

GAHC020001302020



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

Case No. : WP(C) 54/2020

1:KILANGSANGLA
HOKIYONG WARD

VERSUS

1:STATE OF NAGALAND AND 2 ORS
Kohima

2:COMMISSIONER AND SECRETARY SOCIAL WELFARE NAGALAND
Kohima

3:DIRECTOR STATE SOCIAL WELFARE NAGALAND
Kohim

Advocate for the Petitioner : SENTIYANGER

Advocate for the Respondent : GOVT ADV NL

BEFORE
HON'BLE MR. JUSTICE S. HUKATO SWU

JUDGEMENT

Date : 23-03-2021

This is a writ petition filed under 226 of the Constitution of India for issuance of a writ in the nature of mandamus/certiorari whichever is appropriate for a direction to protect the fundamental right of the petitioner as enshrined in Part-III of the Constitution specifically under Article 14, 16 and 21.

2. The case of the petitioner is that her late father Imdongchujang died in harness on 02-11-2011 while serving as S.A.A. (Grade-III non gazette post) under CDPO Office Mokokchung. The petitioner herein has filed an application dated 17-11-2011 before the

Director of Social Welfare, Nagaland, Kohima for considering her case for appointment on compassionate ground. There was no response from the State respondents. Thereafter, another representation was filed on 26-09-2018 before the Director of Social Welfare, Nagaland, Kohima. However, again the State respondents did not take any steps.

3. Being aggrieved, the petitioner filed a writ petition as W.P. (C) No. 30 (K) of 2019, this Court by order dated 28-03-2019 had disposed of the said writ petition with a direction that the State respondents should consider the representation filed by the petitioner on the previous occasion in conformity with the Office Memorandum dated 17-09-2015 concerning the scheme of compassionate appointment that is in existence in the State. The petitioner approached the respondents with a copy of the order passed by this Court and filed a representation. However, the petitioner was again denied appointment on the ground that she was not qualified to be appointed as Grade-III employee which has the requisite qualification of Graduate for employment and for appointment to the post of Grade-IV, it was informed by the concerned department that the Ministry of Women and Child Development by letter dated 23-11-2017, all Grade-IV appointment has been phased out. The same information was communicated by the Department under letter NO.SW/CR-85/2019-210 dated 11-06-2019. The petitioner being so placed was of the view that as and when vacancy arose she would be considered for appointment under the compassionate appointment scheme for the State Government employee who die in harness in any other wing of the Social Welfare Department. The petitioner having received this negative reply from the State respondents has no option but to come again before this Court in a fresh writ petition.

4. Learned counsel for the petitioner submits that the condition and reply given by the State respondents are subject to doubt. The petitioner has taken steps to file RTI before the concerned department and in the RTI reply, the Government of Nagaland, Directorate of Social Welfare by a letter NO.SW/RTI-10/2020/60 dated 22-05-2020 has given the information as desired by the petitioner the contents of which is reproduced below:

“Compassionate appointment

Sl.No	Name of	Designation	Appointed against
.	compassionate appointee		

1	Smti Loreno	Peon	Against Shri. Asao Duftry Rtd. On 30.04.2017
2	Shri. L.Hamyao	Peon	Against Late T.Lualang Chowkidar expired on 25.02.2016
3	Shri. Renbenthung Odyou	Peon	Against Shri. Santsupomo Peon Rtd. On 31.07.2017
4	Shri Lunpao Sitlhou	Peon	Against Shri Neikhwezu Peon Rtd. On 31.08.2017
5	Smti. Kelhousedenuo Keditsu	Peon	Against Lt. Puchobol Savio Peon expired on 29.09.2016
6	Shri Sosangtemjen	Peon	Against Shri Neingulo Chowkidar retired on 31.10.2016

5. The above RTI reply furnished by the respondents clearly demonstrates that candidates were given appointment on compassionate ground during the period when the petitioner's case ought to have been considered. All the appointments shown in the RTI reply suggests that the appointments were made in the year 2016 and 2017 when the petitioner's case was in active consideration. RTI also reflects that out of the six appointees on compassionate appointment, only two appointees were genuinely considerable for appointment on compassionate ground. However, rest of the appointees who were appointed has been shown against the retired employees. This clearly reflects that the petitioner was deprived of her right to be appointed on compassionate ground. The case of the petitioner could have been considered in place of the four candidates who were not qualified to be appointed on compassionate ground. The petitioner is also apprehensive that the respondents may not consider her case in the near future considering her age. Therefore, it has been prayed that appropriate order may be issued against the respondents since the delay was caused by the respondents and the petitioner should not suffer for no fault of her's. He has placed reliance on the ruling of the Apex Court in the case of

State of West Bengal and Others –vs-Banibrata Gosh and Others, reported in (2009) 3 SCC 250, wherein, the Apex Court had given direction for relaxation of the age of the petitioner when fault lies with the respondents who delayed the matter by 10 years. Para 32 of the judgment is reproduced below:-

“ 32. Considering that the writ petition remained pending for 10 years and thereby, the respondent might now have become barred by age for fresh employment, we recommend that the Government may consider the condonation of the age bar, if any, on the part of the respondent. We accordingly set aside the judgment of the Division Bench and restore that of the learned Single Judge and allow the appeal but without any order as to costs.”

6. He has also relied on the judgment of the Division Bench of our own High Court in the case of *Ajij Jaman Barbhuiya-vs-State of Assam & Ors*, reported in 2018 (2) GLT 280, wherein, it has been ruled that the delay caused by the State respondents should not make the petitioner suffer being disprivileged on being considered for appointment on compassionate ground. Para 4 and 5 of the judgment are reproduced below:-

“4. At the very outset, we make it clear that this Court is not oblivious of the fact that if a family has managed to sustain itself for more than couple of years consequent upon the demise of the bread earner in the family, such family perhaps have overcome the initial financial trauma and is not in urgent need of a Government job. What we are concerned in the present case is the sheer lackadaisical attitude demonstrated by the State respondents in handling a case seeking compassionate appointment, causing inordinate delay in the process. To go back to the relevant dates in the instant case, death occurred to the appellant's father on 06.08.2009 and about two months thereafter necessary application in proper format was submitted for appointment on compassionate ground. Instead of bringing the application to its logical conclusion within the earliest possible time not later than two years, the respondent authorities sat over the matter and it was only on 30.07.2014, that is well after four years, it was placed before the District Level Committee. Due recommendation was made by the District Level Committee, having regard to the suitability of the appellant as well as vacancy position obtaining as on November, 2013. As approval of the State Level Committee was required prior to making appointment on compassionate ground, the same was placed before the State Level Committee on 01.04.2015 and again on 09.12.2015. However, the appellant's case was not considered favourably due to want of vacancies. There are no materials on record to show that the decision of the State Selection Committee was communicated to the appellant. As the appellant was in complete dark about the fate of his case before the State Level Committee, he instituted WP(C) 5703/2016. Pursuant to order of the Court dated 21.09.2016, his case was again considered on 11.08.2017 but with the same result that for want of vacancy and the elapse of more than 8 years, the case of the appellant was beyond consideration having spent its force.

5. Application made by the appellant for appointment on compassionate ground well within time on 07.10.2009 was brought to an end only on 11.08.2017. The inordinate delay in the disposal of the application certainly cannot be attributed to the appellant. Further, non-application of mind is also demonstrated by the State Level Committee in rejecting his case due to want of vacancy when an exercise had already been conducted by the District Level Committee certifying the suitability of the appellant and existence of vacancies in the post of

Forest Guards under the establishment of the Divisional Forest Officer, Social Forestry Division, Silchar. Rejection of an application without due application of mind and as a matter of course and by employing the expressions "want of vacancy" and "spent its force", are easy methods to deprive a candidate from his legitimate entitlement. Such course of action would only go to frustrate and defeat the very object governing compassionate appointments. These shortcomings finds best illustration in the present case where the candidature of the appellant was rejected for want of vacancy despite favourable recommendation being made by the District Level Committee having regard to existence of vacancies and on ground of elapse of time, for which the appellant cannot be found fault at."

He argues that the facts of the case in the present petition is also in parameteria with the above mentioned judgment.

7. For the above stated reasons and arguments placed before this Court, learned counsel for the petitioner has prayed that appropriate direction may be given to the State respondents.

8. Learned counsel for the respondent Nos. 2 and 3, Ms. Apila Sangtam, submits that the petitioner's case is being considered by the Department. She submits that the respondents are maintaining petition concerning the compassionate appointment serially and their names are considered in turn on seniority as and when retirement occurs. She also submits that the Department is willing to consider the case of the petitioner as and when vacancy arises.

9. On considering the materials on record and also the submissions made by the parties and also having considered the earlier petition which was disposed and directed by this Court in W.P. (C) 30 (K) of 2019, this Court is of the view that the petitioner has made out a case for consideration of her case under the Office Memorandum NO. AR-8/8/78 dated 17-09-2015 for compassionate appointment scheme for State Government employees who die in harness. The matter having been dragged on for a considerable period of time, it is directed that in the event the vacancy arise and consideration for appointment of the petitioner's application is examined, the respondents shall take recourse upon Item No.8 of the Office Memorandum dated 17-09-2015 for relaxation of upper age limit in respect of the petitioner. The State respondent Nos. 2 and 3 are directed to examine the case of the petitioner for appointment on compassionate ground as and when vacancy arise in terms of the scheme contained above.

With the above direction, writ petition is disposed of.

Sd/-
JUDGE

Comparing Assistant