

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(S) No. 5121 of 2009**

Tilak Ram S/o Shri Bharat Ram, R/o Village Chuchuhiyan, Tahsil
Mungeli, Distt. Bilaspur (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh through Chief Secretary, Mantralaya, D.K.S. Bhawan, Raipur (CG)
2. Superintendent Engineer, P.W.D. Bilaspur Division, Distt. Bilaspur (CG)
3. Executive Engineer, P.W.D. Bilaspur Division, Distt. Bilaspur (CG)

---- Respondents

For Petitioner	:	Ms. Pragya Pandey under instruction of Shri Prateek Sharma, Advocate
For Respondent/State	:	Smt. Smita Ghai, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order On Board****11/09/2015**

The present writ petition has been filed seeking following reliefs:

- i) That this Hon'ble Court may kingly be pleased to call for entire records of the case from the respondents.
 - ii) That this Hon'ble Court may kindly be pleased to issue a writ of mandamus, thereby directing the respondents to give joining to the petitioner immediately in compliance of order dated 13.09.2004 and further be pleased to direct to give salary and other consequential benefits from 14.09.2004, when petitioner moved application for joining.
2. Counsel for the petitioner submits that father of the petitioner was working as a labour with the respondents who died in harness on 02.11.2003. She submits that after death of the father of the petitioner, the petitioner moved an application for grant of compassionate

appointment which was granted to him vide Annexure P-3 dated 13.09.2004. Subsequently, the respondents vide Annexure R-1 dated 16.09.2004 cancelled the order of appointment dated 13.09.2004 on the ground that the father of the petitioner was not a regular employee of the State Government and the scheme for compassionate appointment is applicable only for the regular employees of the State Government.

3. Counsel for the petitioner submits that so far as the order dated 16.09.2004 cancelling the order of the appointment dated 13.09.2004 is concerned, the petitioner had already challenged the same in W.P. No. 6288/05. The said Writ Petition was disposed off on 14.02.2006 wherein the petitioner was granted liberty to approach the Authorities by moving a representation. Subsequently, the petitioner moved a representation to the concerned Authority but the respondents till date have not taken any decision in the said representation.

4. On the contrary State counsel submits that since the appointment was illegally granted to the petitioner, the same was immediately cancelled vide order dated 16.09.2004. Counsel for the State relies on the judgment of the Supreme Court in the matter of **A. Umarani Vs. Registrar, Co-operative Societies and Others** reported in (2004) 7 SCC 112.

5. Be that as it may, the consequences which flow from the order of the Writ Petition no. 6288/05 dated 14.02.06 have no bearing to the present writ petition. So far as the present writ petition is concerned, the relief sought for by the petitioner is a direction to the respondents to give joining to the petitioner in the light of the order dated 13.09.2004.

6. Unless the order dated 16.09.2004 is cancelled or is set aside, the joining sought for by the petitioner cannot be accepted. Because as long as there is no appointment, the question of granting joining does not arise.

7. The Hon'ble Supreme Court in the case of **Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and Others** reported in **2004 (2) SCC 130** has held as under:-

“We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation where to the appellants miserably fail to establish a legal right. It is further trite that despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order which would be in contravention of a statutory provision”.

8. Compassionate appointment can only be given in case if there is a Scheme for the same. Further, the Scheme should also specify as to who will be eligible under the Scheme. In the Case of **State of Jharkhand and Others Vs. Shiv Karampal Sahu** reported in **(2009) 11 SCC 453** the Supreme Court held as under:-

“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.

A circular letter providing for appointment on compassionate grounds in case of death of a government servant cannot be extended in case of the dependants of the deceased who was not a government servant. Public employment must be offered to a person who is entitled therefor. All recruitments subject to just exceptions must be made in terms of the rules framed under Proviso to Article 309 of the Constitution.”

9. Taking into consideration the judgment cited by the State counsel and also the fact that the order of appointment dated 13.09.2004 stands already cancelled vide order dated 16.09.2004, this Court is of the opinion

that the relief sought for by the petitioner in the present writ petition can neither technically nor legally be granted and therefore the same deserves to be dismissed.

10. Accordingly, the instant writ petition being devoid of merit stands dismissed.

Sd/-
(P. Sam Koshy)
JUDGE

Bhola