

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****W.P.(S) No. 484 of 2008**

Kaushal Kishore Nishad Son of Late Dhanesh Ram Nishad,
Resident of Binayakpur, Post Anda, Tahsil and District Durg
(C.G.)

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, Dept. of School Education, Dau Kalyan Singh Bhawan, Mantralay, Raipur (C.G.)
2. The Secretary, Department of School Education, Dau Kalyan Singh Bhawan, Mantralay, Raipur (C.G.)
3. District Education Officer, Distt. Durg (C.G.)
4. Chief Executive Officer, Zila Panchayat, Distt. Durg (C.G.)
5. The Principal, Government Higher Secondary School, Kachandur Distt. Durg (C.G.)

---- Respondents

For Petitioner	:	Shri N. S. Dhurandhar, Advocate
For Respondent/State	:	Shri U. N. S. Deo, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****28/07/2015**

The present petition has been filed challenging the order dated 08.10.2007 (Annexure P-8) whereby the claim of the petitioner for grant of compassionate appointment has been rejected.

2. The facts relevant for disposal of the petition are that the father of the petitioner namely Dhanesh Ram Nishad working as a teacher in the School Education Department had died in harness on 14.06.2002. According to the petitioner, his date of birth is 04.01.1989 and on the date of death of his father he was a minor and on attaining the age of majority and completing 12th standard education he applied for compassionate appointment on

08.01.2007. The contention of the petitioner is that though he had moved an application for grant of compassionate appointment on 08.01.2007, the Office of the District Education Officer, Durg vide letter dated 27.01.2007 asked him to submit his claim application in the format prescribed under the rules. Subsequently, the Authorities vide impugned order dated 08.10.2007 rejected his claim of compassionate appointment on the ground that the claim application was submitted beyond the three years period prescribed under the Rules for grant of compassionate appointment.

3. Counsel for the petitioner submits that earlier on 12.09.2002 the petitioner had moved an application but that point of time since the petitioner was minor, his case was not considered. Counsel for the petitioner relied upon the decision of the Division Bench of this Court in the case of *Supram Prasad v. State of Chhattisgarh and Another* decided on 25.07.2012 in Writ Appeal No. 305 of 2012 wherein, according to the counsel for the petitioner, under somewhat similar facts and circumstances of the case, the Division Bench has allowed the appeal preferred against the rejection of the application and directed the respondents by issuance of mandamus to give the appellant therein a suitable appointment on compassionate ground.

4. The State counsel opposing the petition submits that the facts in the instant case are quite different from the case cited by the counsel for the petitioner. According to the State counsel, in the instant case, admittedly, the petitioner for the first time had moved an application for grant of compassionate appointment in the year 2007 as there is no proof in respect of the claim being put forth by

the Petitioner on any earlier occasion. He further submits that under the rules of the State Govt. a compassionate appointment claim can only be entertained if the claimant puts forth his claim within a period of three years from the date of death of the deceased employee. In the instant case, the claim application has been filed after more than 4 ½ years from the date of death of the deceased employee and therefore, the concerned department has rightly rejected the claim application on the ground of delay in filing the claim. Hence, counsel for the State prayed for rejection of the petition.

5. Considering the rival contentions put forth by the parties and on perusal of the facts of the case, the admitted position in the instant case is that the father of the petitioner died on 14.06.2002 and for the first time, the petitioner moved his application for grant of compassionate appointment before the concerned authorities on 08.01.2007 i.e. after more than 4 ½ years from the date of death of the deceased employee. It is by now a settled position of law that the compassionate appointment cannot be treated as another source of recruitment in the Government establishment rather it is considered as a back door entry. The object of providing compassionate appointment is also to meet the emergency need to the family of the deceased employee and to meet the financial crisis which the family otherwise would be facing. In the instant case when primarily for more than 4 ½ years the family of the deceased could sustain themselves, the need for grant of compassionate appointment and compassion both crossed over and therefore the

claim for grant of compassionate appointment cannot be and should not be considered at such a belated stage.

6. The law in this regard which by now is well settled in a *catena* of decisions of the Hon'ble Supreme Court whereby it has been held that compassionate appointment has to be considered by the employer immediately after the death of the deceased employee and the claim for compassionate appointment has to be promptly raised by the claimant and it cannot be raised at a belated stage. The purpose of providing appointments on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependent of the deceased employee. As it is in the nature of exception to the general provisions, it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. Compassionate ground is not a method of recruitment but is a facility to provide for immediate rehabilitation of the family in distress for relieving the dependent family members of the deceased employee from destitution. In other words, the object of

compassionate appointment is to enable penurious family to tide over the sudden financial crisis and is not to provide employment.

7. The Supreme Court in a recent decision reported in **(2012) 13 SCC 412** (Chief Commissioner, Central Excise and Customs, Lucknow and other v. Prabhat Singh) reiterating the above given legal positions in paragraph-18 has held as under:

“18. The very object of making provision for appointment on compassionate grounds, is to provide succour to a family dependent on a government employee, who has unfortunately died in harness. On such death, the family suddenly finds itself in dire straits, on account of the absence of its sole breadwinner. Delay in seeking such a claim is an antithesis for the purpose for which compassionate appointment was conceived. Delay in raising such a claim is contradictory to the object sought to be achieved.”

8. Further in Paragraph-19 also the Supreme Court in very categorical terms while restricting the scope of interference in a petition for compassionate appointment has held as under:

19. The courts and tribunals should not fall prey to any sympathy syndrome, so as to issue directions for compassionate appointments, without reference to the prescribed norms. The courts are not supposed to carry Santa Claus's big bag on Christmas eve to disburse the gift of compassionate appointment to all those who seek a court's intervention. The courts and tribunals must understand that every such act of sympathy, compassion and discretion wherein directions are issued for appointment on compassionate grounds could deprive a really needy family requiring financial support, and thereby, push into penury a truly indigent, destitute and impoverished family. Discretion is therefore ruled out. So are misplaced sympathy and compassion.”

9. Considering the total facts and circumstances of the case and also relying upon the decisions of the Supreme Court cited above this Court is of the opinion that no good case is made out for interfering with the petition for grant of compassionate appointment to the petitioner at such a belated stage.

10. Thus, the instant petition being devoid of merit deserves to be and is accordingly rejected.

Sd/-
(P. Sam Koshy)
JUDGE