

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4078 of 2014**

- Ku. Annu Chauhan D/o Shri Panch Ram Chauhan, aged about 19 years, resident of village Pata, Post Dolesarvi, Development Block, Tamnar, PS Raigarh, District Raigarh, Chhattisgarh, Civil and Revenue District Raigarh (CG).

---- Petitioner**Versus**

1. The State of Chhattisgarh Through The Secretary, Tribal Welfare Department, Mahanadi Bhawan, Naya Raipur, District Raipur (C.G.).
2. Commissioner, Tribal Welfare Department, Raipur, District Raipur (CG).
3. Collector (Tribal Welfare) Surajpur, District Surajpur (CG).
4. Assistant Commissioner, Tribal Welfare Department, Surajpur, District Surajpur (CG).
5. Block Education Officer, Development Block, Odgi, District Surajpur (CG).
6. Head Master, Middle School, Bedmi, Education Block, Odgi, Tehsil and District Surajpur (CG).

---- Respondents

For Petitioner	Shri AK Prasad, 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 order dated 13.05.2014 whereby the respondents had rejected the claim of the petitioner for compassionate appointment on the ground that her case can not be considered beyond the period of three years from the date of death of

government employee.

2. According to petitioner, her father while working with the respondents died in harness on 03.08.2007. At that time she was minor. On attaining the age of majority, she moved an application for grant of compassionate appointment which stands rejected vide impugned order. It is submitted that when the claim of the petitioner was rejected, the respondents had already introduced a new scheme for compassionate appointment on 14.06.2013 whereby all the circulars/guidelines issued earlier with regard to compassionate appointment stood cancelled, and therefore, her claim ought to have been considered in accordance with circular dated 14.06.2013.
3. Learned State counsel opposing the petition submits that circular dated 14.06.2013 will be applicable on the cases which are submitted on or after 14.06.2013. The petitioner submitted her application on 11.12.2012 and therefore, circular dated 14.06.2013 is not applicable in the instant case. It is also submitted that at the relevant point of time in the circular which was in force does not have any clause to give compassionate appointment to the dependent after his/her attaining the age of majority. The petitioner has filed her application after five years of the death of her father which is beyond the prescribed period of three years, and therefor, she is not entitled for grant of compassionate appointment.
4. Be that as it may, the fact remains that the petitioner did not submit the application within three years of death of the deceased employee. When her father died, the petitioner was a minor and, as such, unable to move an application for compassionate appointment may not improve his case and the said eventuality may not extend the period of limitation because in *State of*

*Manipur vs. Md. Rajaodin*¹ the Supreme Court, 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 *Phoolwati (Smt.) v. Union of India and Ors.* (1991 Supp (2) SCC 689) and *Union of India and Ors. v. Bhagwan Singh* (1995 (6) SCC 476). In *Director of Education (Secondary) and Anr. v. Pushpendra Kumar and 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."

(Emphasis supplied)

5. The Supreme Court in case of *Sanjay Kumar Vs. State of Bihar and Others* (SLP(C) No. 12876 of 2000, decided on 28.08.2000) it has been categorically held as under :

"3.....this court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crises resulting

1 AIR 2003 SCW 4339

due to death of the bread earner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in *Director of Education Vs. Pushpendra Kumar (Supra)*. It is also significant to notice that on the date when the first application was made by the petitioner on 02.06.1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There can not be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there is some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief.”

6. In *Haryana State Electricity Board and another vs. Hakim Singh*² 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."
7. It is a trite law that 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.
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. The Supreme Court in *State of J & K and others Vs. Sajad Ahmed Mir*³, in para 11 has held as under:

² (1997) 8 SCC 85

³ 2006 (5) SCC 766

“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.”

10. In *State Bank of India and Others Vs. Jaspal Kaur*⁴ it has been held by the Supreme Court that matter should be decided within the parameters of the scheme prevailing when application for compassionate appointment filed and not as prevailing on the date of decision of the court.

11. Applying the well settled principle of law to the facts of the case and the family members of the deceased employee had survived for about 7 years is by itself sufficient to infer that the family was not in penury or financial crisis. The reason for compassionate appointment is to tide over the financial problem of the dependants of the deceased employee, but not to provide employment on compassionate basis *de hors* the constitutional scheme of employment. Thus, there is no merit in this petition.

12. As a result, the writ petition, being bereft of merit, is liable to be and is hereby dismissed at the motion stage itself.

Sd/-
(P.Sam Koshy)
JUDGE

inder