

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA,
MANIPUR, TRIPURA, MIZORAM AND ARUNACHAL PRADESH)
ITANAGAR BENCH

Writ Petition (C) 290 (AP) of 2011

Smt. Yotu Lomdik,
Wife of Late Constable, Tassar Lomdik,
B.N.Colony Chimpu,
C/o Commandant Office
Chimpu, Itanagar.

... .. **Petitioner**

Versus

1. The State of Arunachal Pradesh.
Represented by the Commissioner (Home),
Govt. of Arunachal Pradesh,
Itanagar.
2. The Director General of Police,
Govt. of Arunachal Pradesh,
Police Headquarter (PHQ),
Itanagar.
3. The Selection Board constituted for
deciding compassionate appointment cases,
represented by its Chairman,
Deputy Inspector General of Police (E),
Police Headquarter(PHQ),
Itanagar.

... .. **Respondents.**

BEFORE
THE HON'BLE MR.JUSTICE S.C. DAS

For the petitioner : Mr. L. Tenzin, Mr. T. Tsom,
Mr. K. Saxena and Mr. A. K. Singh.
Advocates.

For the respondents : Mr. N.Lawang, Addl.Sr.G.A.

Date of hearing : **23.08.2012**

Date of delivery of
Judgment & order : **23.08.2012**

JUDGMENT & ORDER (ORAL)

By this writ petition the petitioner prayed for issuing a writ of mandamus, directing the respondents to consider the case of the petitioner for her appointment on compassionate ground, for the death of her husband, who had died in-harness.

2. Heard learned counsel, Mr. L. Tenzin, for the petitioner and Additional Sr. G.A., Mr. N. Lawang for the respondents.

3. It is inter alia stated by the petitioner that her husband Tassar Lomdik, while in service, as a constable of police under the Police department, Govt. of Arunachal Pradesh, died on 02.05.2009 leaving behind the petitioner and 6(six) minor children, the youngest one was aged about 3 years. The deceased constable was the sole bread earner of the petitioner and her children and on his death, the petitioner and her children facing immense hardship for survival and therefore, the petitioner immediately made an application to the respondents, authority of her husband for providing her a suitable job to come out of imminent financial hardship, on compassionate ground. The petitioner produced all documents in respect of her

qualification (Class VIII passed) and other relevant testimonials and on consideration of those documents and after taking physical measurement etc., the name of the petitioner was enrolled on Sl. No.225 (Roll No.00463) in the list of candidates eligible for appointment under Group-D post. Thereafter, by a call letter dated 19-01-2011(Annexure-5 to the writ petition), the petitioner was asked to appear before the Selection Board on 23-02-2010 at 9-30 hours for physical efficiency test, written test, trade test and viva-voce etc. Accordingly, she appeared before the Board and the Board considering her application ,based on her educational qualification, physical measurement etc. and her testimonials, enlisted her for a Group D post under the department. The Chairman of the Board declared the total vacancy available under the Group-D posts and asked the petitioner and other candidates to give their preferences for any Group-D posts of Washer man, Cook, Water Carrier , Barber and Sweeper etc. There was only one post for Washer man and the petitioner gave her preference for that post. On 25.02.2011 the Selection Board conducted a trade test and the petitioner appeared in the trade test of Washer man and was waiting for further communication from the respondents, but received no response. Thereafter, the petitioner being helpless, through her uncle, collected all material documents regarding the selection process under the die-in-harness scheme and found that the Selection Board in the trade test awarded her only 5 marks

observing that she could not perform well in respect of the test of ironing clothes and therefore, she was excluded from further consideration for appointment on compassionate ground. It is contended by the petitioner that no financial assessment of the petitioner was made, which was a most important criteria for consideration of appointment in Group-D posts, on compassionate ground, and other relevant factors including that of the family condition, need of a job etc., were also not considered. The respondents considered appointment of 91 candidates but excluded the petitioner only on merit in respect of the trade test without considering other aspects. The petitioner, therefore, challenged the decision of the respondents and prayed for issuing necessary direction for consideration of her candidature.

4. Respondents contended that the application of the petitioner for her appointment on compassionate ground, on the death of her husband, who was a constable of police, was duly taken to consideration but in trade test she could only secure 5 marks and therefore, she was excluded from consideration. The trade test was held on 25.02.2001 and thereafter viva-voce test was taken for all other eligible candidates but since the petitioner could not succeed in the trade test, she was not called for viva-voce test. The selection was made according to the guidelines prepared by the department for appointment under compassionate ground (Annexure 3 to the writ petition) and as

per that guidelines, since the petitioner was not found eligible, her candidature could not be considered.

5. Learned counsel, Mr. Tenzin appearing for the petitioner, has submitted that the State Govt., in the Department of Personnel, Administrative Reforms and Training, issued a memo dated 4th July, 2001 (Annexure 2 to the writ petition), prescribing therein a scheme for compassionate appointment under the State Government. He has submitted that under that scheme, a revised consolidated instruction was issued and pursuant to that scheme, the police department prepared a guideline for appointment under compassionate ground. It is submitted by learned counsel that, while going through the selection process, the respondents virtually given goodbye to the very spirit of the benevolent scheme. The petitioner, while her husband was in employment was simply a house wife having educational qualification of Class VIII and she only opted for a Group-D job and chosen the post of Washer man as proposed by the Chairman of the Selection Board. She was found suitable taking her physical measurement and other tests but only in the trade test, she was given 5 marks out of 50, and was put out of the zone of consideration. She was not called for viva-voce test though there was no benchmark fixed for ousting her from the zone of consideration. There was only one post of Washer man and the petitioner was the only candidate for that post and since there was no benchmark fixed, it was not

proper for the respondents to eliminate her from the zone of consideration simply on the ground that, she secured 5 marks in the trade test. Learned counsel also contended that, for a job on compassionate ground, the merit cannot be the sole criteria and the principal criteria for such appointment should be the family condition and financial position of the family, but those factors have not been taken into consideration by the respondents and simply on trade test i.e. the test regarding ironing of dress, she was put out of the consideration zone. Learned counsel, therefore, contended that non consideration of the candidature of the petitioner is against the very concept of scheme formulated by the State Govt. and hence, prayed for Court's interference in the matter.

6. Learned State counsel, on the other hand, has submitted that the department formulated guidelines for selection of the candidates for appointment on compassionate ground keeping consistence with the scheme formulated by the State Govt. and since the petitioner could not come out successful in the trade test, she was not taken to consideration for appointment as a Washer man, in a Group-D post. Learned counsel, therefore, prayed for dismissal of the writ petition.

7. It is an undisputed fact that the husband of the petitioner died on 02.05.2009 while in service, as a constable of police, and he left behind the petitioner as his only wife and

6(six) minor children. The deceased was the sole bread earner and the petitioner and her children were dependent on the income of the deceased. There is no other source of income of the petitioner and her children. It is also an undisputed fact that, the petitioner immediately after the death of her husband submitted an application to the respondents seeking a job on compassionate ground. Her application was taken into consideration and she was found eligible for consideration of her appointment to a Group-D post. It is also an admitted fact that there were vacancies of Washer man, Cook, Water-carrier, Barber and Sweeper in Group-D posts and the petitioner preferred for appointment in the post of Washer man (a Group-D post). Only one Group-D post of Washer man was vacant and the petitioner was the sole candidate for the post. It is also an admitted that that the petitioner was called by letter dated 19-01-2011(Annexure-5 to the writ petition), informing her that she was eligible after checking her documents and conducting physical measurement etc. for the post of Group-D (Class-IV) on compassionate ground and she was directed to appear before the Selection Board for efficiency, written, trade tests etc. and for viva-voce.

8. The respondents conducted a trade test and awarded 5 marks to the petitioner and thereafter put her out of the consideration zone and that is the grievance of the petitioner for which she approached this court seeking redress.

9. Under Memo dated 04.07.2001 (Annexure-2 to the writ petition), State Govt. has formulated the scheme for compassionate appointment with the following object:-

"The object of the scheme is to grant appointment on compassionate grounds to a dependent family member of a Govt. servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Govt. servant concerned from financial destitution and to help it get over the emergency."

10. Para 3 of the scheme prescribes the authority competent to make compassionate appointments. Para 4, prescribes the post to which such appointments can be made and para 5, prescribes the eligibility for such appointments, which read thus:-

"3. AUTHORITY COMPETENT TO MAKE COMPASSIONATE APPOINTMENT.

Secretary in the Ministry/Department concern in all cases with prior approval of the Minister-in-charge of the Deptt."

4. POSTS TO WHICH SUCH APPOINTMENTS CAN BE MADE.

Group 'C' or Group 'D' posts against the direct recruitment quota.

5. ELIGIBILITY

- (a) *The family is indigent and deserved immediate assistance for relief from financial destitution; and*
- (b) *Applicant for compassionate appointment should be eligible and suitable for the post in all respects.*

Under the provisions of the relevant Recruitment Rules.”

11. Para 16 of the scheme prescribes some general guidelines which reads thus:-

"16.GENERAL

- (a) *Appointments made on grounds of compassion should be done in such a way that persons appointed to the post do have the essential educational and technical qualifications and experience required for the post consistent with the requirement of maintenance of efficiency of administration.*
- (b) *It is not the intention to restrict employment of a family member of the deceased or medically retired Group 'D' Government servant to a Group 'D' post only. As such, a family member of such Group 'D' Government servant can be appointed to a Group 'C' post for which he/she*

is educationally qualified, provided a vacancy in Group 'C' post exists for this purpose.

- (c) *The Scheme of compassionate appointments was conceived as far back as 1958. Since then a number of welfare measures have been introduced by the Government which have made a significant difference in the financial position of the families of the Government servants dying in harness/retired on medical grounds. An application for compassionate appointment should, however, not be rejected merely on the ground that the family of the Government servant has received the benefits under the various welfare schemes. While considering a request for appointment on compassionate ground a balanced and objective assessment of the financial condition of the family has to be made taking into accounts its assets and liabilities (including the benefits received under the various welfare schemes mentioned above) and all other relevant factors such as the presence of an earning member, size of the family, ages of the children and the essential needs of the family etc.*
- (d) *Compassionate appointment should not be denied or delayed merely on the ground that there is reorganization in the Ministry/Department/Office. It should be made available to the person concerned if there is a vacancy meant for compassionate appointment*

and he or she is found eligible and suitable under the same.

- (e) *Requests for compassionate appointment consequent on death or retirement on medical grounds of Group 'D' staff may be considered with greater sympathy by applying relaxed standards depending on the facts and circumstances of the case.*
- (f) *Compassionate appointment will have precedence over absorption of surplus employees and regularization of daily wage/casual workers with/without temporary status.*
- (g) *Any request to increase the upper age limit of 55 years for retirement on medical grounds prescribed in para 2(A) (b) & (c) above in respect of Group 'A' /'B'/'C' Govt. servants and to bring it at par with the upper age limit of 57 years prescribed therein for Group 'D' Govt. servant on the ground that the age of retirement has recently (May,1998) been raised from 58 years to 60 years for Group 'A'/'B'/'C' Govt. servant (which is at par with the age of retirement of 60 years applicable to Group 'D' Govt. servants) or on any other ground should invariably be rejected so as to ensure that the benefit of compassionate appointment available under the scheme is not misused by seeking retirement on medical grounds at the fag end of one's career and also keeping in view the fact that the higher upper*

age limit of 57 years has been prescribed therein for Group 'D' Govt. servants for the reason that they are low paid Govt. servants who get meager invalid person in comparison to others.

Therefore, all authority competent are directed to implement the above SCHEME WHILE ENTERTAINING ANY REQUEST FOR appointment on compassionate ground."

12. Admittedly, Police department formulated guidelines for appointment under compassionate ground (Annexure 3 to the writ petition). Para 4.4 of the guidelines prescribes thus:-

"4.4. Group -D : No written test is proposed for the Group-D posts. However, trade tests and viva voce for 50 marks and 10 marks respectively, may be conducted for the Group-D posts."

13. Para 6 of the guidelines prescribes thus :-

"Other parameters: In addition to above parameters, following criteria/parameters are also suggested with awarding of marks against each parameters for realistic assessment of the conditions of the candidates."

Sl. No.	Particulars	Max marks	Marks awarded
	Destitute		
	Both parents dead	15	15
	Both parents paralysed		15

	One parent paralysed		10
Dependents			
	More than 6	15	15
	Five		13
	Four		11
	Three		9
	Two		7
	One		5
	None		3
Nature of Death			
	While on ops duty	15	15
	While on normal duty		10
	Due to other reasons		07
Remoteness		5	05
Age			
	30 years to upper age allowed	10	10
	25-30		8
	20-25		6
	18-20		4
	Total	60	

14. Admittedly, the petitioner was found eligible for appointment to a post of Group 'D' and she had chosen the post of Washer man she was the single candidate for that post. According to the guidelines and according to letter dated

19.01.2011, the respondents were supposed to conduct physical efficiency test, written test, trade test and viva-voce test but it is evident that only after arranging a trade test, the petitioner has been excluded from the zone of consideration. Annexure 8 shows that the petitioner was awarded only 5 marks and the observation recorded, reads thus :-

"Performance not satisfactory as (1) did not know how to switch on iron (2) Buttoned up shirt before ironing (3) folded uniform trousers in wrong direction before ironing. Did not know basics of ironing/washing."

15. The above observation in Annexure-8, makes it clear that only considering the tests of ironing the clothes, her candidature was rejected. It is not understood as to whether the job of a Washer man is only confined to ironing of clothes or anything else. The petitioner is a widow of a constable and used to do house hold works while her husband was alive. The job of a Washer man cannot be said to be a highly technical job. The petitioner has been only asked to switch on the iron, possibly it was an electric iron, and, then to fold the clothes which she could not do in a right direction. In the ordinary course, it was not possible for a house wife. She might not have done such job while her husband was living. The job of a Class IV employee can in no way be termed as a super technical job. There is nothing before us that the respondents informed the petitioner

as to the nature of the tests she would have to face for the job. Had it been so, the petitioner would make some exercise and appear in the tests. Suddenly asking a house wife to iron the clothes, might have placed the petitioner in surprise. Beside the tests conducted for ironing, other tests were not conducted. In para 6 of Annexure 3, the respondents prescribed other parameters/criteria which has been reproduced above, but that is not at all intelligible. It is abundantly clear that except a test for ironing of clothes, the other eligibility tests were not conducted and no marks were given. A test must be conducted giving opportunity to a candidate on all items for which she was called. The financial condition of the petitioner, which is the most important criteria for consideration of appointment on compassionate ground has not been considered. As already reproduced above in the general guidelines, under the scheme it is made clear that while considering request for appointment on compassionate ground, a balanced and objective assessment of financial condition of the family has to be taken into account but unfortunately, that has not been done in the case of the petitioner and therefore, outright rejection of the petitioner's candidature only considering her trade test, is violative of her legal right. Her candidature would have been considered taking into account all other factors including her financial condition, need of the family for such a job, and her viva-voce tests etc.

16. This Court in the case of ***Achyut Ranjan Das and others V. State of Assam and others reported in 2006(4) GLT 674*** considered various aspects of compassionate appointment taking into consideration the law laid down by the Apex Court . In para 4 of the judgment , the court held thus:-

"4. The numerous precedents cited at the Bar will not require a detailed enumeration. Reference to the leading cases has already been made in the preceding paragraph of this order. It will, therefore, be convenient and appropriate, for the sake of brevity, to cull out the essential principles that appear to emanate from the aforesaid decisions. Compassionate appointment, being on humanitarian consideration, has been permitted to hold the field, though, at the first blush or from a particular perspective, such appointment being without selection and without consideration of inter se merit tends to offend Articles 14 and 16 of the Constitution. It is a specie of appointment that would be justified only if the ultimate rationale behind such appointment i.e., the need based on humanitarian considerations, is satisfied. The qualifications of a claimant and the post held by the deceased prior to his death would not be relevant considerations in making compassionate appointment. A claimant will not have a right of consideration for any particular post and he must accept what is available and offered to him, regardless of his qualification. If a claimant is not willing to accept what is being offered, he must be necessarily skipped over and the case of the

next eligible must receive consideration. Penury and destitution are the touchstones on which compassionate appointment is required to be made. It is to save the family of the deceased from starvation and destitution that compassionate appointment is required to be made. In this regard, the view of the Apex Court laid down in the case of G.M. v. Kunti Tiwari (supra) that the criteria of "not very well to do" would not be the correct guideline or standard to be adopted, must be noticed. The object of compassionate appointment being to save the family from destitution and penury, naturally, compassionate appointments are required to be made within the earliest possible time. Delay in making such appointment would be fatal; with the passage of time, the State and the Courts must understand that the family of the deceased has been able to meet the crisis caused by the death of the sole bread-earner. Once appointment on compassionate ground is made to a particular post, there is no further right vested in the incumbent to claim a better job that may have become available subsequently. Appointment on compassionate ground can only be made against available vacancy. No post can be created; not even supernumerary posts. These would be the broad principles governing the matter of compassionate appointment as laid down by the Apex Court in the decisions commencing from Sushma Gosain (supra) to State of J and K and Ors. (supra)."

16.1 In Para 7 of the judgment, the Court prescribed certain guidelines which reads thus:-

"7. Having understood the principles governing compassionate appointment as deducible from the pronouncements of the Apex Court and in the light of what has been discussed above, this Court is of the view that it will only be just and appropriate to lay down the under noted principles on the basis of which, henceforth, claims relating to compassionate appointment will have to be considered:

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."

17. Applying the ratio of that decision, and for the reasons already explained above, the inescapable conclusion

which may be arrived at is that, the rejection of the petitioner's candidature from the zone of consideration was absolutely illegal. Under the guidelines , the respondents were supposed to arrange all the tests and place the position of the petitioner for consideration of her appointment as per Para 3 of the Scheme dated 04.07.2001(Annexure 2 to the writ petition).

18. The respondents did not arrange viva-voce and other tests and therefore, the selection process in respect of petitioner is concerned, was not conducted according to the scheme formulated by the State Govt. and the guidelines, prepared by the department.

19. The respondents are, therefore, directed to arrange the eligibility test and/or selection process of the petitioner afresh, affording all opportunity to her including that of the financial condition of the petitioner and her minor children and thereafter, to take an appropriate decision in respect of appointment of the petitioner on compassionate ground. The process should be completed within 45 days from today.

20. With the above observation, the writ petition stands disposed of.

JUDGE

sanjay