

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(S) No. 7648 of 2010

Kumari Jyoti Bhelawe D/o Late Shri Rajendra Kumar Bhelawe @ Inderlal Bhelawe, aged about 21 years, R/o C/o Anil Kumar Meshram, Station Para Ward No.10, Rajnandgaon (Chhattisgarh)

---- Petitioner

Versus

1. The State of Chhattisgarh through the Secretary, Department of School Education, Mantralay at D.K.S. Bhawan, Raipur (Chhattisgarh)
2. The District Education Officer, Rajnandgaon (Chhattisgarh)
3. The Block Education Officer, Rajnandgaon, (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Rakesh Anthony, Advocate
For Respondents	:	Shri Anil S. Pandey, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

11/03/2016

The grievance of the petitioner in the present writ petition is the non-consideration of her claim for grant of compassionate appointment by the respondents and the subsequent rejection of representation vide order dated 23.02.2012.

2. The relevant details for adjudication of the present writ petition are that the mother of the petitioner namely Meena Bhelwa while serving with the respondents department died in harness on 21.02.1998. According to the petitioner, on the date of death of her mother, she and her sister were minor and she attained the age of majority in the year 2007. Subsequently, for the first time, she applied for grant of compassionate appointment on 01.07.2009. Her application was processed by the Authorities and she was directed to submit her claim in the prescribed format which she had done but thereafter there was no response on her claim application on the part of the respondents. Hence,

she has filed the present writ petition.

3. Counsel for the petitioner submits that along with their reply the respondents have filed a document dated 23.02.2012 Annexure R-1 wherein the claim of the petitioner has been rejected on the ground that the same was not filed within the prescribed period of limitation. He further submits that the respondents have also filed a circular dated 02.02.2006 Annexure R-2 along with their reply and as per the said circular, the State of Chhattisgarh shall be considering the claim for compassionate appointment in respect of those cases where the deceased employees had died on or after 01.11.1997 to 31.10.2000 and therefore the case of the petitioner also should have been considered in accordance with the said circular dated 02.02.2006 as her mother died on 21.02.1998. He further submits that the rejection of the claim of the petitioner by the respondents is contrary to the decision of the Supreme Court in the case of Canara Bank and Another vs. M. Mahesh Kumar reported in (2015) 7 SCC 412 wherein it has been held that the policy which was prevalent on the date of death of the employee cannot be substituted by a subsequent scheme that came into force much after the date of death of the deceased employee.

4. Counsel appearing for the State submits that it is a case where the death of the employee took place on 21.02.1998 and the present writ petition was filed on 16.12.2010 i.e. after about 13 years, therefore, the present petition should be rejected only on the ground of delay. He also opposes the prayer of the petitioner on the ground that the petitioner attained the age of majority in the year 2007 as is reflected in the petition itself and the application for grant of compassionate appointment was filed for the first time on 01.07.2009 i.e. after more than 2 ½ years and this delay in filing the application for compassionate appointment has not been properly explained by the petitioner. He further submits that in any case, the date of death of the employee is of the year 1998 and today, almost 18 years have elapsed and therefore it would not be proper to provide appointment on compassionate ground to the petitioner now and the

same would be against the object and intention of granting compassionate appointment to a person. Thus, prays for rejection of the petition.

5. Having considered the rival contention put forth by the counsel appearing on either side and on perusal of the record what is an admitted position in the facts and circumstances of the case is that the date of death of the employee is 21.02.1998 and the present writ petition was filed on 16.12.2010 i.e. almost 13 years after death of the employee. Another admitted position is that the petitioner attained the age of majority in the year 2007 and she applied for grant of compassionate appointment on 01.07.2009 i.e. after more than two years. It is settled position of law that the case of compassionate appointment is meant to redeem the family in distress which has to be considered by the employer immediately so as to ensure that the family of the deceased employee is saved from penury and destitute. In the instant case the very fact that the petitioner for the first time applied for compassionate appointment on 01.07.2009 which itself is sufficient indication that the petitioner and her family members had been able to sustain themselves and were not in a stage of penury.

6. The law so far as the compassionate appointment is concerned, by now, is well settled wherein it has been categorically held by the Supreme Court that while considering the case of compassionate appointment sympathy should not weigh in the mind of the authority as the same can lead to nepotism. So far as the judicial pronouncement in this regard is concerned, the position is well settled right from AIR 1997 SC 3887 (Haryana State Electricity Board & Another v. Hakim Singh). Again in (2000) 7 SCC 192 (Sanjay Kumar v. State of Bihar) and more recent in (2009) 13 SCC 600 (State of Chhattisgarh & Others v. Dhirjo Kumar Sengar) it has been reiterated by the Supreme Court that compassionate appointment is only to meet the immediate crisis the family faces on the sudden death of the employee and the same cannot be treated as an inheritable right by the family members of the deceased employee.

7. Considering the legal position laid down by the Supreme Court in the

aforesaid judgments if the same is compared to the facts of the present case, it clearly reflects that sufficient long period has elapsed from the date of death of the employee till the filing of the present writ petition and therefore granting compassionate appointment loses its efficacy. Thus, the case of the petitioner for grant of compassionate appointment at this belated stage today i.e. after more than 18 years from the date of death of the employee would amount to providing employment de hors the constitutional scheme of employment.

8. So far as the judgment cited by the counsel for the petitioner is concerned, the same would not be applicable in the present case and would also not come to the rescue of the petitioner for the reason that even if the scheme for compassionate appointment as was in vogue on the date of death of the employee is taken into consideration, there is a considerable unexplained delay on the part of the petitioner for approaching the Court as also making application for compassionate appointment before the respondents, therefore is quite distinguishable.

9. As a result, the present Writ Petition being devoid of merit is liable to be and is accordingly dismissed.

Sd/-
P. Sam Koshy
Judge