

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 5396 of 2014**

Prabhu Narayan Soni S/o Late Brijmohan Soni Aged About 19 Years R/o Village Bilhamaa Post Bbooli P.S. & Tahsil Dhorpur Civil & Revenue Distt. Surguja, C.G.

---- **Petitioner****Versus**

1. State Of Chhattisgarh Through: The Secretary, School. Education Department Mahanadi Bhawan, New Raipur, Police State New Raipur, Head Post Office, New Raipur, Revenue & Civil District Raipur Chhattisgarh.
2. District Education Officer, Education District, Ambikapur, Revenue and Civil District Surguja C.G.
3. Block Education Officer Lundra Revenue And Civil Distt. Surguja C.G.

---- **Respondents**

For Petitioner:

Mr. Vikram Dixit, Advocate

For State:

Ms. S. Ghai, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****22.01.2016**

1. Present Writ Petition has filed seeking relief of compassionate appointment challenging order dated 29.06.2014 whereby the claim of the Petitioner was rejected by the Respondents.

2. A brief fact of the present case is that father of the Petitioner was employed under Respondent and died on harness on 22.11.2006. In spite of fact that there were elder members in the family yet it was the

Petitioner alone who had applied for compassionate appointment immediately after the death of the deceased employee. On the date of the death of his father his age was about 13 years as is reflected from Annexure P/3 as such he could not get appointment at that point of time. On attaining the age of majority in the year 2012 the Petitioner again applied on 14.06.2013. However, the said application of the Petitioner was considered in accordance with the Scheme that was in force on the date he applied i.e. 14.06.2013. Since, as per the said scheme the application on compassionate ground was being considered only where the death was not more than 3 years ago. In the instant case admittedly the death of the father of the Petitioner took place in the year 2006 and after attaining the age of majority on 15.12.2012 the Petitioner moved application on 14.06.2013 that is after more than 6 years from the date of death of his father.

3. Learned Counsel for the Petitioner submits that the Respondents ought to have considered the case of the Petitioner in accordance with the scheme that was in force in the year 2006.

4. However, on query as to what was the scheme at the time of death of the deceased or what was the scheme that the Respondents did not comply the Petitioner was not able to satisfy this Court by furnishing any such document.

5. The Petitioner further relied upon decision of this Court in **(2012) 4 C.G.L.J 137 in the case of Supram Prasad Vs. State of C.G. &**

Another which was decided on 25.07.2012 directing the State Government to consider the case of the Petitioner immediately for grant of compassionate appointment.

6. The present is the case where the Petitioner has not disclosed either in his application nor by way of averment in the petition as to why other elder member of the family had not claimed for compassionate appointment after the death of the deceased employee. The Supreme Court in case of **Haryana State Electricity Board v. Hakim Singh, AIR 1997 SC 3887** has very categorically held that grant of compassionate appointment can not be a matter of family heritage/lien/succession. The post vacant in the State Government can not be kept vacant till the minor member of the family of the deceased employee attains the age of majority.

7. The said view has been further reiterated in the case of **Birendra Bedia Vs. Central Coalfields Ltd. & Ors., (2000) 7 SCC 192**. The Supreme Court has emphatically held that once the time to apply had run out during the period of minority of the claimant, the reservation of the vacancy for availability of compassionate appointment would not be permissible.

8. The facts in the present case is also same. In the instant case inspite of there being elder members in the family of the Petitioner other than claimant no one applied for grant of compassionate appointment and the Petitioner after he has attained the age of majority applied for

compassionate appointment itself gives sufficient inference that the Petitioner had sufficient means to sustain during the this period and it was not the case where the Petitioner was facing penury or in dire financial need.

9. Taking into consideration the views taken by the Supreme Court hereinabove referred and also the recent decision taken by the Supreme Court in case of ***Local Administration Department and Another Vs. M. Selvanayagam (2011) 13 SCC 42***, this Court is of the opinion that the Respondent has not committed any illegality or infirmity while rejecting the claim of the Petitioner. The claim of the Petitioner was liable to be considered primarily in accordance with the scheme that was in force on the date when the applicant moved his claim application.

10. The Supreme Court in the case in ***State of Gujrat V. Arvind Kumar T. Tiwari, (2012) 9 SCC 545*** held that while granting compassionate appointment sympathy should not be given weightage for the reason if sympathy is taken into consideration then the appointment on compassionate appointment will be couched with nepotism.

11. In view of the Supreme Court decision wherein they have emphatically held that sympathy can not be a factor for consideration of compassionate appointment the decision of the Division Bench of this Court as referred above is distinguishable and do not come to the aid

of the Petitioner in present case and also for the reason that the Petitioner has not shown any justifiable cause as to why the other member of the family who were elder to the him had not claimed for compassionate appointment. In view of all these factors this Court is of the opinion that the order on part of the Respondents rejecting the claim of the Petitioner is just and proper.

12. For the forgoing reasons the Writ Petition being devoid of merit is dismissed.

Sd/-
(P. Sam Koshy)
JUDGE