

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 7253 of 2009

Dinesh Gendle, S/o Late Shri P.L. Gendle, aged about 26 years, R/o Kosa Nagar, Ward No.2, Bhilai, District Durg (CG)

---- **Petitioner**

Versus

1. Food Corporation Of India through General Manager, Head Quarters, 16-20, Barakhamba Lane, New Delhi
2. The Manager Administration Food Corporation Of India, District Office-Durg (CG)

---- **Respondents**

For Petitioner:	Shri V. Vijay, Advocate.
For Respondents:	Shri BP. Gupta, Advocate

Single Bench: Hon'ble Shri P. Sam Koshy, J
Order On Board

24.08.2015

The present petition has been preferred for compassionate appointment by the petitioner on account of the death of his father Late Shri P.L. Gendle, who was working under the Respondents at Bhilai and died in harness on 17.9.2001.

2. The petitioner admittedly had, for the first time, moved an application on 18.6.2003 seeking compassionate appointment, which ultimately was not considered till date by the respondents and finally, the present petition has been filed now in the year 2009 by the petitioner seeking a direction against the respondents for grant of compassionate appointment.

3. Counsel for the petitioner submits that right from the stage of death of his father, he has been moving from pillar to post in the office of the respondents but the respondents have not paid any heed to the request of the petitioner and he has been put to undue hardship.

4. Per contra, counsel for the respondents submits that the claim of the petitioner is not sustainable for the reason that from the pleadings annexed with

the writ petition itself, it is evidently clear that the petitioner had, for the first time, made an application on 18.6.2003 i.e. after the prescribed period of one year's time within which the application for compassionate appointment ought to have been made by the petitioner as per the scheme prevalent in the respondents/Establishment.

5. Counsel for the respondents referred to Annexure R-1 dated 20.5.1990 which was a circular governing the scheme of compassionate appointment wherein Clause IV(b) stipulates that the application on the ground of compassionate appointment should be made within one year from the date of death of the employee. In the instant case, since the petitioner admittedly has moved his claim for compassionate appointment much after one year's time prescribed under the scheme, the claim of the petitioner is not sustainable and prayed for rejection of the writ petition.

6. 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 vs. Raj Kumar (2010) 11 Supreme Courts Cases 661, wherein it has been held in paragraphs – 8 & 9 as under:-

“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.”

7. In view of the aforesaid pronouncement of Hon'ble Supreme Court as well as the fact that the present petitioner has moved his claim for compassionate appointment itself beyond the period prescribed under the scheme, in the opinion of this Court, the same has rightly not been considered by the respondents holding it to be barred by time and the writ petition being devoid of merits, the same is rejected.

Sd/-
(P. Sam Koshy)
J U D G E

