

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 2287 of 2013**

Ajeet Kumar Sinha S/o Late Tribhuwan Sinha Aged About 33 Years R/o Village Songara, Post Songara, Police Station Bhatgaon, Revenue Distt. Surajpur, Civil District Surguja C.G.

---- Petitioner**Versus**

1. State Of C.G. Through The Secretary, Health Department, Mantralaya, New Raiur, P.S. Rakhi, Civil & Revenue District Raipur C.G.
2. The Chief Medical & Health Officer, Ambikapur, (now Surajpur), P.S. Surajpur, Revenue District – Surajpur, Civil District – Surguja (C.G.)
3. Deputy Collector Surguja (Now Surajpur) P.S. Surajpur, Revenue District Surajpur, Civil District Uргуja C.G.

---- Respondents

For Petitioner:
For State :

Shri D. N. Prajapati, Advocate
Smt. S. Ghai, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****15.01.2016**

1. The present Writ Petition has been filed seeking compassionate appointment to the Petitioner.
2. Facts of the case in brief is that the father of the Petitioner died on 22.07.2000 while working with the Respondent No.1. Thereafter, it is said that the wife of the deceased – mother of the Petitioner claimed appointment on compassionate ground which was not considered by

the department and finally the present Petitioner submitted claim for compassionate appointment which was not considered on the ground that the eldest son of the deceased is already in employment of the State Government. According to the State in accordance with guidelines of the State Government the Petitioner would not be entitled for compassionate appointment. The mother of the Petitioner initially filed a Writ Petition WPS No. 4740/2009 which was dismissed as withdrawn on 22.07.2013 on the ground that the Writ Petition ought to have been filed by the present Petitioner not by the mother. Thereafter, the present Writ Petition has been filed after the claim of the present Petitioner for compassionate appointment was rejected on 13.03.2007.

3. Learned Counsel for the Petitioner submits that it is the case where the elder brother of the Petitioner Sujit Kumar Sinha, who is a State government employee was already living separately from the family and the present Petitioner and his mother were solely dependent upon the income from the deceased employee and therefore, he ought to have been considered for grant of compassionate appointment.

4. Learned State Counsel however opposing the present Writ Petition submits that since the State Government has framed guidelines for compassionate appointment. As per the Scheme for compassionate appointment in case if some member of the family of the deceased employee is in employment then the other member of the family cannot claim compassionate appointment. Clause 8 of the circular dated 10-

6-2003 very specifically provides that:

“ (8).....जहाँ परिवार में एक कमाने वाला विद्यमान हो - मृतक शासकीय सेवक के परिवार में यदि पूर्व से ही परिवार को कोई सदस्य कमाने वाला मौजूद है, उस स्थिति में परिवार के दूसरे सदस्य को अनुकम्पा नियुक्ति नहीं दी जाएगी।”

In the instant case elder brother of the Petitioner is a government employee, which is not in dispute. Therefore, the claim of the present petitioner was rightly rejected.

5. In addition to the fact that there is already an employee present in the family another aspect which is to be borne in mind in the present Writ Petition is aspect of delay. Admittedly, the deceased employee died on 22.07.2000. The mother of the Petitioner filed Writ Petition for the first time in the year 2009 after the claim of the present Petitioner for compassionate appointment was rejected on 13.03.2007. The present Petition has been filed in the year 2013 after about more than 6 years of the claim being rejected. As such there is an admitted unexplained inordinate delay on part of the Petitioner firstly in raising claim for compassionate appointment itself and secondly in filing of the present Petition.

6. The law in this regard which 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 ground 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 for appointment to seek 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.

7. The Supreme Court in *State of J & K and Others Vs, Sahad Ahmed Mir* 2006 (5) SCC 766, in para 11 has held as under:

“11.....it is that such an appointment is an exception to general rule. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in

consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should not be departed from except where compelling circumstances demand, such as, death of the sole bread winner, the family survived and the family suffering because of the setback. Once it is proved that inspite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say “goodbye” to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution.”

8. 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.”

9. 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.”

10. Applying the well settled principle of law and considering the rival contentions on behalf of the parties, particularly the fact that an employed person is already available in the family and the scheme of the State Government also dis-entitle such claim, this Court is of the opinion that the Respondent had not committed any illegality or infirmity in the order rejecting grant of compassionate appointment to the Petitioner.

11. Accordingly, the Writ Petition being devoid of merit is rejected.

Sd/-
(P. Sam Koshy)
JUDGE