

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3094 of 2014**

- Sandeep Kumar Yadav S/o Late Shri Shreechand Yadav Aged About 26 Years R/o Village Mangsha Post Office Silyari Thana Dharsiwan Distt. Raipur C.G. Presently R/o Bajrang Nagar, In Front Of Sulabha Building Raipur, Thana City Kotwali Civil & Revenue Distt. Raipur C.G.

---- Petitioner**Versus**

1. State of Chhattisgarh Through The Secretary, Water Resource Department, Mahanadi Bhawan , Naya Raipur C.G.
2. The Chief Engineer Mahanadi Project, Water Resources Departments Raipur C.G.
3. The Superintendent Engineer (Adm.) Mahanadi Circle Water Resources Departments Raipur C.G.
4. The Executive Engineer, Water Management Sambhag No. 1, Water Resources Departments Raipur C.G.
5. The Collector Raipur, Distt. Raipur C.G.

---- Respondents

For Petitioner	Shri Akhilesh Kumar, Advocate.
For Respondent/State	Ms. Smita Ghai, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****21/01/2016**

1. By way of this petition, the petitioner seeks to impugn the orders dated 26.12.2011 and 05.03.2012 whereby the respondents had rejected the claim of the petitioner for compassionate appointment on the ground that his case can

not be considered beyond the period of three years from the date of death of government employee.

2. According to the petitioner, his father while working with the respondents died in harness on 26.10.2004 and thereafter he has moved an application for compassionate appointment on 09.01.2005 (though there is no proof of the same) and the subsequent application which he has filed is on 09.01.2006 (Annexure P/3). It is further submitted that despite reminder dated 09.01.2006, the respondent authorities had considered the case of the petitioner for compassionate appointment in accordance with scheme of the government, rather rejected his claim by the impugned orders intimating him that his case cannot be considered as his claim has been filed beyond the period of three years after the death of government employee which is not permissible under the scheme for compassionate appointment.
3. Admittedly, the father of the petitioner died on 26.10.2004 and the present writ petition has been filed on 04.07.2014 i.e. almost after about 10 years from the date of death of deceased employee. So far as the reason for delay which has been explained by the petitioner is that he approached before the respondent authorities repeatedly and it was only after passing of impugned orders dated 26.11.2011 and 05.03.2012 he has filed the writ petition and as such he had filed his application well within the time.
4. Even if order dated 05.03.2012 i.e. the last order of rejection is taken in to consideration, yet there is delay of more than two and half years in filing the writ petition from the date of rejection of his claim and there is delay of ten years from the date of death of deceased employee in filing of the petition. The delay by the petitioner to approach the authorities at the first instance and

before the court subsequently is sufficient to infer that he was not in penury or any financial crisis.

5. The law with regard to compassionate appointment stands well settled and judicial precedents on the principles abound. Nonetheless, claims without any substance or merit continue to be made, fall in the category of clear frivolous litigation burdening the Courts unnecessarily. The present is a classic case of a completely frivolous litigation for a claim regarding compassionate appointment seeking ways and means to find a Government job with the least effort through litigation rather than to compete for obtaining a secure employment in a competitive world.
6. Essentially, the petitioner seeks a back door appointment without having to face competition and doggedly pursues his claim for compassionate appointment notwithstanding the fact that it has no merit at all.
7. A claim for compassionate appointment is an exception to the constitutional mandate under Article 14 of the Constitution that all appointments in the Government or Semi-Government organizations must be made by open advertisement and competitive merit selection so as to provide equal opportunity to be considered to all who may be eligible, as employment in the Government constitutes a national wealth. A limited exception has been made to this principle by providing for compassionate appointment which is primarily aimed as a part of social constitutional philosophy of the Government to provide succor to the family of the deceased faced with sudden penury and destituteness due to untimely loss of the bread winner. It is therefore patent that there is always an urgency in a claim for compassionate appointment. If a claim is legitimately made within stipulated time and consideration is belated, different issues may arise for determination. Such is not the case presently.

8. It has repeatedly been held that compassionate appointment is not a constitutionally sanctioned mode of appointment in Government service. Any claim therefore has to be strictly in terms of the policy or circulars regulating the same. The Court cannot consider claims for compassionate appointment on the basis of sympathy.
9. In *Haryana State Electricity Board and another vs. Hakim Singh*¹ the Supreme Court held that "the whole object of any compassionate appointment schemes is to give succor to the family to tide over the sudden financial crisis befallen the dependents on account of the untimely demise of its sole earning members."
10. The Supreme Court in *State of J & K and others Vs. Sajad Ahmed Mir*², in para 11 has held 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 not be departed from except where compelling circumstances demand, such as, death of the sole bread winner, the family survived and the family suffering because of the setback. Once it is proved that inspite 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."
11. 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

¹ (1997) 8 SCC 85

² 2006 (5) SCC 766

compassionate grounds, is to provide succor 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.”

12. 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.”

13. Considering the total facts and circumstances of the case and applying the above well settled principle of law to the facts of the case, 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 at such a belated stage.
14. As a result, the writ petition, being bereft of merit, is liable to be and is hereby dismissed. No order as to costs.

Sd/-
(P.Sam Koshy)
JUDGE