

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 459 of 2012**

- Sakirtan Patel S/o late Manglu Ram Patel, aged about 38 years, R/o village Kosir, Tahsil Sarangarh, District Raigarh (CG).

---- Petitioner**Versus**

1. State of Chhattisgarh Through The Secretary, Forest Department DKS Bhawan Raipur (CG).
2. The Conservator of Forest, Circle Bilaspur, District Bilapur (CG).
3. The Divisional Forest Officer, Raigarh, District Raigarh (CG).
4. The Forest Circle Officer, Sarangarh, District Raigarh (CG).

---- Respondents

For Petitioner	Shri UR Kosley, Advocate.
For Respondent/State	Shri Qamrul Aziz, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****12/02/2016**

1. The grievance of the petitioner in the instant petition is against non-consideration of the case of the petitioner for grant of compassionate appointment on the ground that the deceased employee i.e. father of the petitioner was a daily wage worker.
2. According to the petitioner, his father, while working with the Respondents on daily wage basis, died on 23.08.2009. It is further submitted that

considering the length of service of the father of the petitioner on daily wage basis, the present petitioner is entitled for being considered for grant of compassionate appointment. He also submitted that the government was about to regularize the services of the petitioner's father.

3. So far as grant of compassionate appointment is concerned, the State Government has very specifically held that the compassionate appointment would be granted to the dependent of only regular government servant of the State. From the pleadings of the petitioner itself, it is established that there was no order of regularization of the petitioner's father. In absence of regularization of the father of the petitioner, the status of the deceased was that of a daily wage worker, and as such, no right whatsoever accrued in favour of the petitioner for being considered for appointment on compassionate basis.
4. The Supreme Court in 2009(7)SCC 205 (General Manager, Uttaranchal Jal Sansthan Vs. Laxmi Devi and Others) has held that, before a person can claim a status of a government servant not only his appointment must be made in terms of the recruitment rules, he must otherwise fulfill the criterion therefor. Rendition of service for a long time, it is well known, does not confer permanency. It is furthermore not a mode of appointment. Reliance placed on Khagesh Kumar Vs. Inspector General of Registration [1995(supp.)4 SCC-182] for the proposition that ad hoc appointees working for several years without break should be considered for regularization in accordance with the rules, in our opinion is clearly inapplicable. In any event all such decisions must be held to have been

overruled in Umadevi (3) {2006 (4)SCC-1}.

5. Further, in 2009(11)SCC 453 (State of Jharkhand and Others Vs. Shiv Karampal Sahu), the Supreme Court has held as under:

“11. The scheme for grant of monetary compensation to the dependents of the deceased or injured who are affected in any kind of terrorist/virulent/communal attack must be considered in terms of the stipulations made in the circular letters containing policy decisions. Appointment on compassionate ground, it is trite, must be made keeping in view the provisions contained in Articles 14 and 16 of the Constitution of India. Such schemes cannot be given an expansive meaning as the constitutional scheme envisages that all persons who are entitled to be considered for appointment would be eligible for being considered therefor. Any policy decision for appointment on compassionate ground must, therefore, receive a strict construction.”

13. A circular letter providing for appointment on compassionate ground in case of death of a government servant cannot be extended in case of the dependents of the deceased who was not a government servant. A public employment must be offered to a person who is entitled therefor. All recruitments subject to just exceptions must be made in terms of the rules framed under the proviso appended to Article 309 of the Constitution of India. A circular letter issued by the State cannot be issued de hors the constitutional scheme of making offer of public appointment. [See Official Liquidator vs. Dayanand & ors. [(2008) 10 SCC 1 para 52]; State of Bihar vs. Upendra Narayan Singh & Ors. [(2009) 4 SCALE 282 para 19]; and Man Singh v. Commissioner, Garhwal Mandal, Pauri & Ors. [2009 (11) SCC 448].

6. For the reasons mentioned hereinabove, the petition being devoid of merit is liable to be and is hereby dismissed. No order as to costs.

Sd/-
(P. Sam Koshy)
JUDGE