

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (S) No. 2648 OF 2008

Yashwant Kumar Sahu S/o Late Shri Lalit Sahu, aged about : 29 years,
R/o. Tekari, Abhanpur, District Raipur (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, Through : Secretary, Education Department,
D.K.S. Bhawan, Raipur (C.G.)
2. District Education Officer Raipur, District : Raipur (C.G.)
3. State of Madhya Pradesh, Through : Secretary, General
Administration Department, Vallabh Bhawan, Bhopal (C.G.)

... Respondents

For Petitioner	:	Mr. Anup Majumdar, Advocate.
For Respondent-State.	:	Mr. Bhupendra Singh, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

24/08/2015

1. The Petitioner in the instant writ petition has claimed for relief of compassionate appointment and also sought to challenge Annexure P-6, dated 26.11.2007, whereby the claim for compassionate appointment of the Petitioner has been rejected.

2. The relevant facts of the case are that the father of the Petitioner, who was working with the Respondents, died in harness on 30.10.1992. According to the Petitioner, at the relevant point of time, i.e., on the date when his father had died, he was a minor and therefore he could not move the application for grant of compassionate appointment then. According to the Petitioner, on attaining the age of employment subsequently he had moved an application for grant of compassionate appointment which was finally vide order dated 26.11.2007 refused by the Respondents on the ground that since the death of the deceased

employee was prior to 1.1.1997 that was the cut off date fixed in the policy of the compassionate appointment framed by the State Government, his case stood rejected.

3. The Petitioner submitted that firstly the fixing of a cut off date in the policy is bad in law, and secondly the case of the Petitioner ought to have been considered under the relevant rules that prevailed on the date of death of the deceased employee. Counsel for the Petitioner submitted that on these two grounds the writ petition deserves to be allowed and the impugned order is liable to be set aside.

4. Counsel for the State however opposing the writ petition submitted that it is case where the petition deserves to be rejected only on the ground of delay and laches for the reason that admittedly the death of the deceased employee took place on 30.10.1992 and even if the pleading of the Petitioner is to be accepted, the Petitioner attained the age of majority somewhere in the year 1996 and the present writ petition has been field in the year 2007, that is almost after about 11 years after his attaining the age of majority and about 15 years from the date of the death of the deceased employee.

5. It is trite at this juncture to refer to the judgment of Hon'ble the Supreme Court rendered in the case of *State Bank of India and Another v. Raj Kumar*, reported in (2010) 11 SCC 661, wherein it has been held in paragraphs 8 & 9 that:

“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 dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. 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.

9. Normally, the three basic requirements to claim appointment under any scheme for compassionate appointment are: (i) an application by a dependant family member of the deceased employee; (ii) fulfilment of the eligibility criteria prescribed under the scheme, for compassionate appointment; and (iii) availability of posts, for making such appointment. If a scheme provides for automatic appointment to a specified family member, on the death of any employee, without any of the aforesaid requirements, it can be said that the scheme creates a right in favour of the family member for appointment on the date of death of the employee. In such an event the Scheme in force at the time of death would apply.”

6. In *State of Manipur v. Md. Rajaodin* (AIR 2003 SCW 4339), the Supreme Court has categorically observed in paragraph 11 as under:-

“11. In *Smt. Sushma Gosain and Ors. v. Union of India and Ors.* (1989 (4) SCC 468) it was observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. 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. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisage specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was reiterated in *Phoolwati (Smt.) v. Union of India and Ors.* (1991 Supp (2) SCC 689) and *Union of India and ors. v. Bhagwan Singh* (1995 (6) SCC 476). In *Director of Education (Secondary) and Anr. v. Pushpendra Kumar and Ors.* (1998 (5) SCC 192) it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. 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 dependant 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.”

7. The Supreme Court in *State of J & K and others v. Sajad Ahmed Mir*, reported in (2006) 5 SCC 766 has held in paragraph 11 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 not be departed from except where compelling circumstances demand, such as, death of the sole bread winner, the family survived and 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 other ignoring the mandate of Article 14 of the Constitution.”

8. In 1997 (8) SCC 85 (Haryana State Electricity Board and another v. Hakim Singh), the Supreme Court has held that the whole object of any compassionate appointment schemes is to succor to the family to tide over the sudden financial crisis befallen the dependants on account of the untimely demise of its sole earning members.

9. It is a settled position of law that compassionate appointment is always provided to meet the immediate crisis which the family of the deceased employee faces and is provided to tide over the financial hardship that would occur in the light of the death of sole bread earner. In the instant case the very fact that the Petitioner could sustain himself for a period of 15 years from the date of death of his father and also about 11 years from the date of his attaining the age of majority itself would establish the fact that there were no financial constraints which the Petitioner was facing so as to claim for compassionate appointment.

10. Thus, for the foregoing reasons and also in the light of the judgements referred to in the preceding paragraphs, in the opinion of this court no good ground is called for interfering with the impugned order.

11. The Writ Petition is dismissed being devoid of merits.

Sd/-
(P. Sam Koshy)
Judge

/Sharad/