

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 3335 of 2007**

Smt. Shail Kumari Kashyap, aged 35 years, wife of late Shri Bhojram Kashyap, resident of Village & Post Budrukala, via Jaijaipur, District Janjgir-Champa (CG).

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary, Department of School Education, Raipur (CG).
2. District Education Officer, Janjgir, District Janjgir-Champa (CG).

---- Respondents

For Petitioner	:	Shri Somnath Verma, Advocate.
For Respondents	:	Shri UNS Deo, Govt. Advocate.

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

1. The Petitioner by way of this petition seeks to impugn the order dated 08.09.2006 whereby her appointment on compassionate ground has been cancelled.
2. The brief facts necessary for disposal of this petition are that, the husband of Petitioner was initially working as a Headmaster in D.D.S. Higher Secondary School, Birra run by Saraswati Shikshan Samiti, Birra. The said school was subsequently taken over by the State Government on 12.01.2001 and after the said School was taken over, the husband of

Petitioner died on 19.07.2002 while discharging the duties of Headmaster. Thereafter, the Petitioner was granted compassionate appointment vide order dated 17.07.2006 considering the husband of Petitioner to be a regular employee of State Govt., however, when the Respondents/State realized its fault, immediately cancelled the appointment of Petitioner vide order dated 08.09.2007 on the ground that services of Petitioner's husband was not absorbed at the time of absorption of School on 12.01.2001.

3. Learned counsel appearing for the Petitioner submits that subsequent to the death of Husband of Petitioner, the State Govt. had absorbed all the employees who were working in the D.D.S. Higher Secondary School, Birra and had the husband of Petitioner been alive, he would also have been absorbed in the regular service of State Govt., and therefore the Petitioner should get the benefits that accrues under the schemes framed by the State Govt. including the scheme for compassionate appointment. Therefore, a suitable direction in this regard may be issued for considering re-appointment of Petitioner on compassionate ground.
4. On a specific query being put to the counsel for the Petitioner, he fairly admits that services of husband of Petitioner was not absorbed on 19.07.2002 when he died and services of all the employees of said school was absorbed only on November, 2002. This fact itself establishes the fact on the date of death of husband of Petitioner, he was not a regular employee of the State Govt., and therefore, he could not have availed the benefits of schemes framed by the State Govt. including that of compassionate appointment. The State Govt. inadvertently considering him to be a regular employee had granted compassionate appointment to the wife of deceased employee at the first instance, but after realizing its

mistake, had cancelled the appointment order on 08.09.2006.

5. Admittedly, on the date of death, the employee was not posted on the regular sanctioned post of State Govt., thus, the Petitioner was not entitled for compassionate appointment and the Respondent/State has rightly cancelled the appointment order which was passed earlier inadvertently as no right whatsoever had accrued in favour of Petitioner at the time of death of her husband.
6. It is well settled law that appointment on 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. It is also well settled that mere death of the employee does not entitle his family to claim compassionate appointment if the family members could sustain themselves financially from other sources of income.
7. In **State of Haryana & Others Vs. Rani Devi an& Another**¹, it was held that the claim of applicant for appointment on compassionate ground is based on the premise that he was dependant on the deceased-employee. Strictly this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution. However, such claim is considered reasonable as also allowable on the basis of sudden crisis occurring in the family of the employee who had served the State and died while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative instructions which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter

¹ 1996(5) SCC 308

of right.

8. The Supreme Court in the matter of **State of Jharkhand and Others Vs. Shiv Karampal Sahu**² has held that, appointment on compassionate grounds must be made keeping in view provisions contained in Articles 14 and 16 of the Constitution. Such schemes cannot be given an expansive meaning as the constitutional scheme envisages that all persons who are entitled to be considered for appointment would be eligible for being considered therefor. Any policy decision for appointment on compassionate grounds must, therefore, receive a strict construction.
9. In case of **State of J & K and others vs. Sajad Ahmed Mir**³, 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.”

10. In case of **General Manager, Uttaranchal Jal Sansthan Vs. Laxmi Devi & Others**⁴ the Supreme Court has held that “...For the said purpose the cadre strength of the category to which the post belongs is required to be taken into consideration. A regular vacancy is which arises within the cadre strength.It is a trite law that a regular vacancy cannot be filled

2 2009 (11) SCC 453

3 2006 (5) SCC 766

4 2009 (7) SCC 205

up except in terms of the recruitment rules as also upon compliance with the constitutional scheme of equality. Before a person can claim a status of a government servant not only his appointment must be made in terms of the recruitment rules, he must otherwise fulfill the criterion therefor. Appointment made in violation of the constitutional scheme is a nullity. Rendition of service for a long time, it is well known, does not confer permanency. It is furthermore not a mode of appointment. Reliance placed on *Khagesh Kumar v. Inspector General of Registration*, [1995 Supp (4) SCC 182] for the proposition that ad hoc appointees working for several years without break should be considered for regularization in accordance with the Rules, in our opinion, is clearly inapplicable. In any event all such decisions must be held to have been overruled in *Umadevi* (supra).

11. Further, in case of **State of Gujarat & Others vs. Arvindkumar T. Tiwari & Another**⁵, the Supreme Court has held that “it is a settled legal proposition that compassionate appointment cannot be claimed as a matter of right. It is not simply another method of recruitment. A claim to be appointed on such a ground, has to be considered in accordance with the rules, regulations or administrative instructions governing the subject, taking into consideration the financial condition of the family of the deceased.
12. Thus, applying the above well settled principles of law to the facts of the case on hand, in particular taking into consideration the fact that at the relevant point of time only the said School was absorbed and not the services of Petitioner's husband was not absorbed by the State Govt., this court is of the opinion that the Petitioner does not deserve any relief and this court does not think it proper to exercise its writ jurisdiction for

⁵ 2012(9) SCC 545

directing the Respondents to re-consider the case of Petitioner for compassionate appointment.

13. In view of the foregoing, the petition is liable to be and is hereby dismissed. No order asto costs.

Sd/-
(P.Sam Koshy)
JUDGE

inder