

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 555 of 2015**

Mohammad Sahir S/o Late Shri Mohammad Hanif Sheikh, aged about 34 years,
R/o Ambikapur, P.S. & Post Ambikapur, Civil & Revenue District Surguja,
Chhattisgarh.

---- Appellant**Versus**

1. The Chhattisgarh State Power Holding Company Limited, Through its Managing Director (Human Resources) Raipur, Civil and Revenue District Raipur, Chhattisgarh.
2. Deputy General Manager (Human Resources) 2 Chhattisgarh State Power Holding Company Limited, Daganiya Raipur, Civil and REvenue District Raipur, Chhattisgarh.
3. Manager (Human Resources) 6, Chhattisgarh State Power Holding Company Limited, Daganiya, Raipur, Civil & Revenue District Raipur, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Sunil Sahu, Advocate.
For Respondents	:	None.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board**Per Navin Sinha, Chief Justice****20/11/2015**

1. The present appeal arises from order dated 7.9.2015 dismissing Writ Petition (S) No. 3118 of 2015 holding that the application for compassionate appointment preferred was 2 years and 11 months after the date of death when the circular regulating the same dated 30.1.1997 required the application to be preferred within one year from the date of death.

2. Learned Counsel for the Appellant submits that a claim for compassionate appointment has to be considered in accordance with the circular regulating the

same. According to circular dated 30.1.1997 issued by the Respondents, it was the obligation to the Respondents to inform the legal heirs of the deceased, their eligibility to apply for compassionate appointment. If the delay was occasioned because of non-communication by the Respondents, the Appellant cannot be allowed to suffer for the same. It was next submitted that in certain other cases, the legal heirs of the deceased was minor on the date of death of the employee, and on an application made by the wife of deceased at that point of time, the minor has been considered for compassionate appointment after attaining majority. Such actions have caused hostile discrimination to the Appellant and the order under appeal is therefore not sustainable.

3. We have considered the submissions.

4. The appointment on compassionate ground is not a substitute for regular appointment and neither is it a constitutionally approved method of appointment in accordance with Article 14 of the Constitution requiring open advertisement and competitive merit selection. It is an exception carved out of Article 14 in compelling circumstances to prevent the family of the deceased from going to penury and destitute due to sudden death and loss of bread winner of the family. Being an exception to the principle of open competitive merit selection in government jobs under Article 14 of the Constitution, the claim has to be considered strictly in accordance with the circular regulating the same. If the circular contained a time limitation for applying, it had to be strictly followed and any application submitted beyond the prescribed time did not vest even a right to consideration let alone for appointment.

5. In (2008) 15 SCC 560 (Steel Authority of India Limited v. Madhusudan Das) it was observed as follows:

"15. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor viz. that the death of the sole bread earner of the family, must be established. It is meant to provide for a

minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said rule. It is a concession not a right."

6. The emphasis on the time limitation prescribed fell for consideration in (2012) 13 SCC 412 (Chief Commissioner, Central Excise & Customs, Lucknow v. Prabhat Singh) where it was observed as follows:

"14. Most importantly, the High Court did not take into consideration one of the most significant reasons depicted in the orders passed by the appellants (dated 5.1.2006 and 22.5.2008), namely, that under the OM dated 5.5.2003 appointment on compassionate grounds was permissible within a period of three years from the date of death of the employee concerned in harness. Vijay Bahadur Singh, the father of Prabhat Singh had died on 2.3.1996. The candidature of Prabhat Singh for appointment on compassionate grounds, under the OM dated 5.5.2003 could have been considered only till 1.3.1999. Thereafter, Prabhat Singh was rendered ineligible for appointment on compassionate grounds. Pointedly, on the aforesaid grounds, the Review Committee constituted by the appellants to consider the claims of dependents of employees who had died in harness, vide an order dated 21.9.2007, had excluded the names of persons including Prabhat Singh, from the list of pending cases for appointment on compassionate grounds, because they could no longer be appointed on compassionate grounds, since more than three years had expired after the death of the breadwinner concerned in harness.

15. Had the High Court or the Tribunals applied their mind to the aforesaid precondition for eligibility for appointment on compassionate grounds, none of the directions issued by the High Court or the Tribunals would have been issued. Such directions could have been issued only when the party approaching the Tribunal or the High Court had established a prima facie case, by demonstrating fulfillment of the terms and conditions stipulated in the rules/regulations/policy instructions/office memoranda, relevant for such consideration. Had the aforesaid simple exercise been carried out, it would not have been necessary to examine the matter again and again. "

7. We have gone through the circular dated 30.1.1997. It does not contain any stipulation making it an obligation on the part of the Respondents to inform the family of the deceased that there was a provision for compassionate appointment and persuade them to submit such an application. If the bread winner of the family suddenly died and legal heirs were in destitute and penury because of the same, it was their obligation to approach for compassionate appointment. If compassionate appointment is an exception under Article 14 and not a constitutionally sanctioned method of appointment, it is difficult to appreciate the submission that the authorities were under an obligation to inform the family of the deceased of their right to apply for compassionate appointment which otherwise then would become a constitutionally sanctioned method of appointment. The instructions in the circular that whenever an employee dies in harness, the family of the deceased must submit an application within one year from the date of death cannot be construed as an obligation of the Respondents to visit the family of the deceased and persuade them to apply for compassionate appointment so as to hold that failure to perform this obligation creates a right in the legal heirs to be considered after the time prescribed for reasons attributable to the Respondents.

8. The circular provides relaxation for a period of three months with regard to those whose claims for compassionate appointment alone were rejected earlier in view of the mandatory requirement for at least 15 years of service at the time of death before claims for compassionate appointments could be considered.

9. The father of the Appellant died on 6.3.1999. It is not in dispute that the Appellant applied for compassionate appointment 2 years and 11 months later on 11.2.2002. We find no error in the conclusion of the Learned Single Judge that the application was barred by time beyond the period of 1 year under clause 6 of the circular dated 30.1.1997.

10. The submission that some claims for compassionate appointment had been entertained much after the period of one year from the legal heirs who may have been minors on the date of death and was considered much after the period of one year leaves us unimpressed. Judicial precedents abound that a claim to be considered for compassionate appointment is not a vested right and the post held by the deceased did not constitute a part of his estate to be passed on to the legal heirs after his death by keeping it vacant till the legal heirs became eligible to be considered if they were ineligible on the ground of minority within the period of eligibility. Article 14 does not visualize reverse discretion and no mandamus can be issued to perpetuate any illegality.

11. We therefore find no error in the order under appeal. The writ appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE