

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 1532 of 2015**

Rajesh Kumar Vaishnav S/o Shri Agani Kumar Vaishnav, aged about 29 years, occupation-un-employed, R/o Syahimudi (Gopalpur Post), Darri, PS Darri, Civil and Revenue District Korba (CG).

---- Petitioner

Versus

1. The Chhattisgarh State Power Distribution Company Limited through its Managing Director, Daganiya, Raipur, Distt. Raipur (CG).
2. The Chhattisgarh State Power Holding Company Limited, through its Director General Manager (HRD) Daganiya, Raipur, Distt. Raipur (CG).
3. Executive Engineer (Sancharan) Division Chhattisgarh State Power Distribution Company Limited, Korba West, Distt. Korba (CG).

---- Respondents

For Petitioner	Shri Sunil Sahu, Advocate.
For Respondents	Shri Mazid Ali, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

22/01/2016

1. The claim of the petitioner is that he is adopted son of deceased employee Guruwari Bai who died in harness on 03.12.1999 while working with the respondents, and therefore, he is entitled for compassionate appointment.
2. Learned counsel for the petitioner submits that after the death of his mother namely Guruwari Bai who had adopted him, he moved an

application for compassionate appointment on 05.07.2001 for the first time. Subsequently he had been regularly making representations and reminders to the respondents, but the respondents did not consider the same and in meanwhile large number of petitions were filed before this court which were decided in favour of the petitioners therein and against which SLP was also preferred before the Supreme Court. He waited for the outcome of SLP so as to pursue his remedy and thereafter the present writ petition has been filed on 20.04.2015 for a direction to the respondents to consider the case of the petitioner for compassionate appointment in accordance with scheme that is applicable with the respondents.

3. According to counsel for the Respondents there is inordinate and unexplained delay on the part of the petitioner in approaching this court, inasmuch as, the present petition has been filed after more than 14 years from the date of death of the deceased employee.
4. As informed by the petitioner itself, the application for compassionate appointment was filed by him for the first time on 05.07.2001 whereas, he has filed this petition on 20.04.2015 i.e. almost after about 14 years. The very fact that petitioner was not serious about his claim for about 14 years itself is sufficient to show that he was not in stage of penury or there was 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. A claim for compassionate appointment is not based on family heritage, lien or succession. 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 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."

¹ (1997) 8 SCC 85

² 2006 (5) SCC 766

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