

GAHC010128602022



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

Case No. : WP(C)/4496/2022

PUSPA SARMAH @ PUSPHA SHARMA
W/O. LT. GAURANGO SHARMA @ GAURAGA SARMAH, R/O. MOJADAR
ALI, KUMAR GAON DERGAON, P.O./P.S. DERGAON, DIST. GOLAGHAT,
ASSAM, PIN-785614.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM, DISPUR,
GUWAHATI-781006.

2:THE SECRETARY

GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-781006.

3:THE DIRECTOR GENERAL OF POLICE

ULUBARI GUWAHATI-781007
DIST. KAMRUP (M)
ASSAM.

4:THE ADDL. DIRECTOR GENERAL OF POLICE (COMMN)

A.P.R.O.
ULUBARI
GUWAHATI-781007
DIST. KAMRUP (M)
ASSAM.

5:THE DEPUTY COMMISSIONER
DIMA HASAO
HAFLONG
ASSAM
PIN-788819.

6:THE COMMANDANT

5TH A.P. BATTALION
SONTILLA
DIST. DIMA HASAO
ASSAM
PIN-788819

Advocate for the Petitioner : MR. N K MURRY, MS P LINGGI,MS. O KITS,MS P TOKBIPI

Advocate for the Respondent : GA, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 02-04-2026

Heard Mr. N.K. Murry, learned counsel for the writ petitioner. Also heard Ms. M. Bhattacharjee, learned Addl. Sr. Govt. Advocate, Assam appearing for the State respondent.

2. The petitioner in the present writ petition has assailed the decision of the jurisdictional District Level Committee (DLC) dated 13-11-2014, rejecting the claim of the petitioner for appointment on compassionate ground, for the reason that the application submitted by the petitioner, was so submitted after lapse of a period of one year from the date of the death of her husband, late Gauranga Sarma.

3. The husband of the petitioner, while working as a Sub-Inspector (AB), had died-in-

harness on 16-06-2013. The petitioner had submitted an application for consideration of her case for appointment on compassionate ground. The application submitted by the petitioner came to be placed before the jurisdictional DLC in its meeting held on 13-11-2014. The jurisdictional DLC upon consideration of the application of the petitioner had rejected the same on the ground that the same was so preferred after a period of one year since the death of her husband, which had occasioned on 16-06-2013. It was further noted in the said decision that the application of the petitioner is found to have been so preferred on 28-08-2014. It is seen that the petitioner, thereafter, had not assailed the said decision of the jurisdictional DLC as arrived at in its meeting held on 13-11-2014.

4. Thereafter, the son of the petitioner had submitted an application for consideration of his case for appointment on compassionate grounds. The said application not being considered, he had approached this Court by filing W.P.(C) No. 6463/2019. A coordinate Bench of this Court vide order dated 17-11-2020, rejected the said application by noticing that the application was filed by the son of the petitioner, herein, on 05-09-2014 and he had instituted the writ petition being W.P.(C) No. 6463/2019 on 26-08-2019, i.e. approximately 05 years after submission of the said application in the matter claiming appointment on compassionate grounds. This Court held that the very concept of compassionate appointment lost its force after several years of the death of the sole bread-earner and it implies that the family has been able to overcome the immediate loss of the sole bread-earner. In the said order dated 17-11-2020, this Court was apprised by the State respondents that the petitioner, herein, had also preferred an application for appointment on compassionate grounds on 05-19-2013, however, the same was rejected

on 13-11-2014.

5. The petitioner, herein, thereafter, filed a review application being Review Petition No. 68/2022, praying for review of the judgment and order dated 17-11-2020 passed in W.P.(C) No. 6463/2019. The coordinate Bench of this Court vide order dated 23-05-2022 proceeded to dismiss the said review petition.

6. Thereafter, the writ petitioner, herein, has instituted the present proceeding by contending that the coordinate Bench vide order dated 17-11-2020, passed in W.P.(C) No. 6463/2019, having noticed that the application preferred by the petitioner claiming for appointment on compassionate grounds, in pursuance to the death of her husband in harness was dated 05-09-2013, has projected that the rejection of her case by the jurisdictional DLC was clearly perverse, inasmuch as, the jurisdictional DLC in its decision had noticed that the application preferred by the petitioner was so preferred only on 28-08-2014. The petitioner projects that the application submitted by the petitioner being found to have been so submitted on 05-09-2013, a due consideration of her case for appointment on compassionate grounds not having been extended to her, the present proceeding has been instituted. The petitioner has further projected that the rejection of her application for appointment on compassionate grounds by the jurisdictional DLC had come to her knowledge only when the writ petition instituted by her son, i.e. W.P.(C) No. 6463/2019 was disposed of by a coordinate Bench of this Court vide order dated 17-11-2020.

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

8. The facts noticed, hereinabove, are not in dispute. Upon death of the husband of the petitioner, she had submitted applications claiming for appointment on compassionate grounds. The application that came to be placed before the jurisdictional DLC was dated 28-08-2014 and accordingly, the jurisdictional DLC had proceeded to reject her claim by noticing that she had applied for appointment on compassionate grounds after a lapse of one year from the date of death of her husband. It is seen that the petitioner who was in urgent need of being extended with appointment on compassionate grounds, after the death of her husband had not pursued the claim made by her for appointment on compassionate grounds after submission of an application in the matter. No proceeding came to be instituted before this Court and there is also no representation brought on record to reflect that the said claim was being pursued by the petitioner diligently.

9. This Court finds that the petitioner had given up her claim for appointment on compassionate grounds and the said claim was taken up by her son Kiron Sarma. The son of the petitioner had instituted writ petition being W.P.(C) No. 6463/2019, the said writ petition as noticed, hereinabove, was disposed of vide order dated 17-11-2020. A perusal of the said order reflects that on the date of death of the husband of the petitioner, her son was a minor and accordingly, when he became major, has submitted his application dated 05-08-2014. A coordinate Bench of this Court upon close examination of the issues arising in the matter had disposed of the said writ petition with the following observations:-

“.....

In the present case, it is not in dispute by the parties that on the death of the late AB SI Gauranga Sharma, the wife (petitioner's mother) had applied for

compassionate appointment within the time limit i.e. on 05.09.2013 and the same had been rejected by the DLC on 13.11.2014. Interestingly, the petitioner has not specified in his pleadings (writ petition) as to who had submitted the application for compassionate appointment on 05.09.2013. As there has been no denial of the averments made by the respondents that the wife of late AB SI Gauranga Sharma had submitted an application for compassionate appointment on 05.09.2013, it is clear that the application was submitted by wife of the late AB SI Gauranga Sharma on 05.09.2013. Also while the application of the petitioner's mother had been rejected on 13.11.2014, no challenge has been made to the said rejection by the petitioner's mother till date."

.....

18) Besides the above, it is seen that while the petitioner's case is that he had filed his first application for compassionate appointment on 05-09-2014, he has approached this Court only on 26.08.2019, i.e. approximately 5 years after filing his first application for compassionate appointment. It has to be kept in mind that the very concept of compassionate appointment loses its force after several years after the death of the sole bread earner, as it implies that the family has been able to overcome the immediate loss of the bread earner. Keeping the above in view, this Court is also of the view that the present writ petition is hit by delay and laches.

10. The petitioner, herein, thereafter, instituted a review petition being Review Petition No. 68/2022 and the coordinate Bench of this Court vide order dated 23-05-2022 had dismissed the said review petition by observing as follows:-

“.....

The petitioner by way of this review petition has prayed for deleting the sentence in Paragraph 9, which is as follows:

“Also while the application of the petitioner's mother has been rejected on 13.11.2014, no challenge has been made to the said rejection by the petitioner's mother till date.”

The petitioner's counsel submits that while there is no dispute to the said fact that the petitioner's mother had not made any challenge to the rejection of her application for compassionate appointment by the State respondents, the retention of the said sentence in the impugned order dated 17.11.2020 passed in WP(C) No.6463/2019 would be a road block if the petitioner's mother wanted to challenge

the rejection of her application for compassionate appointment on 13.11.2014.

On considering the submissions made by the counsel for the review petitioner, this Court does not find that any case for review has been made out, inasmuch as there is no dispute with regard to the correctness of the observation reflected in the said sentence.

11. The institution of proceedings by the son of the petitioner would go to reveal that she had given up her claim for appointment on compassionate grounds in favour of the consideration to be made in respect of her son. It is settled law that only one member of a family of the deceased employee is entitled to prefer an application for appointment on compassionate grounds. In the present case, it is found that the petitioner, herein, and her son had alternatively made claims for appointment on compassionate grounds. The claim made by the son of the petitioner having been rejected by the order dated 17-11-2020, no challenge being presented to the said order, the claim made by the son of the petitioner would not mandate any further consideration. In respect of the petitioner, herein, she having given up her claim and not pursued the same diligently after the submission of her application for appointment on compassionate grounds now cannot re-agitate her claim for consideration of her case for appointment on compassionate grounds and that too after a long delay occasioning in the matter in institution of such claim. The basis of institution of the present writ petition is the date of the submission of the application as noticed by the coordinate Bench vide order dated 17-11-2020 while disposing of W.P.(C) No. 6463/2019. Even if it is to be assumed that the petitioner, herein, had submitted her application on 05-09-2013, she having not pursued the said claim for long 09 (nine) years till the institution of the present writ petition coupled with the fact that the said claim was, thereafter, pursued by her son reveals that the petitioner's claim

has been rendered a stale one and the same would not mandate consideration at this stage. Further, even if the respondents had erroneously rejected the case of the petitioner by holding that her case did not mandate a consideration as the application submitted by her was so submitted after a lapse of a year from the date of death of her husband, the petitioner being found not to have pursued her application submitted in the matter diligently over the years, this Court, at this stage, would not exercise its discretion under the provisions of Article 226 of the Constitution of India to direct the respondents to extend a consideration to such application submitted by the petitioner in the matter.

12. At this stage, decision of the Hon'ble Supreme Court in the case of ***State of W.B. Vs. Debabrata Tiwari & Ors.*** reported in ***(2025) 5 SCC 712*** is required to be noticed. The Hon'ble Supreme Court in the said decision had drawn the following conclusions:-

“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 breadwinner, 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 third-party 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."

13. Applying the said decision of the Hon'ble Supreme Court to the facts of the present case, this Court finds that the claim made by the petitioner in the present proceeding is a stale one. Accordingly, this Court is of the considered view that it is not a fit case to direct the respondent authorities to consider the claim of the petitioner for appointment on compassionate grounds after lapse of around 13 (thirteen) years since the date of death of the Government servant.

14. Accordingly, the writ petition is held to be devoid of any merit and the same stands dismissed. However, there would be no order as to cost.

JUDGE

Comparing Assistant