

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(S) No. 5344 of 2012**

Deepak Kumar Rajwade S/o Lt. Shri Mohar Say, Resident of Vill.
Taraju, Post Jamgala, Tah. & P.S. Lakhanpur, Dist. Surguja, C.G.

---- Petitioner**Versus**

1. State of Chhattisgarh, through Secretary, Social & Welfare
Department of Panchayat, Mantralay, New Raipur, C.G.
2. The Collector, Surguja, C.G.
3. The Director, Social Welfare & Panchayat Deptt., Ambikapur, Surguja,
C.G.

---- Respondents

For Petitioner	:	Shri Sunil Tripathi, Advocate
For Respondents/State	:	Shri Ashok Swarnkar, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****18.12.2015**

Through the present writ petition the Petitioner has challenged the order dated 26.07.2010 Annexure P-1 whereby the claim of the petitioner for compassionate appointment has been rejected on the ground that the same was filed beyond the prescribed period of three years from the date of death of the employee.

2. The facts relevant in the present Writ Petition are that the deceased employee Mohar Say was working as Asst. Village Panchayat Officer in the Office of Janpad Panchayat, Udaypur, Surguja who died while in service on 25.07.2006. As per the scheme of compassionate appointment, any application for compassionate appointment ought to have been made within a period of 3 years from the date of death of the employee. However, in the instant case, application for compassionate appointment was made for the

first time on 14.05.2010 i.e. after about four years of the death of the employee. As such, the Respondents rejected the claim application on the ground that the same was filed beyond the time limit fixed in the Scheme for Compassionate Appointment.

3. Counsel for the petitioner submits that on the date when the employee died, the petitioner was minor and therefore immediately on his attaining majority, he applied for compassionate appointment on 14.05.2010 and therefore, the impugned rejection order of compassionate appointment on the ground of not applying the same within the prescribed period is bad in law and is liable to be rejected. Counsel for the petitioner relying upon (2006) 9 SCC 195 (Syed Khadim Hussain v. State of Bihar and Others) submits that the case of the petitioner is squarely covered by the facts of the said case and prays for a similar relief.

4. State Counsel, however, opposing the Petition submits that the respondents are bound by the scheme framed for compassionate appointment wherein the dependents of the deceased employee have to apply for compassionate appointment within three years from the date of death of the employee whereas in the instant case the petitioner filed his claim application after about four years of the date of death of the employee. He submits that the widow of the deceased employee immediately after the death of the employee has not claimed for compassionate appointment and the family could sustain themselves for these four years period which shows that the family has sufficient means to sustain themselves and further proofs that it is not a case where the family was at the state of penury or destitute due to immediate death of the deceased.

5. Considering the rival submissions by the Counsel on either side and taking into consideration the fact that the application for compassionate

appointment was filed by the claimant much after the period prescribed under the Scheme of Compassionate Appointment and the application was rejected on the ground of having filed at a belated stage, this Court does not find any infirmity in the action on the part of the Respondents.

6. The law in this regard which by now is well settled in a catena of decisions of the Hon'ble Supreme Court whereby it has been held that compassionate appointment has to be considered by the employer immediately after the death of the deceased employee and the claim for compassionate appointment has to be promptly raised by the claimant and it cannot be raised at a belated stage. 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. 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 dependent 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. 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.

7. The Supreme Court in a recent decision reported in (2012) 13 SCC 412 (Chief Commissioner, Central Excise and Customs, Lucknow and other v. Prabhat Singh) reiterating the above given legal positions in paragraph-18 has held as under:

“18. The very object of making provision for appointment on compassionate grounds, is to provide succour to a family dependent on a government employee, who has unfortunately died in harness. On such death, the family suddenly finds itself in dire straits, on account of the absence of its sole breadwinner. Delay in seeking such a claim is an antithesis for the purpose for which compassionate appointment was conceived. Delay in raising such a claim is contradictory to the object sought to be achieved.”

Further in Paragraph-19 also the Supreme Court in very categorical terms while restricting the scope of interference in a petition for compassionate appointment has held as under:

“19. The courts and tribunals should not fall prey to any sympathy syndrome, so as to issue directions for compassionate appointments, without reference to the prescribed norms. The courts are not supposed to carry Santa Claus's big bag on Christmas eve to disburse the gift of compassionate appointment to all those who seek a court's intervention. The courts and tribunals must understand that every such act of sympathy, compassion and discretion wherein directions are issued for appointment on compassionate grounds could deprive a really needy family requiring financial support, and thereby, push into penury a truly indigent, destitute and impoverished family. Discretion is therefore ruled out. So are misplaced sympathy and compassion.”

8. So far as the judgment i.e. Syed Khadim (Supra) cited by the counsel for the petitioner is concerned, the facts of the said case are entirely different from the present case as the widow of the deceased therein had applied for compassionate appointment within the prescribed time limit but the respondents had not taken decision on the said claim and subsequently, the son of the deceased had applied for employment who at that time was minor.

9. Considering the total facts and circumstances of the case and also relying upon the decisions of the Supreme Court cited above that once a time

is fixed under the Scheme for grant of compassionate appointment, if an application for compassionate appointment has not been made within the stipulated period, the claimant would not be entitled for being considered for compassionate appointment for the reason that the very object of granting compassionate appointment would get diluted.

10. For the aforesaid reasons, this Court does not find any merit in the Writ Petition and accordingly the same is dismissed.

Sd/-
(P. Sam Koshy)
JUDGE