

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(S) No. 6605 of 2014**

Ku. Pratibha Tandan D/o Late Chhavi Lal Tandan, aged about 32 years,
R/o Sector -8, Street No. 53, Quarter no. 2/v, Bhilai, P.S. Sector -6
Kotwali, Civil and Revenue District. Durg, C.G.

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary, Department of School Education, Mahanadi Bhawan, New Raipur, C.G.
2. The Director (Public Educational), Raipur, C.G.
3. District Education Officer, Raipur, C.G.
4. Block Education Officer, Arang, District Raipur, C.G.

---- Respondents

For Petitioner	:	Shri Raghvendra Pradhan, Advocate
For Respondents/State	:	Smt. Smita Ghai, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order On Board****21.01.2016**

Challenge to the present writ petition is Annexure P-1 whereby the claim of the petitioner for compassionate appointment has been rejected on the ground that as per the State Government policy, the claim for compassionate appointment cannot be considered beyond a period of three years from the date of death of the employee.

2. Counsel for the petitioner submits that father of the petitioner was an employee in the State Government who died in harness on 11.11.2006. Subsequent to the death of the employee, his widow i.e. mother of the petitioner applied for grant of compassionate appointment on 07.02.2007 but for some reason or the other, her claim was not considered by the respondents.

3. According to the counsel for the petitioner, the respondents did not take any positive decision on the application of the petitioner's mother for a period of

about five years and later she died. Subsequently, the petitioner who was completely dependent upon her parents and had no source of income and facing the state of penury claimed for compassionate appointment. However, the respondents rejected her claim vide Annexure P-1.

4. Counsel for the petitioner submits that in fact, the rejection of the petitioner's claim is on contradictory stands in as much as on the one hand the respondents say that the claim of the petitioner could not be considered as the same was made after three years of the date of death of the deceased employee whereas in subsequent correspondence they say that since there was not sufficient number of vacancy, the case of the petitioner could not be considered.

5. Per contra, State counsel submits that the present writ petition deserves to be rejected solely on the ground of delay and laches.

6. Admittedly, the present writ petition has been filed after more than three years of the passing of the rejection order and the petitioner has not explained or given any plausible satisfactory reasons for not filing the writ petition from 09.08.2011 till December, 2014. The only explanation for the delay submitted by the petitioner is the repeated correspondence making efforts to collect informations from the Department. The said explanation does not seem to be a plausible ground for condoning the delay in approaching the Court for grant of compassionate appointment.

7. Even otherwise, on the merits of the case, Annexure P-1 clearly reflects that the mother of the petitioner had not shown any keen for taking compassionate appointment after making the application on 07.02.2007. It is also reflected that the department had made efforts in getting the formalities completed so as to consider the claim for compassionate appointment to the mother of the petitioner but she did not in spite of best efforts approach the respondents for furnishing and completing the requisite formalities. Since the mother was not keen for compassionate appointment, subsequent to her death,

no right would accrue to the petitioner for compassionate appointment particularly when the death of the employee took place in the year 2006. Even otherwise, the death of the employee took place in November 2006 and the present writ petition was filed in December, 2014 which clearly shows that the family had sufficient means to sustain themselves and they were not in the state of penury or destitute.

8. The law in this regard by now is well settled in a *catena* of decisions of the Hon'ble Supreme Court whereby it has been held that 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 and more meritorious for seeking 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.

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 decision of the Supreme Court cited above, this Court is of the opinion that the present Petition suffers from delay and latches and there is no merit in the case as well. Accordingly the same is rejected.

**Sd/-
P. Sam Koshy
Judge**