

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.5997 of 2016

Sumit Shalabh Andrews, S/o Late A.K. Andrews, aged about 29 years, R/o Village and P.O. Gunderdehi, District Durg (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Health and Family Welfare Department, Mahanadi Bhawan, Mantralaya, New Raipur (C.G.)
2. Director, Directorate Health Service, Raipur (C.G.)
3. Chief Medical and Health Officer, District Jashpur (C.G.)
4. Chief Medical and Health Officer, District Durg (C.G.)

---- Respondents

For Petitioner: Mr. Barun Kumar Chakrabarty, Advocate.

For State/Respondents: -

Mr. Dheeraj Kumar Wankhede, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

03/11/2016

1. The petitioner's father died in harness while working as Government servant and thereafter, the petitioner was appointed on the post of Peon (Class-IV post) on compassionate basis by order dated 8-12-2009 which he accepted willingly and is continuing on the said post. Thereafter, he made an application that he be appointed on the higher post of Assistant Grade-III as Smt. Lochana Ratre and Kum. Yamini Tamrakar have been granted.

2. Mr. Barun Kumar Chakrabarty, learned counsel for the petitioner, would submit that such an appointment on higher post is not being granted to the petitioner by respondent No.3. Therefore, an appropriate direction be issued for considering the petitioner's case for appointment on higher post of Class-III category.
3. Mr. Dheeraj Kumar Wankhede, learned Government Advocate appearing on behalf of the State/respondents, would submit that once the petitioner having been appointed on a post which he willingly accepted, the petitioner is not entitled again to be considered for higher post i.e. Class-III post.
4. I have heard learned counsel for the parties on the question of admission and given thoughtful consideration to their rival submissions raised therein.
5. It is not in dispute that the petitioner was appointed on the post of Peon on compassionate ground by order dated 8-12-2009 and since then he is performing his duties after joining on the said post for last five years and now, he is claiming appointment on a higher post i.e. Assistant Grade-III (Class-III post) on compassionate ground.
6. The issued raised in this writ petition is no longer *res integra* and concluded by several judgments of Their Lordships of the Supreme Court. The following judgments may be

noticed herein usefully and profitably.

7. In the matter of **State of Haryana v. Naresh Kumar Bali**¹,

Their Lordships of the Supreme Court have held that once a person is considered and appointed on compassionate ground as per scheme, he cannot be considered again as right to make appointment on compassionate ground stood exhausted. Paragraph 15 of the report states as under:-

“15. ... In fact, the respondent did not object to his appointment as a clerk and his claim for consideration for the post of teacher was one year after his appointment. Thus, the appointment on compassionate ground as per the scheme had been completed. The claim for appointment as Inspector was never made earlier. The High Court without even analysing the circumstances under which the seven persons mentioned in its judgment came to be appointed as Police Officers (ASI or Inspector), straight away has chosen to conclude that there was discrimination. We are not in a position to appreciate this line of reasoning....”

8. In the matter of **Umesh Kumar Nagpal v. State of**

Haryana², Their Lordships of the Supreme Court, while highlighting the object of granting compassionate appointment, have held as under:-

“The object is not to give a member of such family a post much less a post for post held by the deceased.”

9. Their Lordships further observed pertinently in the aforesaid case (supra) as under:-

“If the dependant of the deceased employee

1 (1994) 4 SCC 448

2 (1994) 4 SCC 138

finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status, but to see the family through the economic calamity.”

10. Later on, in the matter of **State of Rajasthan v. Umrao**

Singh³, Their Lordships of the Supreme Court have clearly held that dependents having accepted the appointment as LDC on compassionate ground, therefore, the right to be considered for appointment on compassionate ground was consummated and no further consideration on compassionate ground would ever arise, otherwise it would be a case of “endless compassion”. Paragraph 8 of the report states as under:-

“8. Admittedly, the respondent’s father died in harness while working as Sub-Inspector, CID (Special Branch) on 16-3-1988. The respondent filed an application on 8-4-1988 for his appointment on compassionate ground as Sub-Inspector or LDC according to the availability of vacancy. On a consideration of his plea, he was appointed on the post of LDC by order dated 14-12-1989. He accepted the appointment as LDC. Therefore, the right to be considered for the appointment on compassionate ground would ever arise. Otherwise, it would be a case of “endless compassion”. Eligibility selection is yet another thing. Merely because of the so-called eligibility, the learned Single Judge of the High Court was persuaded to the view that direction be issued under proviso to Rule 5 of Rules which has no application to the facts of this case.”

11. Later on, in the matter of **I.G. (Karmik) and others v.**

Prahlad Mani Tripathi⁴, Their Lordships of the Supreme

3 (1994) 6 SCC 560

4 (2007) 6 SCC 162

Court have clearly held once the right is exhausted, any further or second consideration for the higher post on the ground of compassion would not arise.

12. In the light of the principle of law laid down by the Supreme Court in the above referred cases, if the facts of the present case are examined, it is quite vivid that the petitioner has already been considered and appointed on compassionate ground on the post of Peon (Class-IV) by order dated 8-12-2009 which he has accepted and joined on the said post in the year 2009 and is performing his duty on the said post as such, his right to appointment on the ground of compassion stood exhausted on his consideration for the said post and consequent appointment. Now, he cannot turn around and make claim for further / second consideration on compassionate ground for higher post i.e. Class-III post which is clearly impermissible being a case of endless compassion as held by Their Lordships of the Supreme Court in the above-stated cases (supra).

13. As a fallout and consequence of aforesaid discussion, the writ petition is held to be devoid of merit and required to be dismissed and is, therefore, dismissed without notice to the other side. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge