

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 332 of 2015**

- Gitesh Sinha S/o late Ganga Ram Sinha, aged about 22 years, R/o Shikshak Colony, Danganiya, Raipur Police Station, DD Nagar, Raipur, Revenue and Civil District Raipur (CG).

---- Petitioner**Versus**

1. The Chief General Manager, Oriental Insurance Co.Ltd. Head Office, "Oriental House" A-25/27, Asaf Ali Road, New Delhi -110002.
2. The Divisional Manager, The Oriental Insurance Company Ltd. Division Office, Durg, District Durg (CG).

---- Respondents

For Petitioner	Shri Pushpendra Kumar Patel, Advocate.
For Respondents .	Shri Abhishek Sinha, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****14/03/2016**

1. Challenge to the present writ petition is non-consideration of the claim of the petitioner for compassionate appointment by the respondents.
2. According to the petitioner, his father was working with the respondents. His father died on 29.01.2007 and immediately thereafter, mother of the petitioner filed an application on 26.03.2007 for providing compassionate appointment to her son i.e. present petitioner. Though he has been approaching the respondents time and again, but his application for compassionate

appointment has not been considered and decided by the respondents and still the same is kept pending.

3. Counsel for the Respondents fairly submits that he has already filed reply wherein it has been categorically held that at the relevant time when the father of the petitioner has died, there was no policy in the respondents establishment pertaining to grant of compassionate appointment. He further submits that infact on an earlier occasion there was a scheme for compassionate appointment in the respondent's organization, but the same was withdrawn vide circular dated 17.07.2002 w.e.f. 01.06.2002. Subsequently the scheme/policy for compassionate appointment has now been re-introduced w.e.f. 01.11.2014 onwards and that too in respect employee died only on or after 01.11.2014. Therefore, as in the instant case death of employee transpired on 29.01.2007 when there was no policy of compassionate appointment, the question of consideration of the petitioner's case for compassionate appointment does not arise.
4. Counsel for the Respondents submits that in view of ratio of law laid down by the Supreme Court in 2010(11)SCC 661 (State Bank of India and Another Vs. Raj Kumar), this petition deserves to be dismissed.
5. Counsel for the petitioner fairly admits that at the time when his father died there was no existing policy in the respondents organization dealing with compassionate appointment and that he had moved an application in the year, 2007. No order was passed by the respondents entertaining his application in any manner. He submits that his only grievance which still survives is that his case may be considered by the respondents and a speaking order may be passed on his representation. However, on query being made to him, he fairly admits that there was no policy in force with the respondents for

compassionate appointment at the time of death of his father or at the time when he moved an application for compassionate appointment. He also admits that respondents re-introduced the scheme for compassionate appointment w.e.f. 01.11.2014 onwards that too in respect employee died only on or after 01.11.2014. In the said factual circumstances, the question of sending the matter to the respondents for deciding the representation of the petitioner would not be proper.

6. In State Bank of India (Supra) the Supreme Court in paragraph-8 has observed as under :

“8. It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the Rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant.”

7. As per above judgment, the appointment on compassionate ground is not to be considered as a source of recruitment and an application for compassionate appointment has to be considered strictly in accordance with policy of the employer, if any, in respect of compassionate appointment. In the event, if there is no policy/scheme prevailing in the respondent's establishment, there can be no claim as a matter of right for such appointment.

8. Further, in 2009(11)SCC 453 (State of Jharkhand and Others Vs. Shiv Karampal Sahu), the Supreme Court has held as under:

“11. The scheme for grant of monetary compensation to the dependents of the deceased or injured who are affected in any kind of terrorist/virulent/communal attack must be considered in terms of the stipulations made in the circular letters containing policy decisions. Appointment on compassionate ground, it is trite, must be made keeping in view the provisions contained in Articles 14 and 16 of the Constitution of India. Such schemes cannot be given an expansive meaning as the constitutional scheme envisages that all persons who are entitled to be considered for appointment would be eligible for being considered therefor. Any policy decision for appointment on compassionate ground must, therefore, receive a strict construction.”

13. A circular letter providing for appointment on compassionate ground in case of death of a government servant cannot be extended in case of the dependents of the deceased who was not a government servant. A public employment must be offered to a person who is entitled therefor. All recruitments subject to just exceptions must be made in terms of the rules framed under the proviso appended to Article 309 of the Constitution of India. A circular letter issued by the State cannot be issued de hors the constitutional scheme of making offer of public appointment. [See Official Liquidator vs. Dayanand & ors. [(2008) 10 SCC 1 para 52]; State of Bihar vs. Upendra Narayan Singh & Ors. [(2009) 4 SCALE 282 para 19]; and Man Singh v. Commissioner, Garhwal Mandal, Pauri & Ors. [2009 (11) SCC 448].”

9. Non-consideration of the petitioner's claim for compassionate appointment for want of policy/scheme would not come in way of deciding the claim of the petitioner or his mother seeking for monetary compensation if any scheme in this regard was prevailing at the relevant point of time. The petitioner shall be free to raise his grievance in this regard, if so advised.
10. With the aforesaid observations, the writ petition is dismissed. No order as to costs.

Sd/-
(P.Sam Koshy)
JUDGE