

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****W.P.(S) No. 3643 of 2015**

Anand Kumar Kurre S/o Late Shri Virajhu Ram Kurre, aged around 26 years, R/o Gram / Post Bharani, Vyaha Ganiyari, Tehsil Takhatpur, District Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, Department of Panchayat and Social Services, Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh
2. Director, Directorate of Panchayat and Social Services, Mantralaya, Mahandi Bhawan, Naya Raipur, Raipur, Chhattisgarh
3. Joint Director, (Administration) Directorate of Panchayat and Social Services, Mantralaya, Mahandi Bhawan, Naya Raipur, Raipur, Chhattisgarh
4. Joint Director, Directorate of Panchayat and Social Welfare, Bilaspur, District Bilaspur, Chhattisgarh
5. Collector, Bilaspur, District Bilaspur, Chhattisgarh
6. Chief Executive Officer, Janpad Panchayat, Takhatpur, District Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Mateen Siddiqui, Advocate
For Respondent/State	:	Smt. Madhunisha Singh, Panel Lawyer

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

Challenge to the present writ petition is the order dated 08.09.2009 Annexure P-1 whereby the claim of the petitioner for grant of compassionate appointment has been rejected by the respondents on the ground that the period of three years for claiming compassionate appointment has elapsed.

2. The facts relevant for adjudication of the petition are that the father of the petitioner died in harness on 03.12.2004 and the petitioner made his claim for

grant of compassionate appointment on 01.09.2005 but there was no action on the part of the respondents on the said application till 2009. The petitioner had not made any application before any judicial forum seeking a direction for early disposal of his claim. The respondents finally on 08.09.2009 rejected the claim of the petitioner holding that the period of three years for consideration of compassionate appointment has elapsed. Even after rejection of his claim application in September 2009 the petitioner did not care to approach the Court within time rather the present writ petition has been filed after more than six years from the date of rejection of the said application and the petitioner has not given any satisfactory explanation for the said delay caused in filing the present writ petition.

3. Counsel for the petitioner submits that the very basis of rejection of the claim of the petitioner itself is not sustainable for the reason that the circulars relied upon by the respondents were not in force on the date when the claim of the petitioner was rejected. He further submits that on merits the petitioner has a very good case and that the rejection of the claim application by the respondents based upon the circulars which were not in existence on the date when the claim was rejected is bad in law and contrary.

Needless to mention that the said submission of the counsel for the petitioner would be going into the merits of the case. Once when the petitioner has not been able to explain the inordinate delay firstly for not approaching the Court within a reasonable time from the date when he had first made the application for compassionate appointment and secondly for not approaching the Court immediately after the impugned order was passed on 08.09.2009, this Court does not think it proper to go into the merits of the case and deals with the petition only on the question of delay and latches.

4. In the instant case, the claim for compassionate appointment was rejected on 08.09.2009 and the present writ petition was filed on 06.10.2015 i.e. after more than six years and there is no satisfactory explanation for the delay

caused in filing the present petition.

5. The very fact that the petitioner could survive for more than 6 years even after the order of rejection on 08.09.2009 and for about 11 years after the death of the deceased employee in the year 2004 itself is sufficient to infer that the petitioner had sufficient means to sustain himself and further proof that it is not a case where he was in a state of penury or destitute or being financial crisis.

6. Considering the fact that since the petitioner has survived well for about 11 years after the death of the deceased employee, the object for grant of compassionate appointment does not exist any further as the compassionate appointment is to be granted to tide over the immediate financial problem of the dependents of the deceased employee.

7. The law in this regard is well settled as early as in AIR 1997 SC 3887 (Haryana State Electricity Board and another v. Hakim Singh) where the Supreme Court emphatically has said that a claim for compassionate appointment is not based on family heritage or a lien or by way of succession. The compassionate appointment has to be considered by the employer immediately after the death of the deceased employee and the claim for compassionate appointment has to be promptly raised by the claimant and it cannot be raised at a belated stage. 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. Care has, however, to be taken that provision for grant 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 against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependent 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. 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. The Supreme Court in the case of State of J & K and Others Vs, Sahad Ahmed Mir reported in 2006 (5) SCC 766, in para 11 has held as under:

“11.....it is that such an appointment is an exception to 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 in spite 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.”

9. 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 succour 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.”

10. 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.”

11. Considering the total facts and circumstances of the case and also relying upon the decisions of the Supreme Court cited above 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.

12. Thus, only on the ground of delay, this Court is not inclined to entertain the present writ petition and the same is dismissed.

Sd/-
P. Sam Koshy
Judge