

GAHC010034122021



2024:GAU-AS:11225

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

**Case No. : WP(C)/1315/2021**

DWIPJYOTI PATOWARY  
S/O LATE RANJIT PATOWARY  
RESIDENT OF WARD NO. 4, SARTHEBARI TOWN, PO AND PS SARTHEBARI,  
MOUZA SARUKHETRI, DIST BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE  
PERSONAL DEPARTMENT (B) , GOVT. OF ASSAM

2:THE PRINCIPAL SECRETARY  
TO THE GOVT. OF ASSAM  
HOME (A) DEPARTMENT  
DISPUR GUWAHATI 06

3:THE COMMISSIONER OF POLICE  
GOVT. OF ASSAM

4:THE SENIOR SUPERINTENDANT OF POLICE  
GUWAHATI  
KAMRUP M ASSAM

5:THE DEPUTY COMMISSIONER

KAMRUP

**Advocate for the Petitioner** : MR. B K DAS,

**Advocate for the Respondent** : GA, ASSAM,

**BEFORE**

**HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**

Advocate for the petitioner: Shri BK Das  
Advocate for the respondent: Shri R. Dhar, Addl. Sr. GA-Assam.

Date of hearing : **08.05.2025**  
Date of Judgment : **08.05.2025**

**JUDGMENT & ORDER**

The instant petition under Article 226 of the Constitution of India has been filed challenging, *inter alia* the non-consideration and appointment of the petitioner on compassionate ground.

2. The projected case of the petitioner, in a nutshell is that his father, Ranjit Patowary, who was working as a Constable under the Establishment of the Sr. Superintendent of Police, City Guwahati, Kamrup (M), had died in harness on 12.06.2008. The petitioner was stated to be a minor at the time of the death of his father. It has been averred that on attaining the age of majority, his mother had made an application which however was not responded to. Thereafter, his mother again applied for compassionate appointment of the petitioner vide application dated 11.05.2016. However, the petitioner claims that the District Level Committee (DLC) in its meeting held on 02.04.2018 had rejected the application of the petitioner due to late submission of application. The petitioner also claims to have submitted a representation dated 02.11.2019 which was not responded to and

thereafter, the present writ petition has been filed.

3. I have heard Shri K. Kalita, learned counsel appearing on instructions of Shri BK Das, learned counsel for the petitioner. I have also heard Shri R. Dhar, learned Additional Senior Government Advocate, Assam for all the respondents.

4. The learned counsel for the petitioner has submitted that there was no negligence on his part in applying for appointment on compassionate ground. It is submitted that the petitioner was a minor at the time of death of his father and only upon attaining majority, he could apply for the same. He therefore, submits that the reasons cited for rejection namely, delay in applying is arbitrary and requires intervention. He accordingly submits that appropriate directions be issued for such consideration and appointment.

5. *Per contra*, Shri Dhar, learned State Counsel has submitted that the objective of the scheme for appointment on compassionate ground is to give immediate relief to a bereaved family which has lost its sole breadwinner, who was a Government servant. It is submitted in the instant case that the death was in the year 2008 and in the meantime, almost 17 years have passed and therefore, there is no requirement in law for such consideration. He has also highlighted that the aspect of delay in approaching this Court. The learned State Counsel has relied upon the case of ***State of West Bengal Vs. Debabrata Tiwari*** reported in ***AIR 2023 SC 1467*** to contend that the instant application is without any merits. He has also referred to a judgment dated 12.12.2023 passed by this Court in ***WP(C)/6916/2023 [Tapan Saikia Vs. the Chief Secretary & Ors.]*** in

which the aspect that for the State of Assam, there is no Government Circular to permit the minor to submit belated application for compassionate appointment has been highlighted.

6. The rival contentions of the learned counsel for the parties have been duly considered.

7. The facts on record make it clear that the death of the father of the petitioner was on 12.06.2008 and the application was claimed to be made by the petitioner in the year 2016 after the petitioner had attained majority.

8. The law is well settled on the field of appointment on compassionate ground. It has been laid down that in a case where an applicant was a minor at the time of death of the Government servant, there is no requirement in law to wait for such consideration till such applicant attains majority. Further, in the instant case, as on today, about 17 years have passed since the date of death. Thus, issuing a direction to consider now would not be in consonance with the scheme.

9. The very objective of appointment on compassionate ground, which is an exception to the general mode of recruitment, is to give immediate succor to a family which has lost its sole breadwinner who was a Government servant and such objective would not survive after a gap of 17 years.

10. The Hon'ble supreme Court in the case of ***Sanjay Kumar Vs. State of Bihar*** reported in ***(2000) 7 SCC 192*** has laid down as follows:-

*“3. We are unable to agree with the submissions of the learned*

*Senior Counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the breadearner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education v. Pushpendra Kumar. It is also significant to notice that on the date when the first application was made by the petitioner on 2-6-1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there are some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief.”*

11. The law on compassionate appointment has been elaborately explained by Hon'ble Supreme Court in the recent case of **Debabrata Tiwari** (supra). In the said case, almost all the earlier cases on the subject of compassionate appointment have been discussed and the principles have been laid down. It has been reiterated that an appointment on compassionate ground is a departure from the normal rule and is an exception which is meant only to enable the bereaved family to tie over the sudden financial crisis on the death of a government servant while in service. It has also been clarified that it is not a vested right and the aspect of delay would be of paramount consideration. The relevant portion of the said judgment is extracted hereinbelow-

*“7.2. 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 dependants 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.”*

12. On the aspect of delay, the Hon'ble Supreme Court in the aforesaid case of ***Debabrata Tiwari*** (supra), while examining the said aspect from the context of the scheme has also laid down that even if the delay is on account of the authorities, the sense of immediacy is diluted and lost. The relevant part as observed in paragraph 7.5 of the aforesaid judgment is extracted herein below:-

*“7.5. 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 thought 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."*

13. An appointment on compassionate ground is a departure from the normal mode of recruitment wherein a certain quota is reserved and the objective is to enable a bereaved family losing their sole breadwinner who was a government servant to overcome the immediate financial crisis. It has been laid down that such appointment cannot be held to be a matter of any vested right and it is not a source of recruitment.

14. In the instant case, the issue raised regarding the delay is required to be considered *vis-à-vis* the observation made by the Hon'ble Supreme Court in paragraph 7.5 of the case of **Debabrata Tiwari** (supra). It has been clearly laid down that in case of prolonged delay either on the part of the applicant or the authorities, the sense of immediacy is diluted and lost. In view of aforesaid law laid down by the Hon'ble Supreme Court, this Court has no other option but to hold that any further direction for consideration of the case of the petitioner on compassionate ground after a period of about 17 years from the death of a Government servant would not be in sync with the objective of the scheme for compassionate appointment. Even from the date of rejection which is 02.04.2018 there is

an unexplained and inordinate delay of more than 3 years in filing their writ petition which was done on 19.02.2021. In the case of ***Tapan Saikia*** (supra), this Court has also laid down that so far as the State of Assam is concerned, there is no Government Circular permitting a minor to submit application for appointment on compassionate ground at a belated stage.

15. Accordingly, this Court is not in a position to grant any relief to the petitioner.

16. The writ petition accordingly stands dismissed.

**JUDGE**

**Comparing Assistant**