

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 683 of 2015**

Swatantra Ratna Panigrahi son of Shri Khemeshwar Panigrahi, aged about 20 years, Resident of village Kumhali, Post Office Kumhaoi, Police Station Lohandiguda, District Bastar, Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh, Through the Secretary, Panchayat and Rural Development Department, Mahanadi Bhawan, Mantralaya New Raipur, Chhattisgarh.
2. The Collector (Tribal Development) Bastar at Jagdalpur District Bastar, Chhattisgarh.
3. The Assistant Commissioner, Tribal Development, Jagdalpur, District Bastar, Chhattisgarh.
4. The Chief Executive Officer, Zila Panchayat District Bastar, Chhattisgarh.
5. The Chief Executive Officer, Janpad Panchayat, Lohandiguda, District Bastar, Chhattisgarh.
6. The Block Education Officer, Lohandiguda, District Bastar, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Prateek Sharma, Advocate.
For Respondents/State	:	Shri Prafull N Bharat, Additional Advocate General.

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

Judgment on Board**Per Navin Sinha, Chief Justice****05/01/2016**

1. The present appeal arises from order dated 26.10.2015 dismissing Writ Petition (S) No. 633 of 2015 declining to consider the claim for compassionate appointment.

2. Learned Counsel for the Appellant submits that there was no specific prohibition in the policy for compassionate appointment denying the right to consideration because the father of the Appellant was already employed as Assistant Teacher in the Tribal Department. The eligibility to be considered for compassionate appointment was independent of the same arising from the death of the mother who was in government service. The two issues cannot be mixed up. It was next submitted with reference to clause 18 of the policy for compassionate appointment dated 14.6.2013 that the availability of alternative sources of income and which would include employment of father of the Appellant was an irrelevant consideration and compassionate appointment could not be denied on that ground.

3. Learned Additional Advocate General has opposed the appeal submitting that the order calls for no interference. Compassionate appointment was not a matter of right but an exception to appointment in accordance with Article 14 of the Constitution. If the father of the Appellant was in government service, obviously he was not a destitute or in penury because of any sudden loss of the bread winner of the family and which was the only objective of compassionate appointment.

4. We have considered the submissions.

5. Any appointment under the government constitutes a national wealth. It has therefore to be done strictly in accordance with Article 14 of the Constitution of India preceded by an open advertisement and competitive merit selection with opportunity to all eligible who may have applied. A limited exception has thereafter been carved out for providing compassionate appointment to heirs of government servant if death takes place in service. It is an exception and not the rule. The object of providing compassionate appointment in such cases is to provide immediate succor to the family of the deceased who may be left destitute and in penury because of sudden loss of the bread winner of the family. Compassionate appointment is therefore not another mode of appointment

sanctified by the Constitution. Euphemistically, it can be also described to that extent as a back door appointment as the candidate does not have to face competition from amongst other applicants and gains easy entry into service in these days of limited and competitive job opportunities.

6. If the father of the Appellant was in government service, quite obviously, he had a source of income for survival and the Appellant was not left a destitute and in penury because of the sudden death of his mother while in service.

7. It is for that reason that any claim for compassionate appointment has to be considered strictly in accordance with the policy regulating the same. Merely because there may not have been express prohibition with regard to the compassionate appointment if one of the family member has a source of income from government employment will not mean that it was permissive to do so. In that event, compassionate appointment would become another source of appointment contrary to the mandate of Article 14 of the Constitution of India.

8. In AIR 2015 SC 2411 (Canara Bank v. M. Mahesh Kumar) relied upon by the Learned Single Judge, one of the grounds observed is that such appointment was granted to meet the sudden crisis on account of death of the bread winner. Therefore, it could not be granted as a matter of course by way of largesses irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity as the case may be as that again would be contrary to the constitutional mandate of Article 14.

9. We therefore find no reason to interfere with the order under appeal.

10. The appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE