

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 6136 of 2007**

1. Mohan Lal Kanwar S/o Late Shri Bhojram, aged about 30 years, Occupation - Service, Working On The Post Of Peon, Posted At Government Girls Middle School, Kharsiya, Block - Kharsiya, District - Raigarh (C.G.)

---- Petitioner**Versus**

1. State Of Chhattisgarh, through the Secretary, School Education Department, DKS Building, Raipur (CG).
2. The Director, Directorate of Public Instructions, Raipur (CG).
3. The Collector, Raigarh, District Raigarh (CG).
4. The District Education Officer, District Raigarh (CG).
5. The Chief Executive Officer, Zila Panchayat, Raigarh, Dist. Raigarh (CG).

---- Respondent

For Petitioner

Shri K.P. Sahu, Advocate

For Respondent/State

Shri S.M. Ali, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****5-5-2017**

1. Petitioner is claiming appointment on regular basis from the date of his initial appointment as Peon on the ground that the said appointment being the compassionate appointment the

same could not have been made on daily wages or ad hoc or temporary basis.

2. On 3-7-1995 the petitioner was appointed as Peon on contingency basis by the Deputy Director (Education), Raigarh, and was posted in the Municipal Girls Higher Secondary School, Kharsiya, District Raigarh. His service book was also prepared, however, he was always treated as a daily wage employee, therefore, the petitioner moved a representation on 19-9-2007 (Annexure – P/4) stating, *inter alia*, that by virtue of State Government's circular dated 6-7-2007 compassionate appointment has to be on regular basis, therefore, he should be regularised from the date of initial appointment.
3. In the return filed by the respondents it has not been denied that the petitioner's father died in harness while he was serving in the Education Department as a regular employee, therefore, he was granted compassionate appointment, however, State has referred to the judgment of the Supreme Court in **Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors.**¹ to contend that since the petitioner was not appointed through any selection process he could not claim to be a regular employee from the date of initial appointment.

1 (2006) 4 SCC 1

4. Having heard learned counsel for the parties and on perusal of the State Government's circular dated 6-7-2007, it would appear, the writ petition deserves to be allowed. In the said circular issued by the General Administration Department, Government of Chhattisgarh, by order and in the name of Governor of Chhattisgarh, it is clearly stipulated that despite Government instructions compassionate appointment is granted on daily wages/Collector rate, which is not permissible. It further stipulates that if the deceased employee was a regular employee the compassionate appointment should be given in regular establishment and if the deceased was a member of contingency paid establishment the compassionate appointment should be allowed in that establishment.
5. The circular dated 6-7-2007 is, therefore, clear in terms categorically stating that the compassionate appointment should be made on regular basis and not on daily wages or Collector rate.
6. Reliance placed by the learned State counsel upon the decision of the Supreme Court rendered in **Umadevi** (supra), is thoroughly misplaced because the said judgment does not apply to a compassionate appointee. The compassionate

appointment is always treated to be a special measure to provide immediate succor and financial assistance to the family of the deceased Government servant. It is not a back door entry because such appointment is sanctioned under the circulars issued by the State Government from time to time.

7. In view of foregoing, the writ petition deserves to be and is hereby allowed. The petitioner's initial appointment shall be treated to have been made on regular basis and he should be accorded seniority from the date of his initial appointment. The petitioner is also entitled to the difference of pay from the date of initial appointment till the date of actual payment, which shall be paid to him within a period of six months, however, in the facts and circumstances of the case, the petitioner is held not entitled for any interest on the amount of arrears.
8. There shall be no order as to costs.

Sd/-

Judge

Prashant Kuamr Mishra

Gowri