

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****W.P.(S) No. 2939 of 2010**

Preetam Kumar S/o Late Anjori Ram, aged, about 19 years, R/o village Barhi, Tahsil Baloda, District Durg (C.G.)

---- Petitioner**Versus**

1. State of Chhattisgarh through Secretary, Education Department, D.K.S. Bhawan, Raipur (C.G.)
2. District education Officer, Durg, (C.G.)

---- Respondents

For Petitioner : None

For Respondent/State: Shri Satish Gupta, G.A. & Ms. Tripti Rao, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****15/02/2016**

In the absence of any representation on behalf of the petitioner, the present writ petition is being decided with the assistance of State Advocates.

2. Challenge to the present writ petition is the order dated 13.11.2009 (Annexure P-1) whereby the claim for compassionate appointment sought by the petitioner has been rejected on the ground of having not been raised the same within the prescribed period of three years.

3. The facts relevant for disposal of the petition are that the father of the petitioner namely Anjori Ram working as Assistant Teacher with the respondent department died in harness on 17.06.2004. According to the petitioner, on the date of death of his father he was minor and that after attaining the age of majority in the year 2009, he immediately moved an application for

compassionate appointment which was rejected vide impugned order dated 13.11.2009 by the respondents stating that as per the scheme at the relevant point of time, the claim for compassionate appointment ought to have been made within three years from the date of death of the employee.

4. The petitioner through its pleadings in the writ petition has submitted that the Govt. ought to have considered his case sympathetically. He has submitted that admittedly, at the relevant time he was minor and that immediately on his attaining the age of majority he had applied for compassionate appointment and the rejection of the same is arbitrary, illegal and also bad in law. In his pleading, the petitioner also submits that the scheme for compassionate appointment of the year 2002 was in force on the date when his father died and therefore the respondents cannot debar the claim of a minor made on attaining the age of majority.

5. State counsel however opposes the claim of the petitioner and submits that the scheme for compassionate appointment Annexure P-6 enclosed with this petition clearly stipulates that the claim for compassionate appointment has to be made within a period of three years from the date of death of the employee and amendment brought for in the said notification would remain alive only for a period of three years from the date of death of the employee and not beyond the said period. For this reason, the claim of the petitioner has been rejected. State counsel relies on (2007) 2 SCC 481 (National Institute of Technology and others v. Niraj Kumar Singh) and 2001 (1) MPHT 1 SC (Sanjay Kumar v. State of Bihar and others)

6. Considering the submissions made by the counsel for the State and on perusal of the record, the admitted fact is that the death of the father of the petitioner took place on 17.06.2004 and the petitioner for the first time had applied for grant of compassionate appointment on 06.11.2009 i.e. after more than five years from the date of death of the employee. The claim of the petitioner was rejected only on the ground that the death of the employee took place much before three years from the date on which the application was made.

7. The law in respect of grant of compassionate appointment is well settled by a series of decisions of the Supreme Court wherein it has been held that compassionate appointment should not be considered as an alternative source of recruitment and it is an exception to the general rule under Article 14 of the Constitution of India. The object for grant of compassionate appointment is to tide away the financial crisis which the family of the deceased employee would face on the sudden death of the employee. The claim for compassionate appointment cannot be kept alive as a case of inheritable right of the son of a deceased employee or for that matter it cannot be kept vacant till the claimant attains the age of majority where he was minor at the relevant point of time.

8. In a *catena* of decisions of the Hon'ble Supreme Court 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.

9. 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.”

10. 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.”

11. Further in the case of Local Administration Department and another v. M. Selvanayagam alias Kumaravelu the Apex Court has held as under:

“Ideally, the appointment on compassionate basis should be made without any loss of time but having regard to the delays in the administrative process and several other relevant factors such as the number of already pending claims under the scheme and availability of vacancies, etc. normally the appointment may come after several months or even after two to three years.”

12. The Supreme Court in recent past in AIR 1997 SC 3887 (Haryana State Electricity Board and another v. Hakim Singh), AIR 1998 SC 2613 (K. I. Pavunny v. Asstt. Collector, Cochin), (2000) 7 SCC 192 (Sanjay Kumar v. State of Bihar and others) and (2003) 7 SCC 511 (State of Manipur v. Md. Rajaodin) dealing with the same issue has taken a consistent view as enunciated in the preceding paragraphs of this order.

13. Considering the total facts and circumstances of the case and also relying upon the decisions of the Supreme Court cited above,

this Court is of the opinion that no good case is made out for interfering with the petition for grant of compassionate appointment to the petitioner.

14. Accordingly, the present writ petition being devoid of merit is rejected.

Sd/-
(P. Sam Koshy)
JUDGE