

(2023) 01 GAU CK 0014

Gauhati High Court

Case No: Writ Petition (Civil) No. 7074 Of 2015

Krishna Bharali

APPELLANT

Vs

State Of Assam And 4
Ors

RESPONDENT

Date of Decision: Jan. 2, 2023

Acts Referred:

- Constitution Of India, 1950 - Article 226

Hon'ble Judges: Devashis Baruah, J

Bench: Single Bench

Advocate: M P Sarma, R.R. Gogoi, S. Baruah

Final Decision: Dismissed

Judgement

1. Heard Mr. M. P. Sarma, the learned counsel appearing on behalf of the petitioner and Mr. R. R. Gogoi, the learned counsel appearing on behalf of

the respondent Nos. 2, 3 and 5. I have also heard Ms. S. Baruah, the learned Government Advocate appearing on behalf of the respondent Nos. 1 and

4.

2. The instant writ petition has been filed by the petitioner challenging the inaction on the part of the respondent authorities for not giving the

petitioner's appointment on compassionate grounds as per the Government Memorandum dated 09.09.1983 and 02.03.2009 against the regular

vacant post of any Grade-III in the Department of Excise and/or any other post as per the recommendation made by the District Level Committee

vide its meeting dated 22.09.2010.

3. The brief facts of the instant case is that the petitioner's father was working as Havildar in Excise Department under Bihupuria Circle in the District of Lakhimpur who died in harness on 26.03.2010. The father of the petitioner left behind his wife, two unmarried daughters and two sons including the petitioner. Thereupon, the petitioner submitted an application on 24.04.2010 seeking appointment on compassionate ground through the Superintendent of Excise, Lakhimpur. In the meeting held on 22.09.2010, the petitioner was recommended for the post of Grade-III (Excise Constable) under the Excise Department and vide its letter dated 26.10.2010, the recommendation which included the name of the petitioner was placed before the State Level Committee. The State Level Committee however sat over the matter for a period of 3 (three) years for which the petitioner was constrained to approach this Court under Article 226 of the Constitution of India by filing a writ petition being WP(C) No.3273/2014 thereby seeking a direction to consider the case of the petitioner for appointment on compassionate grounds. However, during the pendency of the said writ petition, it came to light that the petitioner's case was considered in the meeting held on 11.06.2014 wherein the petitioner's case was rejected on the ground of lack of vacancy and his application was considered to have spent its force. The petitioner immediately withdrew the said writ petition i.e. WP(C) No.3273/2014 with a liberty to challenge the decision of the State Level Committee. Subsequent thereto, the petitioner filed another writ petition i.e. WP(C) No.4248/2014 challenging the decision of the State Level Committee dated 11.06.2014. This Court however disposed of the said writ petition thereby setting aside the decision of the State Level Committee dated 11.06.2014 in respect to the petitioner and with a further direction upon the State Level Committee to reconsider the case of the petitioner against the existing available vacancy in the post of Excise Constable earmarked for appointment on compassionate ground.

4. However, it may be relevant to take note of that this Court while disposing of the said writ petition vide the order dated 19.09.2014 had categorically observed that it was not the case of the State Level Committee that on the date of consideration, there was no vacancy in the post of Excise Constable to accommodate the petitioner as per the recommendation.

5. It further appears from the records that on 14.08.2015, the State Level Committee reconsidered the case of the petitioner and rejected the case of

the petitioner on the ground of non-availability of vacant post for the year 2014-15. However, the State Level Committee in its Minutes dated

14.08.2015 have also recorded that the cases of various persons including the petitioner are returned to the District Level Committee with a direction

that if the applications have not spent its force as determined by the High Court in the case of Sri Achyut Ranjan Das Vs. State of Assam and Others,

their cases may be considered again in the District Level if otherwise found eligible.

6. Being aggrieved, the petitioner has approached this Court challenging the Minutes of the meeting dated 14.08.2015 by way of the instant writ

petition.

7. It appears from the records that this Court vide an order dated 23.11.2015 had issued notice making it returnable by 3 (three) weeks. The record

reveals that the respondent Nos. 2 and 3 have filed a joint affidavit on 24.08.2016. In the said affidavit, it has been mentioned that the petitioner's

case was again placed before the State Level Committee in its meeting held on 14.08.2015. However, the case of the petitioner was again rejected on

account of non-availability of the vacant post for the year 2014-2015. It was further mentioned that for the year 2014-2015, the vacancy position for

Excise Constable (Grade-III) earmarked for compassionate appointment was only 3 out of which one post was reserved for Schedule Tribe (Plain). It

was further mentioned that for the period from 2008 to 2012, there were only 6 numbers of post which were reserved for compassionate appointment

throughout the State of Assam which were also filled up. It was further mentioned that the stand of the petitioner that there were existing vacancy

available was misconceived in view of the fact that against the total existing vacancies throughout the State, only 5% is reserved for appointment on

compassionate ground. Further, it was mentioned that mere existence of a vacancy in a District need not necessarily mean that the same is reserved

for appointment on compassionate ground.

8. The respondent No.4 has also filed an affidavit-in-opposition on 10.02.2016. In the said affidavit-in-opposition, it was mentioned that the

petitioner's proposal was placed in the District Level Committee held on 22.09.2010 and was recommended for the post of Grade-III and

forwarded to the higher authority for further necessary action vide the letter dated 26.10.2010. There is no mention whatsoever in the said affidavit by

the respondent No.4 as to what is the stand of the District Level Committee insofar as the directions given in the Minutes of the meeting held on

14.08.2015.

9. In the backdrop of the above pleadings, I have also heard the learned counsels appearing for the parties. It appears from the records that the case

of the petitioner has been rejected on the ground of want of vacancy. The learned counsel for the petitioner however has not been able to show that

the action of the State Level Committee suffers from any perversity by not taking into consideration that there were available vacancies.

10. Be that as it may, it is also relevant to take note of that the whole object of granting compassionate appointment 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. As held by the Supreme Court in the case of Umesh Kumar

Nagpal Vs. State of Haryana and Others reported in (1994) 4 SCC 138, the compassionate appointment cannot be granted after a lapse of reasonable

period which must be specified in the rules. It has been further observed that the consideration for such employment is not a vested right which can be

exercised at any time in future inasmuch as the object being to enable the family to get over the financial crisis which it faces at the time of the death

of sole breadwinner and as such the compassionate appointment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

Paragraph 6 of the said judgment being relevant is quoted hereinbelow:

“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.â€

11. The recent trend of the judgments have also been not to interfere in matters for appointment on compassionate ground after a long lapse of time

however, with an exception to the effect that if the consideration so made by the respondent authorities suffers from perversity, unreasonableness,

irrationality, the Court can interfere. In the instant case, the father of the petitioner expired in the year 2010 and as on the date of consideration of the

instant application, 12 years have already passed by. The learned counsel for the petitioner however has not been able to show that the rejection of the

case of the petitioner by the State Level Committee in its meeting dated 14.08.2015 for want of vacancy suffers from any perversity or

unreasonableness.

12. Consequently, this Court therefore does not find the instant case to be a fit case for exercise of jurisdiction under Article 226 of the Constitution of

India.

13. Accordingly, the instant petition stands dismissed. However, in the facts of the case, this Court is not inclined to impose any cost.