

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 55 of 2016**

Santosh Sonvani S/o Late N.D. Sonvani aged about 36 years R/o Ward No.37
Lokmanya Tilak Nagar Behind B.R. Cold Store District Jagdalpur (Bastar) Chhattisgarh

---- Appellant**Versus**

1. State of Chhattisgarh through Secretary Public Health and Engineering Department
D.K.S. Bhawan Raipur Chhattisgarh

2. Collectore Jagdalpur Chhattisgarh

3. Engineer in Chief P.H.E. Department Raipur Chhattisgarh

4. Executive Engineer P.H.E. Department Jagdalpur Chhattisgarh

5. Superintendent Engineer P.H.E. Department Jagdalpur Region Jagdalpur
Chhattisgarh

---- Respondents

For Appellant	:	Shri Vinod Deshmukh, Advocate.
For Respondent/State	:	Shri UNS Deo, Government Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board**Per Navin Sinha, Chief Justice****09/02/2016**

1. I.A. No.1 of 2016 has been filed to condone delay of 301 days in preferring the appeal. Considering the submissions on behalf of the parties, delay is condoned.

2. The present appeal arises from order dated 3.2.2015 dismissing Writ Petition (S) No.690 of 2012 declining to issue any direction to consider for compassionate appointment.

3. Learned Counsel for the Appellant submits that on 22.3.2007 the claim was rejected on the ground that three years had expired from the date of death and there were no vacant posts. On 16.11.2011, it was rejected on the ground that he had passed Class-V in the year 2009 and when he applied on 4.8.2011, he had completed 37 years of age. The taking of different grounds at different times was itself arbitrary. If no vacancy was available then supernumerary post should have been created considering the purpose of compassionate appointment. This Court in Writ Petition (S) No.3170 of 2011 on 22.6.2011 observed that if any adverse decision was taken on the pending application, the Appellant was at liberty to pursue remedies in accordance with law.

4. Learned Counsel for the State opposing the appeal submitted that if the Appellant obtained Class-V qualification in the year 2009, there was no illegality in the rejection of his application on 22.3.2007. Applications of ten other persons had also been rejected. No claim for compassionate appointment can be considered in a writ application filed in the year 2012 for a death which occurred on 17.8.2003 being too distant in point of time, when compassionate appointment is given in the urgency of the exigency due to sudden death of the bread winner leaving the family destitute and in penury.

5. We have considered the submissions on behalf of the parties.

6. The law stands well settled that no directions can be given by mandamus to create a supernumerary post for appointment on compassionate grounds. Creation of posts is a privilege of Government and the writ Court should restrain itself from giving such directions imposing burden on the financial exchequer including the need for employees etc. In *Himachal Road Transport Corpn. v. Dinesh Kumar*, (1996) 4 SCC 560, it was observed as follows:

"10. In the absence of a vacancy it is not open to the Corporation to appoint a person to any post. It will be a gross abuse of the powers of a public authority to appoint persons when vacancies are not available. If persons are so appointed

and paid salaries, it will be a mere misuse of public funds, which is totally unauthorised. Normally, even if the Tribunal finds that a person is qualified to be appointed to a post under the kith and kin policy, the Tribunal should only give a direction to the appropriate authority to consider the case of the particular applicant, in the light of the relevant rules and subject to the availability of the post. It is not open to the Tribunal either to direct the appointment of any person to a post or direct the authorities concerned to create a supernumerary post and then appoint a person to such a post....."

7. Be that as it may, the father of the Appellant was deceased in harness on 17.8.2003. He applied for compassionate appointment on 16.10.2003. It was rejected on 22.3.2007. It is an undisputed fact that this order of rejection was never challenged by the Appellant and it attained finality. In Writ Petition (S) No.3170 of 2011 it was claimed that the application for compassionate appointment was still pending consideration and had not been disposed. The observation of this Court granting liberty to pursue matters afresh in accordance with law was based on the premise with regard to non-existence of any order dated 22.3.2007. In absence of any challenge to the order dated 22.3.2007, the Appellant cannot evade the same by filing a fresh representation on 4.8.2011 and seek to create a fresh cause of action on that basis.

8. We find no reason to interfere with the order under appeal for that additional reason. The appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE