

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Appeal No.159 of 2016**

1. Food Corporation Of India Through Its Chairman, H.Q., 16-20 Barakhambha Lane, Khadya Sadan, New Delhi- 110001.
2. Executive Director (West), Food Corporation Of India, Zonal Office (West), F.C.I. New Building, Rajendra Nagar, Dattapada Road, Borivali (E), Mumbai 66 (Maharashtra)
3. General Manager (Region), F.C.I. Regional Office, Kapa, Raipur, District Raipur (Chhattisgarh)
4. Area Manager, F.C.I. District Office, Bilaspur, Anugrahabhawan, Maharana Pratap Chowk, Jarhabhata, Dist : Bilaspur (Chhattisgarh)

---- Appellants**Versus**

Nagendra Kumar Yadav S/o Late Shri Muneeram Yadav, Aged About 34 Years R/o Kunj Nagar, Tehsil Surajpur, P.S. Jainagar, District : Surajpur (Chhattisgarh)

---- Respondent

For Appellant:	Shri BP. Singh along with Smt. Richa Jain, Advocate.
For Respondent:	Shri Sunil Pillai, Advocate.

Hon'ble The Chief Justice**Hon'ble Shri Justice P. Sam Koshy****Order on Board****Per Navin Sinha, Chief Justice****02/05/2016**

1. The present appeal arises from order dated 6.1.2016 in Writ Petition (S) No.908 of 2015 preferred by the sole Respondent seeking compassionate appointment after the death of his father in harness on 30.6.2008.
2. The application was rejected on 19.1.2015 as communicated on 5.2.2015 that the Respondent was ineligible as he was a married son of the deceased and therefore outside the purview of the policy for compassionate appointment. The Learned Single Judge held that marriage was a sacred institution and a basic civil right of a man and woman coming within the ambit of Article 21 of the Constitution of India and does not bring about a severance

of the relationship between a father and son or the widowed mother and son. Referring to precedents with regard to marriage being a basic civil right of a man/woman, it was held that the yardstick for extending the benefit of compassionate appointment should be dependency of the dependent and not the marital status. There was no express prohibition in the policy excluding a married son from consideration. It could not be assumed without examining the facts and taking into consideration the attendant circumstances that the married son was not dependent on the deceased employee. In a given situation, the son may not be earning and is still dependant on the earnings of his father. The assumption that marriage automatically leads to independence depriving the dependent status was violative of Article 14 of the Constitution of India. Directions were therefore given to consider the claim of the Respondent for compassionate appointment in accordance with law.

3. Learned Counsel for the Appellants submitted that Clause-2 of the Scheme for compassionate appointment which defines “dependant family member” in Clause-(b) included a son (including adopted son), the definition was therefore inclusive only with regard to an adopted son and exclusive as far as a married son is concerned. The scheme for compassionate appointment was not concerned with social customs or societal practices. Any frequently asked questions with regard to the policy are internal matters which do not become a part of the scheme. Being an exception to the normal mode of appointment under Article 14 of the Constitution in any Government service by open advertisement and competitive selection, what was not provided for in the scheme has to be exclusively kept out. Appointment on compassionate ground was permissible strictly in accordance with the scheme and the Court cannot give directions in a manner modifying the scheme itself. Clause-5(b) of the scheme provides that the Applicant should

be eligible. If eligibility itself was wanting, the question of consideration does not arise.

4. It was next submitted that the deceased died in harness on 30.6.2008. The Respondent alleges that he applied on 8.9.2008 relying on an internal communication dated 19.11.2008 in context of an application made by his mother. It is not clear if this application was made by the mother for compassionate appointment herself or whether it was made to consider the Respondent. Be that as it may, till the institution of the Writ Petition on 17.3.2015, compassionate appointment was not a necessity, much less a compelling necessity for the Respondent as he took no steps to enforce his rights or to seek consideration, assuming for the sake of argument though not admitting that the letter dated 19.11.2008 was in context of his mother having made a request to consider him for compassionate appointment. It only indicates that the Respondent had adequate means of survival and the family was not indigent making compassionate appointment a compelling necessity. The Respondent appears to have taken advantage of an advertisement published by the Appellants on 22.2.2014 with reference to such persons who may have made a claim for compassionate appointment but due to change in place of residence after the demise in harness, the communications may have been sent at the last known address of the deceased employee and consequent failure of the communication to reach the aggrieved which necessitated an additional opportunity to them for approaching the Appellants. It is not the case of the Respondent that he fell in this category. The question of his seeking to revive a claim which never existed or was extremely stale does not arise.

5. The last submission was that a sum of Rs.14,50,480/- was paid to the family as terminal dues and the wife of the deceased employee was getting

monthly pension of Rs.2,000/-. The elder brother of the deceased Respondent was in Government service and the Respondent himself had a transport business having an income of approximately Rs.60,000/- per annum and a residential house at Kunjnagar at Surajpur. The Departmental Committee constituted to consider claims for compassionate appointment had called for a report and which has also been placed on record.

6. Learned Counsel for the Respondent submitted that he had applied for compassionate appointment on 8.09.2008 and that the communication dated 19.11.2008 was in that context recommending his candidature. The Appellants took no action on his application for compassionate appointment made as far as back 2008. The Respondent never made any fresh application for compassionate appointment in response to the advertisement dated 22.2.2014 but merely reiterated his original claim for compassionate appointment. It was denied that the elder brother of the Respondent was in Government service or that the Respondent had a transport business. Merely because the Respondent may have got married, it cannot be a complete bar to consideration. During such consideration, further enquiry can be held by the Appellants with regard to dependency factor also.

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

8. The law with regard to compassionate appointment stands well entrenched and it is not considered necessary to deal with the principles all over again except to the extent necessary for purposes of the present order, as also precedents in that regard.

9. The normal rule is that employment under the Government constitutes a national wealth. Any appointment on a Government post has therefore to be strictly in accordance with the constitutional mandate under Article 14 of the Constitution by open advertisement and competitive merit selection.

Compassionate appointment makes a limited inroad into this mandate. Being an exception to the normal rule, it is permissible only in such cases where the sudden death of a bread winner of the family leaves it in penury and indigence with no other source of income making survival with human dignity itself a very difficult proposition. It has to be kept in mind that an appointment secured on compassionate grounds is not an entry in service through the front door but is essentially a back door entry without having to face any competition. It is an easy source for a secure employment in a country where employment opportunities are extremely scarce. It must be kept in mind that every appointment made in Government service on compassionate grounds is at the cost of shutting the door on the face of another candidate who may be equally if not more competent but unfortunately did not have the benefit of a descent as being the legal heir of a deceased employee who died in harness. Therefore, it has been repeatedly held that a claim for compassionate appointment has to be considered strictly in accordance with the scheme and it is not open for the Court to rewrite a scheme or give any directions beyond the scheme. In a particular case, if the Court is of the opinion that the scheme itself required reconsideration, mandamus can be issued to that restricted extent only and no mandamus can be issued to consider outside the scheme.

10. The scheme for compassionate appointment in the present case defines a dependant family member as a son including an adopted son. It is further qualified that being a son or an adopted son does not automatically entitle consideration for compassionate appointment unless such son or adopted son was wholly dependant on the Government servant at the time of death. Clause-5(b) explicitly provides that the Applicant must be eligible which means he must be a son or adopted son. Additionally, Clause-5(a)

provides that the family must be indigent requiring immediate assistance for relief from financial destitution.

11. The Respondent's father died in harness on 30.6.2008. No copy of the the application stated to have submitted by the Respondent for compassionate appointment on 8.9.2008 has been brought on record. What is sought to be canvassed before the Court is a contention on assumptions and presumptions with reference to an internal communication of the Appellants dated 19.11.2008 in context of communication received from the mother of the Respondent. It is not the case of the Respondent that his mother was not eligible to be considered for compassionate appointment herself. The possibility that she may have applied for compassionate appointment herself therefore cannot be ruled out and there is no specific submission or assertion of fact in this regard in the Writ Petition.

12. At this juncture, it becomes very relevant to deal with the queries put by us to the Counsel for the Respondent. The response we elicited was that the Respondent was married as far back as 2005 in the life time of his father and sired a male child on 18.4.2006 and the second male child was already on its way during the life time of the deceased sired on 4.9.2008. Both the children are studying in Carmel Convent school in Class- 3 and 4 respectively. The Appellants constituted a committee to examine cases for compassionate appointment which arrived at the conclusion that the family had received financial benefits of Rs.14,50,480/- along with the widow receiving pension of Rs.2,000/- per month. This fact has not been denied in the rejoinder. It is true that in every case of death in harness, there will be lumpsum benefits granted along with monthly pension and the same by itself cannot always be considered as an absolute ground to deny compassionate appointment. But in the given facts of a case, it may become crucially relevant. An investment

of Rs.14,50,480/- by the widow would undoubtedly bring her recurring monthly returns also. Paragraph-8.9 to which the Counsel for the Respondent invited our attention or for that matter any other paragraph does not contain any specific assertion that the Respondent had no independent source of income for survival of himself, the wife and the children born from the marriage as also his widowed mother and that they were left hand to mouth now. The absence of any such assertion coupled with the fact finding committee report leaves us satisfied that the Respondent does have a source of income sufficient for him to survive and look after his wife, children and widowed mother. Even otherwise, surely, the Respondent had a source of livelihood when he decided to get married and take on the responsibility of another's life along with lives that may follow from the union. Obviously, for that reason he did not consider compassionate appointment a compelling necessity till he saw the golden opportunity to seek a claim in response to the advertisement dated 22.2.2014 published by the Appellants in Hindi Daily "Dainik Bhaskar". The advertisement clearly provides and stipulates that a lot of claims for compassionate appointment have remained un-responded because the communication sent to the family of the deceased has been returned due to change of address, naturally because they were sent at the last known address of the deceased employee. The Respondent in paragraph-8.10 of the Writ Petition did not state that he falls in that category but simply avers that in pursuance of the advertisement he approached the Appellants all over again and submitted his documents afresh. Unless the Respondent is first able to demonstrate that he comes within the ambit of the advertisement dated 22.2.2014, the Writ Petition filed on 17.3.2015 with regard to a death that occurred as far back as 30.06.2008 is grossly stale and merits no consideration. There are no allegations of any malafide in the selection process or the Committee which considered the same.

13. The question of marriage being a sacred institution and the bond between the father and son or the son and the widowed mother or that the institution of marriage was sanctified under Article 21 of the Constitution of India perhaps are not relevant at all in the facts of the present case in absence of the Petitioner having failed to establish that he was fully dependant on his deceased father and the complete absence of any explanation for the golden silence on his part from July, 2008 till the institution of a Writ Petition in March, 2015.

14. We are therefore unable to sustain the order under appeal. It is set aside.

15. The appeal is allowed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE