

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (S) No. 7279 OF 2011

Mahendra Kumar Baghel, S/o Late Shri Dinu Ram Baghel, aged about 33 years, R/o Village Ghontiya, Post Ghontiya, Tah. Jagdalpur, District Bastar (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through Secretary, School Education Department, D.K.S. Bhawan, Raipur (C.G.)
2. The Director, Public Education, Chhattisgarh, Raipur (C.G.)
3. The District Education Officer, District Bastar at Jagdalpur (C.G.)
4. The Block Education Officer, Block- Bastar, District Bastar (C.G.)

... Respondents

For Petitioner	:	Mr. Subhash Yadav, Advocate.
For Respondent-State	:	Mr. Ashok Swarnakar, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

18/12/2015

1. Challenge through the present writ petition is to the order dated 17.9.2009, Annexure P-3, whereby the order of appointment dated 18.6.2009 issued in favour of the Petitioner has been cancelled.
2. According to the Petitioner, the father of the Petitioner was an employee of the Respondents, who died in harness on 25.8.2005. Immediately on the death of the father, the Petitioner had applied on 27.10.2005 that is just about after two months time and the said application was under process with the Respondents and it is only on 18.6.2009 that they had granted appointment to the Petitioner. Immediately, the Petitioner joined the services and was performing his duties when suddenly after about three months time, the impugned order dated 17.9.2009 was passed whereby the order of appointment of the Petitioner was cancelled. The order of cancellation did not disclose

any reason for cancellation. But the Petitioner subsequently came to know from the letter of the Respondents, dated 6.11.2009, that rejection was on account of the fact that the appointment of the Petitioner was granted beyond the period of three years from the date of death which according to the scheme of compassionate appointment was not permissible.

3. As per the Petitioner, the Respondents have not been able to show any document to the effect that for the period of 3 years they had no vacancy at the relevant place for granting appointment to the Petitioner. Similarly, the Respondents have also not disclosed as to when the actual vacancy arose against which the Petitioner had got a right for appointment. In the absence of such material facts only on the ground that the Petitioner happened to get an appointment after three years by itself would not get vitiate the appointment without proper justification and reasons.

4. Counsel for the State in their reply has not been able to adduce any documentary proof to show that there were no vacancies for the intervening period of 3 years from the date of death and the State also has not been able to show any proof of the actual date on which the vacancy arose against which the Petitioner has been granted appointment. Even otherwise now that an appointment order having been passed and on which joining also accrued in his favour, it should not have been lightly interfered with, that too without cogent reasons and grounds with documentary proof.

5. In the absence of any material produced on the part of the State to support the impugned order of cancellation of appointment, this Court is of the opinion that only on account of the fact that the Petitioner has been given an appointment beyond the period of 3 years would not

itself vitiate. The admitted position in the instant case is that the Petitioner had promptly applied for grant of compassionate appointment just within two months time from the date of death and it was under active consideration by the Respondents and if the Respondents for some reasons or the other sit over the said application and would not grant an appointment to the Petitioner and ultimately relief is granted after considerable period by itself cannot be said that the Petitioner has got an illegal appointment rather it was a case where the case of the Petitioner was duly processed and was granted appointment in accordance with law and the guidelines for compassionate appointment. Without there being any justified and plausible reason supported by cogent documentary proof the action on the part of the State Government in cancelling the same appears to be highhandedness and arbitrary and is also illegal. The State also has failed to produce sufficient document in support of their contentions with their reply to the writ petition. It is also not the case of the State that the order of appointment has been obtained by illegal means. Lastly, the State has also not been able to show as to whether the scheme for compassionate appointment on the date of death also had a time cap of three years. This also would vitiate the action of the State as a subsequently passed circular or guidelines much after the death of the deceased employee cannot be made applicable only because the Government did not promptly decide his claim.

6. For the foregoing reasons, the impugned order dated 17.9.2009, Annexure P-3, is quashed and it is directed that the Petitioner shall be reinstated in the services of the Respondents forthwith. However, the Petitioner shall not be entitled for any back-wages applying the principle

of 'no work no pay' but shall be entitled for the benefit of continuity in service for the purpose of seniority for the intervening period.

7. The writ petition is allowed.

Sd/-
(P. Sam Koshy)
Judge

/Sharad/