

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (S) No. 1860 of 2016**

Smt. Chitrakala Pandey, widow of Late Naresh Pandey, aged about 38 years, Occupation -Service-Auxiliary Nursing Midwife, presently working as Assistant Grade-III in Receipt Section, Office of Chief Medical & Health Officer, Bilaspur, resident of Opposite Bajpai Chambers, Rajendra Nagar, Police Station Civil Lines, Bilaspur, District Bilaspur (C.G.)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Health & Family Welfare, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur (C.G.)
2. The Director, Health Services, Govt. of C.G., Indravati Bhawan, Raipur (C.G.)
3. The Commissioner, Health & Family Welfare Department, Govt. of C.G., Raipur (C.G.)
4. The Chief Medical & Health Officer, Seepat Road, Sarkanda, Bilaspur (C.G.)

---- Respondents

For Petitioner : Shri Malay Shrivastava, Advocate.
 For Respondents/State: Shri Avinash Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****02/11/2016**

(1) The petitioner's husband died in harness on 3.1.2005 while working as Government servant, pursuant to which the petitioner was given compassionate appointment on 20.12.2005

on the post of Auxiliary Nursing Midwife (ANM), which the petitioner joined willingly without any protest.

(2) Thereafter, the petitioner made an application on 01.10.2012 for change of post/giving appointment on the post of Assistant Grade-III, which was not decided by the authority concerned and then the petitioner filed writ petition bearing W.P. (S) No.5602/2014, in which this Court by order dated 29.10.2014 directed the State Government to consider the case of the petitioner for change of post from ANM to Assistant Grade III in accordance with law.

(3) The State Government, by its order dated 8.2.2016, rejected the petitioner's application relying upon clause 11(1) of the Circular of the State Government dated 10.6.2003 and held that after the petitioner having been appointed on compassionate ground, her change of post is not liable to be considered, against which, this writ petition has been filed.

(4) Shri Malay Shrivastava, learned counsel appearing for the petitioner would submit that post of Assistant Grade-III has now fallen vacant and, therefore, respondents authorities be directed to consider and grant compassionate appointment on the said post to the petitioner, *whereas* Mr. Avinash Singh, learned counsel appearing for the respondents/State would submit that the petitioner's case is barred by Clause 11(1) of the Circular of the State Government dated 10.06.2003 and, as such, the

petitioner is not entitled for change of post as the petitioner has already accepted compassionate appointment on the post of ANM and working on the said post for the last 10 years.

(5) I have heard counsel for the parties on the question of admission and given thoughtful consideration to their rival submissions made therein.

(6) The issued raised in this writ petition is no longer *res integra* and concluded by judgment of their Lordships of the Supreme Court. The following judgments may be noticed herein usefully & profitably.

(6.1) In the matter of **State of Haryana Vs. Naresh Kumar Bali**¹, their Lordships of the Supreme Court have held that once the person is considered and appointed on compassionate ground as per scheme, he cannot be considered again as right to make appointment on compassionate ground stood exhausted. Para 15 of the report states as under:-

“15.In fact, the respondent did not object to his appointment as a clerk and his claim for consideration for the post of teacher was one year after his appointment. Thus, the appointment on compassionate ground as per the scheme had been completed. The claim for appointment as Inspector was never made earlier. The High Court without even analysing the circumstances under which the seven persons mentioned in its judgment came to be appointed as Police Officers (ASI or Inspector), straight away has chosen to conclude that

1 (1994) 4 SCC 448

there was discrimination. We are not in a position to appreciate this line of reasoning....”

(6.2) In the matter of **Umesh Kumar Nagpal Vs. State of Haryana**², their Lordships of the Supreme Court, while highlighting the object of granting compassionate appointment, have held as under:-

“The object is not to give a member of such family a post muchless a post for host held by deceased.”

(6.3) Their Lordships further observed pertinently in the aforesaid case (supra) as under:-

“If the dependent of deceased employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status, but to see the family through the economic calamity.”

(6.4) Later on, in **State of Rajasthan Vs. Umrao Singh**³, Their Lordships of the Supreme Court has clearly held that dependents having accepted the appointment as LDC on compassionate ground, therefore, the right to be considered for the appointment on compassionate ground was consummated and no further consideration on compassionate ground would ever arise, otherwise it would e a case of “endless compassion”. Para 8 the report states as under:-

“8. Admittedly, the respondent’s father died in harness

2 (1994) 4 SCC 138

3 (1994) 6 SCC 560

while working as Sub-Inspector, CID (Special Branch) on 16-3-1988. The respondent filed an application on 8-4-1988 for his appointment on compassionate ground as Sub-Inspector or LDC according to the availability of vacancy. On a consideration of his plea, he was appointed on the post of LDC by order dated 14-12-1989. He accepted the appointment as LDC. Therefore, the right to be considered for the appointment on compassionate ground would ever arise. Otherwise, it would be a case of “endless compassion”. Eligibility selection is yet another thing. Merely because of the so-called eligibility, the learned Single Judge of the High Court was persuaded to the view that direction be issued under proviso to Rule 5 of Rules which has no application to the facts of this case.”

(6.5) Later on, in **I.G. (Karmik) and others Vs. Prahlad Mani Tripathi⁴**, their Lordships of the Supreme Court have clearly held once the right is exhausted, any further or second consideration for the higher post on the ground of compassion would not arise.

(7) In the light of the ratio of law laid down by the supreme Court in above referred cases, if the facts of the present case are examined, it is quite vivid that the petitioner has already been considered on compassionate ground and appointment has been given on the post of ANM by order dated 20.10. 2005 which she has very well accepted & joined and performing her duties on the said post for last 10 years and, thereafter her right to appointment on the ground of compassion stood exhausted,

4 (2007) 6 SCC 162

now she cannot turn around and make claim for further/second consideration on the compassionate ground for the higher post/change of post, which is clearly impermissible being endless compassion as held by their Lordships of the Supreme Court in the above-stated cases (supra) and thus, this petition, being without substance, is liable to be dismissed.

(8) As a fall out and the consequence of the aforesaid discussion, the writ petition is held to be devoid of merit and required to be dismissed, and is, therefore, dismissed.

(9) There shall be no order as to cost (s).

Sd/-

(Sanjay K. Agrawal)
Judge

D/-