

(2025) 12 GAU CK 0036

Gauhati HC

Case No: WPC Of 1162 Of 2024

Palash Swargiary

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision: Dec. 16, 2025

Acts Referred:

- Constitution of India, 1950- Article 226

Hon'ble Judges: N. Unni Krishnan Nair, J

Bench: Single Bench

Advocate: Deba Sarmah, N Shyam

Final Decision: Dismissed

Judgement

N. Unni Krishnan Nair, J

1. Heard Mr. D. Sarma, learned counsel for the petitioner. Also heard Mr. B.J. Talukdar, learned Sr. Advocate assisted by Mr. P.K. Medhi, learned counsel appearing for all the respondents.

2. The petitioner in the present proceeding has assailed a decision dated 06-12-2023 of the State Level Committee (SLC) in rejecting the claim of the petitioner, herein, for appointment on compassionate ground for want of vacancy within the 5% quota mandated for effecting such appointments.

3. The father of the petitioner while working as Gr-IV employee in the office of the General Manager, District Industries and Commerce Centre, Barpeta, had died-in-harness, on 17-11-2014. The petitioner, thereafter, submitted an application for appointment on compassionate ground. The application of the petitioner was, thereafter, forwarded to the District Level Committee (DLC) for consideration, however, the said application remained pending consideration for a considerable period of time. The application of the petitioner was considered by the DLC in its meeting held on 25-02-2016 and on such consideration, the name of the petitioner

was recommended for appointment against a vacant post that had occasioned in the year 2015 in the establishment of the respondent No. 4. The recommendation made by the DLC came to be placed before the State Level Committee (SLC) and the said committee in its meeting held on 18-01-2020, proceeded to reject the claim of the petitioner on the ground of want of vacancies for effecting his appointment within the quota prescribed for appointment on compassionate ground. Being aggrieved, the petitioner had assailed the decision of the SLC, before this Court by way of instituting a writ petition being W.P.(C) No. 1853/2020. A Co-ordinate Bench of this Court vide order dated 09-08-2023 disposed of the said writ petition directing the SLC to consider the claim of the petitioner on the basis of the recommendation, so made by the DLC, by applying the Office Memorandum dated 02-03-2009.

It is seen that the case of the petitioner was again placed before the SLC in its meeting held on 06-12-2023 by the authorities. The SLC after reconsidering the claim of the petitioner proceeded to reject the same holding that there was no vacancy within the 5% quota reserved for appointment on compassionate ground. It is in the said background that the petitioner has instituted the present writ petition.

4. I have heard the learned counsel for the parties and also perused the materials available on record.

5. The materials brought on record reveals that the father of the petitioner had died-in-harness on 17-11-2014. Thereafter, the case of the petitioner was considered by the DLC as well as by the SLC in terms of the policy of the State Government for extending appointments on compassionate ground. The SLC had rejected the claim of the petitioner on the ground that there was no vacancy within the 5% quota kept reserved for appointment on compassionate ground. The learned counsel for the petitioner submits that the said reasoning advanced by the SLC, insofar as, the case of the petitioner is concerned is clearly perverse inasmuch as the jurisdictional DLC had categorically made recommendation in favour of the petitioner against an identified vacant post which was projected to fall within the 5% quota mandated for appointment on compassionate ground.

6. This Court on examination of the rival contention brought on record by the learned counsel for the parties, finds that even if the reasoning advanced by the SLC in the matter is erroneous, considering the long lapse of time occasioning in the matter after the death of the father of the petitioner, which had occasioned on 17-11-2014, it would not be open to this Court, after 11 years, to issue a direction upon the respondent authorities to reconsider the claim of the petitioner for appointment on compassionate ground. This Court holds that the claim of the petitioner, in view of the long delay occasioning in the matter, has been rendered stale and this Court would not be called upon to issue directions upon the respondent authorities to re-examine the claim of the petitioner, which has admittedly being rendered stale.

7. In this connection reference is made to the decision of the Honble Supreme Court in the case of State of West Bengal Vs. Debabrata Tiwari & Ors., reported in (2023) SCC Online SC 219, wherein the Honble Supreme Court, upon considering its earlier decisions available in the matter had concluded as follows:-

32. On consideration of the aforesaid decisions of this Court, the following principles emerge:

i. That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must be resorted to only in order to achieve the stated objectives, i.e., to enable the family of the deceased to get over the sudden financial crisis.

ii. Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependents of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.

iii. Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over.

iv. That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

v. In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits if any, received by the family, the age, dependency and marital status of its members, together with the income from any other source.

33. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis due to the death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be in a position to make both ends meet, a provision is made for giving gainful appointment to one of the dependents of the deceased who may be eligible for such appointment. Having regard to such an object, it would be of no avail to grant compassionate appointment to the dependents of the deceased employee, after the crisis which arose on account of death of a

bread-winner, has been overcome. Thus, there is also a compelling need to act with a sense of immediacy in matters concerning compassionate appointment because on failure to do so, the object of the scheme of compassionate would be frustrated. Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and thus lose its significance and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out for consideration.

34. As noted above, the sine qua non for entertaining a claim for compassionate appointment is that the family of the deceased employee would be unable to make two ends meet without one of the dependents of the deceased employee being employed on compassionate grounds. The financial condition of the family of the deceased, at the time of the death of the deceased, is the primary consideration that ought to guide the authorities' decision in the matter.

35. Considering the second question referred to above, in the first instance, regarding whether applications for compassionate appointment could be considered after a delay of several years, we are of the view that, in a case where, for reasons of prolonged delay, either on the part of the applicant in claiming compassionate appointment or the authorities in deciding such claim, the sense of immediacy is diluted and lost. Further, the financial circumstances of the family of the deceased, may have changed, for the better, since the time of the death of the government employee. In such circumstances, Courts or other relevant authorities are to be guided by the fact that for such prolonged period of delay, the family of the deceased was able to sustain themselves, most probably by availing gainful employment from some other source. Granting compassionate appointment in such a case, as noted by this Court in *Hakim Singh* would amount to treating a claim for compassionate appointment as though it were a matter of inheritance based on a line of succession which is contrary to the Constitution. Since compassionate appointment is not a vested right and the same is relative to the financial condition and hardship faced by the dependents of the deceased government employee as a consequence of his death, a claim for compassionate appointment may not be entertained after lapse of a considerable period of time since the death of the government employee.

36. Laches or undue delay, the blame-worthy conduct of a person in approaching a Court of Equity in England for obtaining discretionary relief which disentitled him for grant of such relief was explained succinctly by Sir Barnes Peacock, in *Lindsay Petroleum Co. v. Prosper Armstrong*, [1874] 3 P.C. 221 as under:

Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation, in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute or limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of Justice or injustice in taking the one course or the other, so far as it relates to the remedy.

37. Whether the above doctrine of laches which disentitled grant of relief to a party by Equity Court of England, could disentitle the grant of relief to a person by the High Court in the exercise of its power under Article 226 of our Constitution, came up for consideration before a Constitution Bench of this Court in *Moon Mills Ltd. v. M. R. Meher*, President, Industrial Court, Bombay, AIR 1967 SC 1450. In the said case, it was regarded as a principle that disentitled a party for grant of relief from a High Court in the exercise of its discretionary power under Article 226 of the Constitution.

38. In *State of M.P. v. Nandlal Jaiswal*, (1986) 4 SCC 566 this Court restated the principle articulated in earlier pronouncements in the following words:

9. the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the Petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this Rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of thirdparty rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

39. While we are mindful of the fact that there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution,

ordinarily, a writ petition should be filed within a reasonable time, vide **Jagdish Lal v. State of Haryana, (1997) 6 SCC 538; NDMC**

v. Pan Singh, (2007) 9 SCC 278.

40. Further, simply because the Respondents-Writ Petitioners submitted their applications to the relevant authority in the year 2005- 2006, it cannot be said that they diligently perused the matter and had not slept over their rights. In this regard, it may be apposite to refer to the decision of this Court in **State of Uttaranchal v. Shiv Charan Singh Bhandari, (2013) 12 SCC 179, wherein the following observations were made:**

19. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time.

8. The Honble Supreme Court, in the above noted decision, had concluded that for reasons of prolonged delay, either on the part of the applicant for claiming compassionate appointment or the authorities in deciding such claim, the sense of immediacy is diluted and lost. Accordingly, it was held that granting compassionate appointment in such a case, would amount to treating a claim for compassionate appointment as if it were a matter of inheritance based on a line of succession, which is contrary to the Constitution. Accordingly, the Honble Supreme Court had concluded that since compassionate appointment is not a vested right and the same is relative to the financial condition and hardship faced by the dependants of the deceased government employee as a consequence of his death, a claim for compassionate appointment may not be entertained after lapse of a considerable period of time since the death of the government employee.

9. Applying the decision of the Honble Supreme Court in the case of **Debabrata Tiwari (Supra)** to the facts of the present case, considering the long lapse of time occasioning since the date of death of the father of the petitioner, it has to be held that the sense of immediacy for seeking compassionate appointment would cease to exist and thus lose its significance and this would be a relevant consideration in determining as to whether a case for direction for consideration of the case of the petitioner on grant of compassionate appointment has been made out.

10. In the present case as noted above, the father of the petitioner had expired on 17-11-2014. Accordingly, at this distant point of time, it is not appropriate for this Court to issue directions upon the respondent authorities to consider the case of the petitioner for appointment on compassionate grounds. Further, this Court is of the considered view that no direction in the present matter would be called upon to be so issued, requiring the respondents to consider the case of the petitioner on compassionate grounds.

11. In view of the above, this writ petition is held to be devoid of merit and accordingly, the same stands dismissed. However, there would be no order as to costs.