

GAHC010141772021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/280/2021

RAJU PATOWARY
S/O- LATE KUMUD PATOWARY, VILL.- PUKHURIPARA, P.O. AND P.S.
NAGARBERA, DIST.- KAMRUP(R), ASSAM, PIN- 781127.

VERSUS

THE STATE OF ASSAM AND 5 ORS.

REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM, PANCHAYAT
AND RURAL DEVELOPMENT, ASSAM, DISPUR, GUWAHATI-781006.

2:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT
ASSAM
PANJABARI
JURIPAR
PIN- 781037
DIST.- KAMRUP
ASSAM

3:THE DIRECTOR
PANCHAYAT AND RURAL DEVELOPMENT
ASSAM
PANJABARI
JURIPAR
PIN- 781037
DIST.- KAMRUP
ASSAM

4:THE JOINT DIRECTOR
PANCHAYAT AND RURAL DEVELOPMENT
ASSAM
PANJABARI
JURIPAR
PIN- 781037
DIST.- KAMRUP
ASSAM

5:THE CHAIRMAN
DISTRICT LEVEL COMMITTEE -CUM- THE DEPUTY COMMISSIONER
KAMRUP(RURAL)
AMINGAON
GUWAHATI-781031.

6:THE BLOCK DEVELOPMENT OFFICER
CHAMARIA DEVELOPMENT BLOCK
NAGARBERA
PIN- 781127
DIST.- KAMRUP
ASSAM

Advocate for the Petitioner : MS. S B CHOUDHURY

Advocate for the Respondent : SR, GA, ASSAM

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

For the Appellant : Ms. S. B. Choudhury, Advocate

For the Respondents : Mr. M. Nath, SC, Respondent
Nos. 2, 3, 4 & 6

: Mr. P. Sarmah, Govt. Advocate
Respondent No. 5.

Date of Hearing : 08.12.2021

Date of Judgment : 04.01.2022

JUDGMENT & ORDER (CAV)

(Soumitra Saikia, J)

The appellant as the writ petitioner approached this Court by filing WP(C) No. 1636/2017 challenging the inaction of the respondent authorities in respect of his application dated 27.10.2016 seeking compassionate appointment. The writ petition was dismissed and being aggrieved the present writ appeal has been filed.

2. From the pleadings on record, it is seen that the appellant's Late father was employed as 'Gram Sevak' under Chamaria Development Block under the Department of Panchayat and Rural Development, Government of Assam. The father of the appellant, namely, late Kumud Patowary died-in-harness on 27.09.2011. Pursuant to the death of his father, the appellant filed his application dated 25.11.2011 seeking compassionate appointment. His application was forwarded to the District Level Committee which was constituted by the Government of Assam for consideration of cases for compassionate appointment. In its meeting held on 27.03.2012 the District Level Committee rejected his case on the ground of want of vacancies. In the minutes of the District Level Committee meeting held on 27.03.2012 it was reflected therein that his case would be considered again as and when the vacancy arises. Thereafter, his case was again considered by another District Level Committee and in its meeting held on 28.09.2012, his candidature was rejected on the ground that he was under qualified for the post of 'Gram Sevak'. Pursuant to his application being rejected for the second time by the District Level Committee, it is submitted by the appellant that upon being advised by the Members of the District Level Committee, the appellant submitted another application on 27.10.2016 for compassionate appointment.

3. As no decision was being taken on the said application submitted by the applicant, he approached this Court again by way of a writ petition being WP(C) No. 1636/2017. During the course of hearing of the said writ petition, the learned counsel for the State respondents submitted that the appellant's application dated 27.10.2016 may have been placed before the District Level

Committee and consideration thereof might have been given. The said writ petition accordingly came to be disposed of vide order dated 03.11.2017 upon the statement made by the Departmental counsel that the petitioner's application must have been placed before the District Level Committee. The respondent authorities were directed to furnish to the appellant a copy of the decision taken thereon by the District Level Committee. It was further directed that in the event the application of the appellant was not placed before the District Level Committee, the respondents were directed to place the said application of the appellant dated 27.10.2016 before the next available District Level Committee of Kamrup(Rural) district.

4. Pursuant to the said order, copy of the minutes of the meeting of the District Level Committee for recommendation of cases for appointment on compassionate ground of Kamrup(Rural) district were made available to the appellant. In respect of the application of the appellant, the proposal was rejected on the ground that the criteria of "*3(three) years of Service*" of the deceased employee according to the Government O.M. No. ABP 50/2006/Pt/182 dated 01.06.2015 was not fulfilled by the deceased father of the appellant. His father expired on 27.09.2011 and his date of retirement would have been 31.01.2014. Being aggrieved by the said rejection of his application for compassionate appointment, the appellant approached this Court for a second time by way of a writ petition being WP(C) No. 132/2021. The learned Single Judge vide the impugned order dated 20.08.2021 dismissed the writ petition. Being aggrieved the present writ appeal has been filed.

5. The learned counsel for the writ appellant submits that the appellant had approached this Court without any delay in applying for appointment on compassionate ground. She submits that the father of the appellant had expired on 27.09.2011 and the appellant filed his application seeking compassionate appointment on 25.11.2011. The learned counsel for the writ appellant submits that the authorities while rejecting the application of the petitioner had initially rejected the application on the ground of want of vacancy and it was reflected in the minutes that his case would be considered as and when the vacancy arises. Subsequently, vide meeting dated 28.09.2012, the District Level Committee again rejected his case on the ground of being under qualified for the post of 'Gram Sevak'. However, the appellant was advised to submit afresh pursuant to which he again submitted a fresh application which, however, was rejected on the ground that his father did not meet "3(three) years of Service" criteria as notified under Government O.M. No. ABP 50/2006/Pt/182 dated 01.06.2015.

6. The learned counsel for the appellant submits that the application of the appellant seeking compassionate appointment could not have been rejected by the authorities on three occasions by referring to three separate grounds. That apart, when the father of the appellant expired in the year 2011, the O.M. No. ABP 50/2006/Pt/182 dated 01.06.2015 was not even in force and, therefore, the O.M. No. ABP 50/2006/Pt/182 dated 01.06.2015 was not applicable to the appellant and therefore the rejection of the appellant on the ground that his late father did not fulfill the "3(three) years of service" criteria is wholly uncalled for and arbitrary. The learned counsel for the appellant submits that such

arbitrary actions of the Government being not considered by the learned Single Judge, the impugned Judgment calls for due interference and consequential orders for appointment of the appellant on compassionate ground be passed by the Appellate Court.

7. Mr. M. Nath, learned counsel for the respondent Nos. 2, 3, 4 & 6 submits that the consideration of the appellant for appointment on compassionate ground pertains to the year 2011 and the same being rejected in the year 2012 no fresh application could have been furnished by the appellant again. The appellant also has not placed on record any evidence to suggest that the fresh application was furnished at the instance/advise of the Department.

8. The learned counsel for the Department disputes such contentions of the learned counsel for the appellant. The learned counsel for the respondents refers to the Judgment of this Court referred in *Achyut Ranjan Das and Ors. –Vs- State of Assam and Ors.*, reported in *2006 4 GLT 674*, wherein this Court had laid down certain guidelines for consideration of the cases for compassionate appointments across various departments in the State of Assam. Referring to the said guidelines, the learned counsel for the respondents submits that in terms of the guidelines, cases of eligible candidates which remain pending and could not be considered due to want of vacancy for a period of two years will require no further consideration and will have to be understood to have spent their force.

9. The learned counsel for the respondents, therefore, submits that there is no infirmity in the order passed by the learned Single

Judge and the Department had rightly rejected the case of the appellant and, therefore, the writ appeal ought to be dismissed.

10. We have heard the learned counsels for the parties and we have also perused the pleadings on record.

11. From the pleadings on record, it is seen that although the appellant filed his application for appointment on compassionate ground vide application dated 25.11.2011, in the meeting held on 27.03.2012, the District Level Committee rejected his case for want of vacancy. Subsequently, it is seen that the District Level Committee again considered his case and vide meeting held on 28.09.2012 his case was rejected on the ground of appellant being under qualified for the post of 'Gram Sevak'. These orders of the District Level Committee were never assailed by the appellant. Thereafter, the appellant again filed a fresh application, which was considered and rejected by the District Level Committee vide its meeting held on 01.03.2017.

12. It is no longer *res integra* that compassionate appointments are made in order to enable the family members of the deceased employee to tide over the immediate hardship and the misfortune that has befallen on the family because of expiry of the sole earning member of the family. Therefore, the purpose of the scheme for compassionate appointment is primarily to enable the family to tide over the immediate crisis caused by the death of the family member who was an employee under the Department.

13. The law laid down by the Apex Court in this context is very clear that the object of such a scheme is not to give any member of the family any post much less a post held by the deceased relative.

The object of granting compassionate appointment is solely to enable the family to provide succour to the needy family and to avoid financial destitution. There is no vested right that can accrue in respect of any member of the deceased family to the post held by the deceased employee or any other post under the compassionate scheme.

14. In this context reference may be made to the law laid down by the Apex Court in *Umesh Kumar Nagpal –Vs- State of Haryana and Ors.*, reported in (1994) 4 SCC 138 and the several Judgments rendered by the Apex Court thereafter. Further this Court in the case of *Achyut Ranjan Das and Ors. (supra)* had also laid down certain principles as deducible from the various pronouncements of the Apex Court under which cases of compassionate appointment ought to be considered by the Department. A reference to the said principles referred to in this Judgment would be relevant for the purposes of this case. The proposals at Paragraph- 7 of the said Judgment reads as under:-

"I. All pending applications against existing and available vacancies as per the quota earmarked including the cases of the Petitioners in the present cases and all others, who may not be before the Court, shall be decided in accordance with the proposed directions to be laid down in the present order and also in accordance with the principles noted in the preceding paragraphs of this order. This will be done within a period of 4 (four) months from today. The present direction naturally has to be considered as a one-time measure in view of the subsequent direction as laid down in the succeeding paragraphs.

II. The District Head of each Department will intimate the vacancies as and when such vacancies occur, to the Court

Appointed District Level Committees for its scrutiny. There will be no delay in such intimation.

III. The District Level Committee will be constituted by the Deputy Commissioner of the District and the Superintendent of Police. The Deputy Commissioner himself will sit in the Committee. The District Head(s) of such departments in which vacancies are available shall be co-opted as the Additional Members of the Committee.

IV. The District Level Committee will meet once every 2 (two) months on the last Saturday of the second month.

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 "seniority of the claim" will not be resorted to unless two or more eligible candidates are at par.

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. v. 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.

VII. The recommendations of the District Level Committee will be considered by a State Level Committee consisting of the Chief Secretary and the Senior Financial Commissioner of the State. The Commissioner and Secretary of the Department(s) in which vacancies are available will be co-opted as Additional Members of the State Level Committee.

VIII. The State Level Committee will meet once every 3 (three) months.

IX. All vacancies available against the quota of compassionate appointment must be filled up within a period of 6 (six) months from the date of occurrence of the vacancy in accordance with the present directions.

X. If the applications of eligible candidates remain pending and cannot be considered due to want of vacancies for a period of 2 (two) years from the date of making such applications, all such applications will require no further consideration and must be understood to have spent their force.

15. At serial No. 'X' of the principles laid down, it has been held that cases which remain pending and cannot be considered due to want of vacancy for a period of 2(two) years from the date of making applications will required no further consideration must be considered to have been spent *their force*.

16. As discussed above, the appellant's father expired on 27.09.2011 and his case of compassionate appointment was rejected by the District Level Committee first in its meeting held on 27.03.2012 and thereafter in its meeting held on 28.09.2012. It is the pleaded case of the appellant that he become aware of such rejection only in the year 2014 and pursuant to which he filed

another application on 27.10.2016. The rejection of the appellant's first application by the District Level Committee vide its meetings held on 27.03.2012 and 28.09.2012 were never challenged by the appellant. The subsequent application dated 27.10.2016 was filed almost 5(five) years after expiry of his father. It is also seen that by the earlier writ petition being WP(C) No. 1636/2017 the challenge made therein was to the non-consideration of his subsequent application dated 27.10.2016. And accordingly, vide order dated 03.11.2017 the writ petition was disposed of directing the Department to intimate the appellant about the decision of the District Level Committee. The decision taken by the District Level Committee vide its meeting held on 01.03.2017 came to be assailed by the subsequent writ petition being WP(C) No. 132/2021 which came to be dismissed vide order dated 20.08.2021 and which order is under challenge. The learned Single Judge although came to a finding that there were materials on record to show that the vacancies which arose in the year 2011-12 relating to the year of the death of the father of the petitioner are still lying vacant and that contents of the minutes of the District Level Committee dated 27.03.2012, 28.09.2012 and 01.03.2017 were incorrect or erroneous, the learned Single Judge however came to the conclusion that since there were three posts available in the establishment and as per the Office Memorandum dated 02.03.2009 under which the petitioner is covered, the compassionate appointment quota being 5(five) per cent of the vacancies in the year, therefore, not even one post will fall for consideration under compassionate appointment under the Department as sought to be claimed by the appellant. In view of such findings, the writ petition was dismissed on two counts, firstly,

there is no vacancy for the year 2011-12, and secondly, in view of the cadre strength of 3(three) cannot be any reservation is so far it relates to compassionate appointment as per Office Memorandum dated 02.03.2009.

17. Such view taken by the learned Single Judge on the facts and circumstances of the case is a possible view and is certainly not perverse. Therefore, in a Intra-Court appeal unless the view of the learned Single Judge is perverse, no interference is called for¹.

18. In view of the discussions made herein above and considering the law laid down by the Apex Court as well as by this Court in *Achyut Ranjan Das (supra)*, we do not find any infirmity in the order passed by the learned Single Judge, consequently there being no merit in the appeal.

19. Accordingly, this writ appeal is dismissed as being without any merit.

JUDGE

CHIEF JUSTICE

Comparing Assistant

¹ (2020) 16 SCC 478 – N. Ramachandra Reddy –Vs- State of Telangana and Others