

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(S) No. 4661 of 2011**

Harishankar Pandey S/o Late Shri Chandrika Prasad Pandey, R/o Pattar
Khan, Post Belha, Distt. Bilaspur, CG

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

1. State of Chhattisgarh, through Secretary, Forest Department, D.K.S. Building Raipur, District- Raipur, CG
2. Collector, Ambikapur, Distt. Surguja, CG
3. Chhattisgarh State Forest Development Corporation Ltd. through Additional Managing Director, Head Officer at Lokesh Plaza Shanker Nagar Road, Shankar Nagar, Raipur, CG
4. Divisional Manger, Surguja Pariyojna Mandal, Ambikapur, Distt. Surguja, CG

---- **Respondents**

For Petitioner	: Smt. Indira Tripathi, Advocate
For Respondents 1 & 2	: Shri Prafull N. Bharat, Addl. A.G.
For Respondents 3 & 4	: Shri Aditya Bhardwaj, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****18.12.2015**

Grievance of the petitioner is that his father died in harness on 23.12.2006 and subsequently, he moved an application for grant of compassionate appointment but the same was rejected by the respondents vide order dated 11.12.2007 Annexure P-2 on the ground of non availability of vacancy of the post which is commensurate educational qualification of the petitioner (VIIIth pass).

2. Counsel for the petitioner submits that though the application of the petitioner for grant of compassionate appointment was rejected vide order dated 11.12.2007 but subsequently, after passing of XIIth Class he immediately approached the authorities concerned in the year 2012 stating

that as he has cleared XIIth Class, he may be considered on the post wherein XIIth pass candidate can be accommodated. He further submits that there is also recommendation made by the Collector in this regard so far as the petitioner is concerned, yet the Authorities concerned are not granting appointment to the petitioner.

3. Counsel appearing for the contesting respondents 3 & 4 submits that so far as the case of the petitioner is concerned, on the date when the petitioner applied for compassionate appointment, he was only VIIIth pass and VIIIth pass candidate could have been considered only on the post of Sandesh Wahak. He submits that at the relevant point of time, since there was no vacancy of Sandesh Wahak existed, the case of the petitioner could not be considered and accordingly, the same was rejected on 11.12.2007. He further submits that any appointment on compassionate ground can only be made subject to the availability of the vacancies and that in the absence of any vacancy, the claim of the petitioner cannot be kept for long. He also submits that so far as the petitioner having subsequently cleared his XIIth Class is concerned, the same could not be considered afresh for appointment even the rules do not permit keeping the application till he attains minimum qualification.

4. Counsel for the respondents oppose the petition on the ground of delay also. According to them, claim of the petitioner was refused in the year 2007 and the present writ petition was filed in the year 2011 i.e. after almost three years eight months.

5. The very object of granting compassionate appointment is to tide over the immediate crisis faced by the family of the deceased employee but in the instant case, the petitioner having not challenged the rejection order immediately shows sufficient proof of the fact that the family could sustain for

these periods.

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.”

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.”

8. Taking into consideration the total facts and circumstances of the case particularly the fact that there was no vacancy available on the date when the case of the petitioner was processed by the respondents and taking note of the fact that the writ petition itself has been preferred after more than three years from the date of rejection of the application for compassionate appointment, this Court does not find any illegality or infirmity in the action on the part of the respondents.

9. Accordingly, the instant writ petition being devoid of merit is dismissed.

Sd/-
(P. Sam Koshy)
JUDGE