

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2304 of 2014

1. Pradeep Kumar Goutam S/o Late Vishnu Datt Gautam Aged About 41 years Working As Attendant Grade II, Office Of Junior Engineer, C.S.P.D.C.L. Katghora, C.G. Distt. Korba C.G.

---- Petitioner

Versus

1. Chhattisgarh State Power Holding Company Limited, Through Its Managing Director, Chhattisgarh State Power Holding Company Limited (Govt. Of C.G. Undertaking And A Successor Company Of C.S.E.B.) Registered Office Vidyut Sewa Bhawan, Ground Floor Daganiya, Raipur C.G.
2. Chhattisgarh State Power Distribution Company Ltd. Through Its Managing Director H.R. C.G. State Power Distribution Company Limited Govt. Of Chhattisgarh Undertaking And A Successor Company Of C.S.E.B. Registered Office Vidyut Seva Bhawan Daganiya Raipur C.G.
3. Chief Engineer C.G. State Power Distribution Company Limited, Tifra, Bilaspur C.G.
4. Superintendent Engineer C.G. State Power Distribution Company Limited Distt. Korba C.G.

---- Respondent

For Petitioner	Shri N.N. Roy, Advocate
For Respondent/CSPDCL	Shri K.R. Nair, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

23/07/2015

Heard learned counsel for the parties.

1. Petitioner, who has already been granted compassionate appointment on a class IV post, has assailed the legality and validity of the memo dated 19-2-2014 issued by the respondent CSPDCL rejecting his representation for reconsideration of his candidature for compassionate appointment for the post of Assistant Grade III.
2. Necessary facts, needing reference for adjudication of the petition, are that petitioner's father died in harness on 11-2-2005. On petitioner's application he was offered compassionate appointment on class IV post by order dated 12-5-2005. He submitted representation in the year 2010 for appointment on the post of Assistant Grade III (Class III category), which was rejected on 10-12-2010, however, the petitioner moved another application in the year 2014, which has now been turned down by the impugned order.
3. Learned counsel for the petitioner would draw attention of the Court to Annexure – P/5 wherein one Keshav Prasad has been offered appointment as AG III, despite the fact that he has passed his undergraduate examination in Third Division, by granting relaxation in terms of the circular dated 30-7-2013. Learned counsel would submit that in the said case also the death of the employee had taken place on 1-9-2010 i.e. prior to issuance of circular dated

30-7-2013, therefore, the petitioner is also entitled for similar treatment. Learned counsel would further submit that there are many other similar cases wherein relaxation has been granted and appointment on compassionate ground has been made by granting relaxation in qualification.

4. Per contra, learned counsel for the respondents would submit that the petitioner has been offered appointment on the basis of the applicable norms/eligibility criteria, on the date the cause of action accrued i.e. the date of death of his father and consideration of his case for compassionate appointment. Learned counsel would next submit that the petitioner cannot take benefit of the circular, which was issued after more than 8 years from the date of his appointment. Learned counsel would lastly submit that the petition suffers from delay and laches.
5. There is no dispute about the the fact that when the petitioner's application for grant of compassionate appointment was considered in the year 2005 the eligibility qualification for a class III post was second division higher secondary examination, stenography or typing examination or second division under graduate examination. There was no provision for granting relaxation in the said qualification.
6. Since admittedly the petitioner has passed his graduate examination in third division his case could not have been considered for

appointment on class III post. In subsequent circular issued on 25-3-2008 also no such relaxation was provided which came to be introduced for the first time on 30-7-2013. Merely because one candidate or some other candidates have been granted relaxation, petitioner cannot claim to enforce negative equality.

7. In **Basawaraj v. Land Acquisition Officer**¹, the Supreme Court, at para 8, held thus:-

“8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible.”

¹ (2013) 14 SCC 81

8. In a petition under Article 226 of the Constitution of India the petitioner has to succeed on his own strength based on the norms applicable on the date of consideration of his case for grant of compassionate appointment.
9. It is well settled proposition of law that prayer for reconsideration of case for compassionate appointment to higher post is not maintainable.
10. In **State of Rajasthan v. Umrao Singh**² and **I.G. (Karmik) and Others v. Prahalad Mani Tripathi**³, the Supreme Court has held that the second consideration for higher post on compassionate ground is not permissible. Similarly, in **State of M.P. and Others v. Ramesh Kumar Sharma**⁴, the Supreme Court has held that there is no right in favour of a person to be appointed on a post of his choice. In **I.G. (Karmik)** (supra), the same principle has again been reiterated.
11. Even otherwise, when the petitioner was offered the compassionate appointment on class IV post in the year 2005 he accepted the same without any demur and moved a representation for the first time in 2010, which was rejected on 10-12-2010, against which the

2 (1994) 6 SCC 560

3 (2007) 6 SCC 162

4 1994 Supp. (3) SCC 661

petitioner did not prefer any writ petition immediately. He moved another representation to revive the cause of action and when the same was rejected the petitioner has preferred the present writ petition.

12. It is settled law that repeated representations in absence of any statutory provision for making such representation or appeal would not extend the period of limitation. (See: **State of Tripura and Others v. Arabinda Chakraborty and Others**⁵). Even if no limitation is prescribed for filing a writ petition, in such cases, the principles of delay and laches would be attracted.
13. *Ex-consequenti*, the writ petition, *sans substratum*, is liable to be and is hereby dismissed, leaving the parties to bear their own costs.

Sd/-

Judge

Prashant Kumar Mishra

Gowri

⁵ (2014) 6 SCC 460