

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) No. 405 OF 2012**

Dharmendra Sen S/o Late Kuber Sen, aged about 25 years, R/o Village Dhansuli, Post Bangoli, Thana Khorara, Tahsil Tilda, Distt. Raipur (C.G.)

... Petitioner**Versus**

1. State of Chhattisgarh, through the Secretary, Department of PWD, D.K.S. Bhawan, Raipur (C.G.)
2. Chief Engineer, PWD, East Raipur Zone, Raipur, Distt. Raipur (C.G.)
3. Executive Engineer, PWD Division Mekahara No.2, Raipur, Distt. Raipur (C.G.)

... Respondents

For Petitioner	:	Mr. Ashok Patil, Advocate.
For Respondent-State	:	Ms. Smita Ghai, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****18/12/2015**

1. Grievance of the Petitioner in the present writ petition is non-consideration of his claim for grant of compassionate appointment.
2. Counsel for the Petitioner submits that the father of the Petitioner, Late Kuber Sen, was working with the Respondents and died on 14.8.2005. The Petitioner moved an application for grant of compassionate appointment in the year 2006 i.e. on 8.5.2006 to be precise. Grievance of the Petitioner is that the claim of the Petitioner was not decided by the Respondent authorities and they are still sitting tight over the said claim application.
3. However, a perusal of the reply filed by the State Government would show that the claim of the Petitioner already stands decided on 21.2.2007, vide Annexure R-1, wherein his claim has been rejected by the competent authority.

4. It is pertinent to note that the order dated 21.2.2007 has not been challenged by the Petitioner at any point of time nor has the Petitioner in spite of the fact that the return was filed in the year 2012 preferred any application seeking to challenge this order in the present writ petition. In the absence of either of the two, the grievance of the Petitioner is not sustainable and the claim of the Petitioner is not worth entertaining and the writ petition deserves to be rejected on this ground alone. Even otherwise if the facts of the present writ petition are taken note of, the death of the deceased employee was in the year 2005 and the present writ petition has been filed in the year 2012, that is, after more than 7 years from the date of 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 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. But in the instant case, if we take into consideration the records, the Petitioner had moved application for grant of compassionate appointment in the year 2006 and till 2012 he did not have any grievance that itself is sufficient proof to show that he had sufficient means to sustain himself and which would defeat the claim for compassionate appointment.

10. Needless to mention that in addition to the ground of availability of sufficient means to survive, the writ petition deserves to be rejected only on the ground of approaching the High Court at an inordinately delayed stage as the death of the deceased employee had taken place in the year 2005 and the present writ petition was filed belatedly after more than 7 years, which itself establishes the fact that the Petitioner

could sustain comfortably during these period and that there was no immediate financial crisis which the Petitioner's family faced.

11. 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 entertaining the present writ petition.

12. The writ petition is dismissed being devoid of merits.

Sd/-
(P. Sam Koshy)
Judge

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