

(2022) 12 GAU CK 0021

Gauhati High Court

Case No: Writ Petition (Civil) No. 7451 Of 2018

Parmeswar Ray

APPELLANT

Vs

State Of Assam And 3
Ors.

RESPONDENT

Date of Decision: Dec. 9, 2022

Acts Referred:

- Constitution Of India, 1950 - Article 226

Hon'ble Judges: Devashis Baruah, J

Bench: Single Bench

Advocate: K. Das, T. C. Chutia

Final Decision: Dismissed

Judgement

1. Heard Mr. K. Das, the learned counsel for the petitioner and Mr. T. C. Chutia, the learned Senior Government Advocate, Assam appearing on

behalf of the respondent Nos.1 to 4.

2. This Court vide an order today on 09.12.2022 has substituted the respondent No.4 by the District Level Selection Committee for appointment on

compassionate ground represented by the Deputy Commissioner, Bongaigaon, Assam-cum-Chairman in I.A.(C) No.3644/2022.

3. Mr. T. C. Chutia, the learned Senior Government Advocate, Assam appearing on behalf of the respondent Nos.1 to 4 submits that in view of the

various pronouncements of law by the Supreme Court wherein it has been held that right to seek compassionate appointment is not a matter of right

but the whole object of granting compassionate appointment is just to enable the family to tide over the sudden crisis and taking into account that

already 11 years have passed by since the death of the father of the petitioner and the petitioner has been able to survive, the instant writ petition can be taken up for disposal at the stage itself. In that view of the matter, the instant matter has been taken up for disposal.

4. The case of the petitioner herein is that the petitioner had passed his HSLC examination on 23.03.1986. The petitioner's father Late Binod

Chandra Roy was working under the 8th Assam Police Battalion, Abhayapuri, Bongaigaon, Assam in the rank of NK No.938 who died in harness on

17.09.2011 leaving behind his wife and four children including the petitioner. Pursuant to the death of the father of the petitioner, on 25.10.2011 the

petitioner submitted an application before the respondent No.3 seeking appointment on compassionate ground against the vacant post of his father.

The said application was forwarded by the respondent No.3 to the Deputy Commissioner, Bongaigaon, Assam on 11.11.2011.

5. In the meeting held by the District Level Selection Committee on 21.01.2012, petitioner's application was placed for consideration. However, as

the petitioner could not learn anything as regard the fate of his application, he filed an application under Right to Information Act, 2005 to know the

outcome of the meeting of the District Level Selection Committee held on 21.01.2012. In reply to the petitioner's application under Right to

Information Act, the respondent No.3 informed the petitioner vide the letter dated 21.08.2018 that in the meeting of the District Level Selection

Committee held on 21.01.2012, the petitioner's application was rejected on the ground of economic condition.

6. Being aggrieved, the petitioner has approached this Court under Article 226 of the Constitution of India challenging the decision taken in the District

Level Selection Committee dated 21.01.2012 whereby the petitioner's application was rejected on economic condition.

7. At this stage, it may also be relevant herein to mention that the petitioner filed the application under the Right to Information Act on 11.04.2018, i.e.

almost after 6 years from the date of the meeting of the District Level Selection Committee which is dated 21.01.2012. The ground on which the

petitioner has assailed the decision of the District Level Selection Committee dated 21.01.2012 is that the District Level Selection Committee for

appointment on compassionate ground ignored the fact of vacancy of the position as well as the eligibility of the candidate and had arbitrarily rejected

the candidature of the petitioner. It is the further case of the petitioner that the rejection of the application of the petitioner on the ground of his

economic condition was imaginary taking into consideration that there is no service holder either in the Government or private sector in the family of

the petitioner and the elder brother of the petitioner is a cultivator and somehow is maintaining his livelihood by farming as a tenant and the petitioner

also helps his elder brother in cultivation.

8. On the other hand, Mr. T. C. Chu(cid:17)a, the learned Senior Government Advocate, Assam appearing on behalf of the respondents submits that the whole object of

gran(cid:17)ng compassionate appointment is just to enable the family to (cid:17)de over the sudden crisis upon the death of the sole bread earner. The object is not to give

a member of such family a post much less a post for the post held by the deceased. What is further mere death of an employee in harness does not en(cid:17)tle his

family to such source of livelihood. The Government or the public authority concerned has to examine the financial condi(cid:17)on of the family of the deceased and

it is only if it is sa(cid:17)sfied that but for the provision of employment, the family will not be able to meet the crisis, then a job is to be offered to the eligible member

of the family. The learned senior Government Advocate further submits that the post in Class III & IV are the lowest posts in the non-manual and manual

categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family of the financial des(cid:17)tu(cid:17)on and to help it get

over the emergency. The learned senior Government Advocate, therefore, submi(cid:42)ed that in the instant case, the pe(cid:17)(cid:17)oner had filed an applica(cid:17)on in 2011 and

his applica(cid:17)on was rejected as far back in 2012 and it was only in 2018 that the pe(cid:17)(cid:17)oner sought to know about the fate of the applica(cid:17)on and thereupon in

the year 2018, the pe(cid:17)(cid:17)oner has immediately rushed to the Court. He submi(cid:42)ed that had the pe(cid:17)(cid:17)oner been in extreme urgency or difficulty on account of the

death of his father, he would have definitely taken due steps rather than waiting for six long years to know the fate of his application for compassionate

appointment. Under such circumstances, the question of inference or any direction being given for the purpose of compassionate appointment, at this stage,

would be contrary to the well settled principles laid down by the Hon^{ble} Supreme Court in various judgments. He has also referred to the judgment of the

Supreme Court in the case of Government of India and Another vs. P. Venkatesh, reported in (2019) 15 SCC 613 as well as in a very recent judgment of the

Supreme Court in the case of Central Bank of India vs. Niran (Civil Appeal No.5111 of 2022) dated 3rd of August, 2022 whereby the Supreme Court categorically

held that financial criteria for compassionate appointment given in a compassionate appointment scheme cannot be ignored.

9. Upon perusal of the materials on record and hearing the learned counsel for the parties, this Court is of the opinion that it is necessary in the present facts

and circumstances to take into account as to what is the right of a person to seek appointment in terms with compassionate appointment scheme.

10. The Supreme Court in the case of Secretary to the Government. Department of Education (Primary and Others) vs. Bheemesh Alias Bheemappa

reported in 2021 SCC Online SC 1264 had held after taking into account various judgments rendered by the Supreme Court that if compassionate

appointment is one of the conditions of service and is made automatic upon the death of an employee in harness without any kind of scrutiny

whatsoever, the same would be treated as a vested right in law. It was observed that it is not so in as much as appointment on compassionate ground

is not automatic but subject to strict scrutiny of various parameters including the financial position of the family, the economic dependent of the family

upon the deceased employee and the avocation of the other members of the family. It was held that no one can claim to have a vested right for

appointment on compassionate grounds. In the case of P. Venkatesh (supra), the Supreme Court was called upon to decide as to whether the

direction issued by the Division Bench of the High Court of Madras to direct the appellants for appointment on compassionate basis to the respondent

within a period of three month from the date of the order was justified or not. The Supreme Court, after taking into account the judgment in the case

of Umesh Kumar Nagpal vs. State of Haryana, reported in (1994) 4 SCC 138 held that the compassionate appointment cannot be granted after a

lapse of reasonable period which must be specified in the rules. It was further held that the consideration for such an employment is not a vested right

which can be exercised at any time in future in as much as the object being to enable the family to get over the financial crisis which he faces at the

time of the death of the sole bread earner. Under such circumstances, the Supreme Court taking into consideration that direction issued by the High

Court of Madras was nearly 21 years after the death of the employee had set aside the judgment passed by the High Court of Madras. Paragraph

Nos.7 to 11 of the said judgment, being relevant, are quoted herein below:-

“7. The primary difficulty in accepting the line of submissions, which weighed with the High Court, and were reiterated on behalf of the

respondent in these proceedings, is simply this: compassionate appointment, it is well-settled, is intended to enable the family of a deceased

employee to tide over the crisis which is caused as a result of the death of an employee, while in harness. The essence of the claim lies in the

immediacy of the need. If the facts of the present case are seen, it is evident that even the first recourse to the Central Administrative

Tribunal was in 2007, nearly eleven years after the death of the employee. In the meantime, the first set of representations had been rejected

on 3-1-1997. The Tribunal, unfortunately, passed a succession of orders calling upon the appellants to consider and then reconsider the

representations for compassionate appointment. After the Union Ministry of Information and Broadcasting rejected the representation on

13-11-2007, it was only in 2010 that the Tribunal was moved again, with the same result. These successive orders of the Tribunal for

reconsideration of the representation cannot obliterate the effect of the initial delay in moving the Tribunal for compassionate appointment

over a decade after the death of the deceased employee.

8. This “dispose of the representation” mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders

may make for a quick or easy disposal of cases in overburdened adjudicatory institutions. But, they do no service to the cause of justice. The litigant is

back again before the court, as this case shows, having incurred attendant costs and suffered delays of the legal process. This would have been

obviated by calling for a counter in the first instance, thereby resulting in finality to the dispute. By the time, the High Court issued its direction on 9-8-

2016, nearly twenty-one years had elapsed since the date of the death of the employee.

9. In *Umesh Kumar Nagpal v. State of Haryana*, this Court held thus:

“2. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is

not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in

harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the

financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not

be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts

in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the

family, of the financial destitution and to help it get over the emergency.”

10. Bearing in mind the above principles, this Court held:

“6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be

specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object

being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate

employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.”

11. The recourse to the Tribunal suffered from a delay of over a decade in the first instance. This staleness of the claim took away the very basis of

providing compassionate appointment. The claim was liable to be rejected on that ground and ought to have been so rejected. The judgment of the

High Court is unsustainable.â€

11. In the instant case, it would be seen from Annexure-F to the writ petition that the father of the petitioner was survived by his wife and four

children. The petitioner applied for compassionate appointment in the year 2011 and it was only on 2018, the petitioner had filed an application under

Right to Information Act to know the fate of his application which was under consideration in the meeting held on 21.01.2012. The petitioner on

coming to learn from the information so given vide communication dated 21.08.2018 had approached this Court in the year 2018.

12. This Court is presently taking up the matter in the fag end of the year 2022. It further appears from the record that there has been no material

shown to the effect that the petitioner and his family members have not been able to tide over the emergency or the financial hardship which has

occurred immediately upon the death of the father of the petitioner and such hardships is still continuing.

13. In view of the law as has been laid down by the Supreme Court as discussed herein above, this Court is of the opinion that this is not a fit case

where a direction or mandamus can be issued to the District Level Selection Committee again to reassess the petitionerâ€™s application taking into

account the lapse of time.

14. Under such circumstances, this Court finding no merit in the instant writ petition, dismisses the same.