

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No. 371 of 2006**

Rohit Kumar Tiwari S/o Late Shri Madhav Prasad Tiwari, aged about 32 years, R/o Kirari, Via-Nariyara, Distt. Bilaspur

---- **Petitioner****Versus**

1. State of Chhattisgarh through the Secretary, Department of Agriculture, D.K.S. Bhavan, Mantralaya, Raipur (CG)
2. Director, Agriculture, Raipur (CG)
3. The Joint Director, Agriculture, Raipur Division, Raipur (CG)
4. Director, Agriculture, Bhopal (M.P.)
5. State of M.P. Through the Secretary, Agriculture Department, Bhopal (M.P.)

---- **Respondents**

For Petitioner	:	Ms. Sharmila Singhai, Advocate.
For Respondents/State	:	Shri Bhupendra Singh, P.L.

Hon'ble Shri Justice P.Sam Koshy**Order On Board****04/09/2015**

1. The present case has a checkered history of litigation wherein through the present writ petition the petitioner has challenged the order dated 13.01.2000 (Annexure P-1) passed by the respondent No.2 rejecting his claim for grant of compassionate appointment.

2. The brief narration of facts relevant for adjudication of the present writ petition is as under:

- The father of the petitioner late Madhav Prasad Tiwari was working as a Surveyor in the office of the respondents. On 20.04.1987, the father of the petitioner, on medical ground, took retirement under Rule 35 of the

Madhya Pradesh Civil Services Pension Rules, 1976. It is said that when the father of the petitioner got retired on medical ground in the year 1987, the petitioner was minor and at that time he had moved an application for compassionate appointment which got rejected on the ground that the petitioner was a minor. The petitioner was asked to revive his claim after he attained the age of majority vide order dated 13.11.1990 (Annexure P-3). Subsequently, on attaining the age of majority, the petitioner somewhere in October, 1992 revived his claim for grant of compassionate appointment which was duly forwarded by the Office of the Joint director, Agriculture, Raipur Division, Raipur to the Director, Agriculture, Bhopal on 30.11.1992 (Annexure P-4). However, on due consideration of the claim application, the petitioner could not be granted appointment because of non availability of clear vacancy for the post of LDC and it was said that as and when the vacancy arose, the petitioner's case would be considered. Subsequently, the claim of the petitioner was rejected on the ground that the petitioner would not be entitled for compassionate appointment in the light of the circular of the State Govt. dated 03.01.1995 and this was also intimated to the petitioner vide order dated 22.04.1995 (Annexure P-6).

- Against the said order dated 22.04.1995, the petitioner filed a case before the State Administrative Tribunal at Raipur which was registered as O.A. No.564/98 which was allowed and disposed of on 30.08.1999 whereby the Tribunal ordered that the case of the petitioner be considered for compassionate appointment on the basis of Circular dated 18.06.1994 subject to his eligibility and fitness.
- Subsequent to the direction of the State Administrative Tribunal, the State Govt. again considered the case of the petitioner and rejected the claim

vide order dated 13.01.2000 Annexure P-1. Subsequent to the rejection of his claim vide order dated 13.01.2000, the petitioner preferred a contempt petition before the Tribunal registered as M.A. No.11/2000. However, taking into consideration all the facts and circumstances of the case particularly the fact that the petitioner's father had retired on 20.04.1987 on medical ground much before the circular dated 18.06.1994, the Tribunal held that the petitioner would not be entitled for the benefit of compassionate appointment and which has rightly been rejected by the Authorities on 13.01.2000. Accordingly, the contempt petition before the Tribunal was dismissed on 29.01.2001.

- It is pertinent to note that even at this stage, the petitioner did not think it proper to challenge the order dated 13.01.2000 and on the contrary filed a petition i.e. W.P. No. 840/2001 before the High Court challenging the order of the Tribunal dated 29.01.2001 passed in the contempt petition M.A. No. 11/2000. The Division Bench of this High Court vide its order dated 12.12.2005 dismissed the writ petition approving and affirming the decision of the Tribunal and also taking note of the fact that the petitioner has not questioned the legality of the order dated 13.01.2000 rejecting his claim application. While dismissing the writ petition the High Court in its operative paragraph held as under:

“For the present purpose, suffice it to state that since the order made by the respondents dated 13.01.2000 remains unchallenged, there is no scope for us to grant relief of appointment on compassionate ground to the petitioner. By this observation, we are not understood to have stated that the petitioner is entitled to the appointment on compassionate ground. That question is left open to be agitated in an appropriate proceeding. Writ petition is dismissed subject to the above observation. No costs.”

3. After the writ petition was dismissed by the High Court on 12.12.2005 the petitioner has now filed the present fresh writ petition challenging the order dated 13.01.2000 after about six years time from passing of the impugned order dated 13.01.2000 and about 19 years after retirement of his father on medical ground.

4. Counsel for the petitioner submits that it is not a case where there was a default on the part of the petitioner in approaching the Authorities for grant of compassionate appointment at the earliest rather it is a case where the petitioner had promptly made his claim for compassionate appointment which was also considered for a couple of occasions and each time the respondents Authorities kept on assuring firstly on the ground that he has not attained the age of majority and secondly there is no vacancy in the department and his case would be considered on first attaining the age of majority and second on the availability of vacancy. According to the counsel for the petitioner, having given assurance to the petitioner, the respondents further could not retract from their assurance and commitment so made and as such a right has accrued in favour of the petitioner. Counsel for the petitioner agitated that the case of the petitioner ought to have been considered on the basis of the existing rules and scheme for compassionate appointment prevalent on the date, his father had retired on medical ground. Counsel for the petitioner cited a circular dated 24.03.1975 Annexure P11 wherein it reflects that one family member of the employee who has been retired on medical ground would be eligible for grant of compassionate appointment. According to the counsel for the petitioner, this circular 24.03.1975 was further continued vide circular dated 10.06.1994 and therefore on the date when the petitioner's father was medically invalidated, there was a scheme prevalent for compassionate appointment for which the petitioner had also applied but which was turned

down and therefore the present writ petition deserves to be allowed. Counsel for the petitioner relied upon **(2008) 13 SCC 730 (V. Sivamurthy Vs. State of Andhra Pradesh and Others)** and **(2009) 7 SCC 295 (Maharani Devi and Another Vs. Union of India and Others)** in support of her contention stating that the cases in respect of those employees who have been retired on medical ground cannot be discriminated from the cases of the employees who died in harness.

5. Per contra, State counsel opposing the petition submitted that the instant writ petition deserves to be rejected on more than one grounds; firstly, the claim of the petitioner now has become a stale claim particularly the claim being that of a compassionate appointment. Secondly, since the claim of the petitioner at the first instance itself vide order dated 26.09.1994 was rejected on account of the non availability of vacancy, the same stood exhausted and that the claim for compassionate appointment could not have been kept alive for a indefinite period and for some reasons if the authority kept it alive, it by itself could not give a right to the petitioner for compassionate appointment. According to the State counsel, at the first instance itself the case of the petitioner was considered on the basis of the prevailing circular as it existed prior to 10.06.1994. However, after the circular dated 10.06.1994 stood modified on 03.01.1995, the case of the petitioner could not have been considered any further because the circular dated 03.01.1995 had removed the category of persons for compassionate appointment who had retired on medical ground. State counsel further submitted that the present writ petition is not sustainable for the reason that the petitioner's claim as was raised before the Administrative Tribunal in O.A. No. 564 of 1998 stood rejected in the contempt petition preferred by the petitioner registered as M.A. No. 11/2000 and while deciding the contempt petition the Tribunal categorically

held that the petitioner did not have any claim for compassionate appointment. The said finding has further been affirmed by the Division of this High Court in W.P. No. 840 of 2001. Thus, counsel for the State submitted that the present petition primarily being devoid of merit and further suffering from delay and latches, the claim of the petitioner by efflux of time has become stale claim, therefore, the claim at this juncture, should not be and cannot be considered.

6. Normal schemes contemplate compassionate appointment on an application by a dependent family member, subject to the applicant fulfilling the prescribed eligibility requirements, and subject to availability of a vacancy for making the appointment. Normally the three basic requirements to claim appointment under any scheme for compassionate appointment are: (i) an application by a dependent family member of the deceased employee; (ii) fulfillment of the eligibility criteria prescribed under the scheme, for compassionate appointment; and (iii) availability of posts, for making such appointment.

7. The Supreme Court in the case of **State Bank of India and Another Vs. Raj Kumar** reported in **(2010) 11 SCC 661** has held as under:

“8. It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process.....The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease

to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant.

13. Further, where the earlier scheme is abolished and the new scheme which replaces it specifically provides that all pending applications will be considered only in terms of the new scheme, then the new scheme alone will apply. As compassionate appointment is a concession and not a right, the employer may wind up the scheme or modify the scheme at any time depending upon its policies, financial capacity and availability of posts.”

8. In the matter of **State of J & K and others vs. Sajad Ahmed Mir**¹, the Supreme Court after having considered all the aspects of compassionate appointment, in para 11 observed as under :-

“11.....it is that such an appointment is an exception to the general rule. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say “goodbye” to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution.”

9. In the matter of **Haryana State Electricity Board and another vs. Hakim Singh**² the Supreme Court held that “the whole object of any compassionate appointment scheme is to give succor to the family to tide over the sudden financial crisis befallen the dependants on account of the untimely demise of its sole earning member.”

10. Further, in case of **Union of India & Another vs. Shashank Goswami and Another**³ the Supreme Court has held as under :

1 (2006) 5 SCC 766

2 2007 AIR SCW 6060

3 (2012) 11 SCC 307

10. As a rule public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis and not to confer a status on the family. Thus, applicant cannot claim appointment in a particular class/group of post. Appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.”

11. In addition, very recently in case of **MGB Gramin Bank Vs. Chakrawarti Singh**⁴ the Supreme Court in a very categorical term has held as under :

6.....The consideration for such employment is not a vested right. The object being to enable the family to get over the financial crisis.”

8. An “ameliorating relief” should not be taken as opening an alternative mode of recruitment to public employment. Furthermore, an application made at a belated stage cannot be entertained for the reason that by lapse of time, the purpose of making such appointment stands evaporated.”

12. So far as the two judgments i.e. the case of V. Sivamurthy (Supra) and the case of Maharani Devi (Supra) referred by the counsel for the petitioner are concerned, the proposition laid down by the Supreme Court in these two cases is not in dispute in any manner. However, in the present case, in fact, the case of the petitioner had been considered at the relevant point of time but for the non-availability of vacancy the petitioner could not be accommodated and by the time the vacancy arose, the policy had changed. Thus, the case of the petitioner could not be considered thereafter and which has been duly considered and appreciated by the State Administrative Tribunal vide its order dated 29.01.2001. The petitioner could not have claimed that once having been considered his case on the prevailing guidelines of compassionate appointment and for want of vacancy he could not be considered at the

4 (2014) 13 SCC 583

relevant point of time and only because the Authorities kept it alive for consideration in the event of a vacancy arises at a later stage would not mean that second time also when the case of the petitioner was considered, it would be the same policy which was prevailing on the date his father was retired on medical ground. Since subsequently the policy itself was changed, the petitioner unfortunately lost his chance. But the fact that the petitioner's claim was considered at one point of time in accordance with the prevailing rules and guidelines, the requirement of the command as laid down in the two judgments cited by the counsel appearing for the petitioner stands complied with and therefore the said two judgments are distinguishable on these facts.

13. Considering the total facts and circumstances of the case and also the judicial pronouncements referred to as above, admittedly, the age of the petitioner at present is more than 40 years and as such he has crossed the age limit for getting an employment with the State Government. The record further shows that the case of the petitioner at the first instance itself was considered and he could not be granted employment because of the non availability of vacancy. Subsequently, the right of the petitioner stood extinguished after circular dated 03.01.1995 wherein the scheme for compassionate appointment to a family member of the employee who had retired on medical ground stood abolished. True it is that the case for compassionate appointment preferred by the petitioner before the State Administrative Tribunal initially was allowed but in the contempt petition, the Tribunal after considering the totality of the facts and circumstances of the case and also keeping in view the circular dated 03.01.1995 had dismissed the claim of the petitioner. The Division Bench of this Court in Writ Petition No. 840 of 2001 has also confirmed the order of the Tribunal and dismissed the writ petition preferred by the petitioner. As such the case for grant of

compassionate appointment already stood adjudicated by the State Administrative Tribunal which stands confirmed by the Division Bench of this High Court vide its order dated 12.12.2005.

14. For the foregoing reasons, the instant writ petition being totally devoid of merit is liable to be and is accordingly dismissed.

**Sd/-
(P.Sam Koshy)
JUDGE**

Bhola