

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 3529 OF 2015

Rakesh Kumar Dubey S/o Late Shri Ramakant Dubey
aged about 33 years Occupation Un-employed R/o village
Dabo Post FASTERPUR P.S. Mungeli Civil District Bilaspur
Revenue District Mungeli (CG)

---Petitioner

Versus

1. The Chhattisgarh State Power Holding Company Limited through its Director General Manager (HRD) Daganiya Raipur District Raipur (CG)
2. Deputy Managing Director Chhattisgarh State Power Holding Company Limited Daganiya Raipur District Raipur (CG)
3. Welfare Officer/Welfare Assistant Chhattisgarh State Power Holding Company Limited Daganiya Raipur District Raipur (C.G.)

----Respondents

For Petitioner : Mr. Sunil Sahu, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

08/01/2016

1. The petitioner has assailed the order dated 03/08/2015 passed by the respondents rejecting his

prayer for grant of compassionate appointment.

2. The petitioner's father died in harness on 14/03/1998 while he was posted as Parichalak Grade-I (Line) in the office of the respondents. The petitioner had earlier preferred Writ Petition (S) No.52/2015 for grant of compassionate appointment which was disposed of on 28/01/2015 directing the respondents to decide his application in accordance with the eligibility conditions laid down in the policy dated 30/01/1997.

3. Pursuant to the said order, the petitioner's application has now been rejected on the ground that he has moved an application for compassionate appointment on 20/09/2001, which is beyond the period of one year; therefore, petitioner is not fit to be considered on merit in view of Clause-6 of the policy dated 30/01/1997.

4. Clause-6 of the policy dated 30/01/1997 clearly provides that the dependent of the deceased employee has to submit application in the office where the deceased was working within one year from the date of death, with further stipulation that application received after one year

shall not be considered.

5. In the matter of **Shreejith L. Vs. Deputy Director (Education) Kerala and Others**¹, the Supreme Court has observed as follows:-

“18. There is considerable merit in the contention urged by Mr. Rajan. It is not in dispute that Respondent 1 had attained majority on 8-5-1995 whereas the application for compassionate appointment was made on 10-9-2007. This application was, on the face of it, beyond the period stipulated in the scheme for making such a claim. The High Court appears to have confused an application required to be filed within the period stipulated for the purpose with the availability of a vacancy against which such an application could be considered by the Manager. These were two distinctly different matters. What was important was the making of an application for appointment on compassionate basis within the period stipulated for the purpose. Whether or not a vacancy is available had nothing to do with the making of the application itself.”

6. It is not in dispute that petitioner's father died on 14/03/1998 and petitioner preferred application for compassionate appointment on 28/10/1998, that application has been returned as the petitioner was minor. Thereafter, on 20/09/2001, petitioner again filed an application for compassionate appointment, which was

¹ (2012) 7 SCC 248

rejected on the ground that it is filed beyond the period of one year.

7. The contention of the petitioner is that he was ineligible on account of minority, therefore, his application was returned on 28/10/1998 and he has preferred second application on 20/09/2001, which is within one year. This argument has been considered and rejected by the Division Bench of this Court in Writ Appeal No.555/2015 (*Mohammad Sahir v. The Chhattisgarh State Power Holding Company Limited and others*) decided on 20/11/2015, in which, the Division Bench has observed as follows:-

“9. The father of the Appellant died on 6.3.1999. It is not in dispute that the Appellant applied for compassionate appointment 2 years and 11 months later on 11.2.2002. We find no error in the conclusion of the Learned Single Judge that the application was barred by time beyond the period of 1 year under Clause 6 of the circular dated 3.1.1997.

10. The submission that some claims for compassionate appointment had been entertained much after the period of one year from the legal heirs who may have been minors on the date of death and was considered much after the period of one year leaves us unimpressed. Judicial precedents abound that a claim to be considered

for compassionate appointment is not a vested right and the post legal heirs after his death by keeping it vacant till the legal heirs became eligible to be considered if they were ineligible on the ground of minority within the period of eligibility. Article 14 does not visualize reverse discretion and no mandamus can be issued to perpetuate any illegality.”

8. In view of the above facts and following the decision rendered by Division Bench of this Court in *Mohammad Sahir (supra)*, it cannot be held that petitioner’s application was within time. The writ petition deserves to be and is accordingly dismissed at the stage of admission without notice to the other side.

Sd/-
(Sanjay K. Agrawal)
JUDGE

Tiwari