

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No. 4123 of 2006**

Raja Ram Kumhar, S/o late Shri Shyam Lal Kumhar, aged about 30 years,
R/o Dabripara, Chhatidih, Bilaspur, Distt. Bilaspur (CG).

---- Petitioner**Versus**

1. State of Chhattisgarh through Department of Higher Education by the
Commissioner, Higher Education, Office Address Government Science
College Campus No.4, Raipur (CG).
2. CMD Post G. College, through Principal CMD, PG College, Bilaspur (CG).

---- Respondents

For Petitioner	:	Shri Manoj Mishra, Advocate.
For Respondent No.1.	:	Shri UNS Deo, Govt. Advocate.
For Respondent No.2.	:	Shri Soumya Rai, Advocate.

Hon'ble Shri Justice P.Sam Koshy**Order On Board****04/09/2015**

1. The Petitioner is challenging non grant of compassionate appointment on account of death of his father who died in harness while working under the employment of Respondent No.2, a government aided private college.
2. The brief facts necessary for disposal of this petition is that, the father of Petitioner while working with the Respondent No.2 died in harness on 08.03.2004, however, on application being moved for compassionate appointment, the State Govt. has refused to grant compassionate appointment to the Petitioner on the ground that scheme of

compassionate appointment of the State Govt. is not applicable to the government aided private colleges.

3. On being asked, the counsel for the Petitioner is unable to satisfy the court that scheme of compassionate appointment of the State Government is also applicable upon the government aided private colleges. In absence of any scheme made applicable upon such establishments receiving government aid, the Petitioner as a matter of right cannot claim for his appointment on compassionate ground. Even otherwise, appointment on 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. It is also well settled that mere death of the employee does not entitle his family to claim compassionate appointment if the family members could sustain themselves financially from other sources of income.
4. The Supreme Court in the matter of **State of Manipur vs. Md. Rajaodin**¹, after having heard various cases on compassionate appointment, observed as under :

“11. In *Smt. Sushma Gosain and Ors. v. Union of India and Ors.* {1989 (4) SCC 468} it was observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. 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. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisage specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was reiterated in

1 AIR 2003 SCW 4339

Phoolwati (Smt.) v. Union of India & Ors. {1991 Supp (2) SCC 689} and *Union of India & Ors. v. Bhagwan Singh* {1995 (6) SCC 476}. In *Director of Education (Secondary) & Anr. v. Pushpendra Kumar & Ors.* {1998 (5) SCC 192}, it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. 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 dependant 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.”

5. In the matter of **State of J & K and others vs. Sajad Ahmed Mir**², the Supreme Court after having considered all the aspects of compassionate appointment, in para 11 observed as under :-

“11.....it is that such an appointment is an exception to the general rule. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say “goodbye” to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution.”

6. In the matter of **Haryana State Electricity Board and another vs. Hakim Singh**³ the Supreme Court held that “the whole object of any compassionate appointment scheme is to give succor to the family to tide over the sudden financial crisis befallen the dependants on account of the

² (2006) 5 SCC 766

³ 2007 AIR SCW 6060

untimely demise of its sole earning member.”

7. Thus, applying the above well settled principles of law to the facts of the case on hand, in particular taking into consideration the fact that scheme of compassionate appointment is not applicable to the government aided private colleges, this court is of the opinion that the Petitioner does not deserve any relief and this court does not think it proper to exercise its writ jurisdiction for directing the Respondent No.2 to consider the case of Petitioner for compassionate appointment.
8. In view of the foregoing, the petition is liable to be and is hereby dismissed. No order as to costs.

Sd/-
(P.Sam Koshy)
JUDGE

inder