and others, reported in 2010(4) GLT 340, this Court in paragraph-22 had held as under:-

â??An argument was advanced that the cases are required to be considered on the basis of seniority of cases. Examples were shown that the

authorities/departments have considered the cases of subsequent years while the cases of earlier years have been left out. Needless to say that

compassionate appointment is not a source of recruitment, so as to contend that such appointments will have to be made on the basis of seniority of

cases. Such appointments are made on need basis upon evaluation of comparative needs. This aspect of the matter has also been taken note of in

Achyut Ranjan Das (supra) vide Principle No.V. Thus, it cannot be claimed that since one's claim is prior in time than another, he or she will get

preference over the latter applicant.â?? Again in Paragraph-40(vi), it has been provided as under:-

â??40(vi) The cases for compassionate appointment shall be considered on need basis upon comparative assessment of various applications and not

applying the test of seniority of claims. It may so happen that a claim latter in

point of time is more deserving than a claim prior in point of time.â??

12. From the provisions of the aforesaid two judgments of this Court, the only consideration while recommending a person for compassionate appointment is the financial need of the family of the deceased, which is to be evaluated on an inter-se financial comparison amongst all the available candidates who are to be taken up for consideration and upon such evaluation, those applicants whose familyâ??s financial condition is worse off are to be recommended.

13. In the background of the aforesaid propositions of law laid down by this Court in Achyut Ranjan Das (supra) and in Faziron Nessa (supra), where the only relevant consideration is an inter-se financial comparison, when the procedure adopted by the DLC is examined, it is noticed that the financial comparison are made only amongst the applicants within a particular office or a particular department. The said procedure necessarily also leads to a situation where in the event the financial condition of an applicant in another department is worse off than the recommended candidate in a given department but because of the department wise consideration, such worse off applicants fail to get a recommendation. Such procedure of department wise consideration would by itself be an aberration of the law laid down by this Court in Achyut Ranjan Das (supra) and Faziron Nessa (supra) that the cases for compassionate appointment be recommended only on need basis upon comparative assessment of the various applications and that the applicant, whose financial condition is worse off is to be preferred for recommendation over any other candidate, whose financial condition may be better off in comparison. Accordingly, this Court is of the view that by adopting the procedure of giving the consideration department wise or office wise, the respondent authorities are not strictly adhering to the principle that the recommendations for compassionate appointment be made only upon an inter-se comparison of the financial status of the respective applicant and that upon such comparison, only the applicant whose financial condition is worse off be given the recommendation over others.

14. Mr. M. Choudhury, learned senior counsel, who is assisting the Court as an Amicus Curiae, also brings to the notice of a judgment and order of the Patna High Court rendered in Prem Narayan and another Â â?"vs- State of Bihar and others, reported in (1996) 1 LLJ 700, wherein in paragraph-

7, it had been held as under:-

What is in our mind is that all cases of compassionate appointment to posts permissible under the existing circular should be considered together

by one body. The circular confers right upon the dependent family members of government servants dying in harness to be considered for appointment

to suitable Class III or Class IV posts. It does not make distinction between different departments or offices. All government servants dying in

harness stand on the same footing irrespective of where they were working.

15. The said view of the Patna High Court also has a relevance for the purpose of this writ petition inasmuch as, a more appropriate procedure to be

adopted for compassionate appointment would be that the DLC takes into account the overall vacancies available in all the departments and thereupon

consider such vacancies against all the applications made irrespective of the department where the deceased had earlier served. If the said procedure

is adopted, the authorities would be in a better position to evaluate as to who amongst the applicants would be financially worse off and accordingly

recommendations can be made to the available vacancies depending upon their suitability and qualification as may be required. Such a procedure

would also take care of the requirement that even if the applicant of a given department where the vacancies are not available are financially worse

off, still recommendation can be made in their favour. As a result, the applicants who are otherwise financially worse off would not stand rejected on the

ground of vacancies not being available in the department where the deceased had earlier worked.

16. In view of the above, it is directed that henceforth, all such DLCs and SLC in the State of Assam shall give a consideration not department and

office wise, but taking the sum total of the total number of vacancies in all the departments and thereafter arrive at an inter-se financial comparison of

all the applicants in respect of the departments and thereafter make the recommendation in the order of the applicants, who are financially worse off,

subject of course to their suitability and their qualification for the given post. This order shall not be construed to be an order requiring the DLCs

and the SLC to re-open the earlier cases, which were already considered and dealt with department wise as was done earlier.

17. However, in the instant case, the DLC may consider the case of the petitioner

again for any other post where vacancy may be available inasmuch as although the application of the petitioner may have been for the post of LDA, but under the law of compassionate appointment, such indication is merely a desire and is not to be construed that the applicant is to be considered only for the post for which the application was made.

18. Accordingly, the application of the petitioner be placed before the next available DLC of Nagaon district. In terms of the above, the writ petition stands disposed of.