

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 6596 of 2016**

- Daneshvar Prasad Banjare S/o Late Shir Ramsukh Banjare, Aged About 24 Years R/o Village Dhodhari P.S. Khadgaon, Distirct Rajnandgaon Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Its Secretary, Anusuchit Jati & Anusuchit Jan Jati Vikas Vibhag, Mahanadi Bhavan, Mantralaya Naya Raipur Chhattisgarh
2. Collector, Rajnandgaon Chhattisgarh
3. Chief Executive Officer, Janpad Panchayat Manpur Distirct Rajnandgaon Chhattisgarh
4. Sahayak Ayukta, Adivasi Vikas Rajnandgaon, Distirct Rajnandgaon Chhattisgarh
5. Chief Executive Officer, Janpad Panchayat Manpur Distirct Rajnandgaon Chhattisgarh

----Respondents

For Petitioner:

Mr. R.K. Suryavanshi, Advocate

For State :

Mr. Majid Ali, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****10.03.2017**

1. The Petitioner through the present Writ Petition has sought for the relief of quashment of Annexure P/1 dated 21.11.2013 whereby the claim of compassionate appointment of the Petitioner was rejected as the same was filed beyond the prescribed limit under the Scheme of Compassionate Appointment applicable under the Government of Chhattisgarh. In addition the Petitioner has also sought for a direction to the Respondent to immediately process the case for release of

General Provident Fund (GPF) amount lying in the name of father of the Petitioner, the deceased employee which has till date not been released to them.

2. So far as the first relief of seeking compassionate appointment is concerned the relevant facts necessary for adjudication of the instant case is that the father of the present Petitioner was an employee working as Siksha Karmi Grade III at Primary School Dhodhari Block Manpur District, Rajnandgaon. He died in harness on 25.09.2006. In the family of the deceased employee three children and wife were there. For reason best known to the Petitioner he did not put his claim for compassionate appointment at the relevant point of time. The mother of the Petitioner for the first time did put her claim for grant of compassionate appointment on 26.07.2012. The said application was rejected by the Respondents vide the impugned order 22.11.2013. The ground for rejection was for the reason of it being filed much after the prescribed period under the compassionate appointment policy.
3. A perusal of the record would show that the Petitioner immediately on the death of the deceased had not put his claim for compassionate appointment. It also does not appear to have been pressed promptly by any other family members of the deceased. Admittedly there is delay on the part of the Petitioner claiming for compassionate appointment. The grant of compassionate appoint is always to be considered only in accordance with the scheme / policy framed by the employer. In the instant case there is a period prescribed in the policy of the

state Government for moving an application for compassionate appointment. At the relevant time that at the time of death of the employee the scheme which was in force for moving an application for compassionate appointment time prescribed was within a period of 6 months from the date of death of the deceased. The said policy subsequently has been amended and the time limit was enhanced to the extent of moving an application within 3 years. Even if both these periods are taken into consideration even then if the date on which the present Applicant has moved the application is taken note of, it would reveal that it is much after 3 years, in as much as there is delay of more than 6 years on the part of the Petitioner.

4. So far as non grant of compassionate appointment is concerned particularly at the belated stage, it is by now well settled in a series of decision of the Hon'ble Supreme Court. The Supreme Court in the case of **Haryana State Electricity Board and Anr v. Hakim Singh** reported in **1997 AIR SC 3887** has held that "the whole object of any compassionate appointment schemes is to give succor to the family to tide over the sudden financial crisis befallen the dependents on account of the untimely demise of its sole earning members".
5. The said stand of the Supreme Court has also been reiterated in case of **State of Gujrat and Others vs. Arvindkumar T. Tiwari and Another** reported in **2012 (9) SCC 545**.
6. At this juncture it would be trite to refer to the decision of the Hon'ble Supreme Court in case of **Chief Commissioner, Central Excise and Customs, Lucknow and other v. Prabhat Singh**

reported in **(2012) 13 SCC 412** 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....”

7. 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.”

8. In **State of Manipur vs. Md. Rajaodin** reported in **AIR 2003 SCW 4339** the Supreme Court, after having heard various cases on compassionate appointment, observed as under :

“11. In *Smt. Sushma Gosain and Ors. v. Union of India and Ors.* (1989 (4) SCC 468) it was observed that in all claims of appointment on compassionate grounds, there should not be

any delay in appointment. 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. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisage specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was reiterated in *Phoolwati (Smt.) v. Union of India and ors.* (1991 Supp (2) SCC 689) and *Union of India and ors. v. Bhagwan Singh* (1995 (6) SCC 476). In *Director of Education (Secondary) and Anr. v. Pushpendra Kumar and Ors.* (1998 (5) SCC 192) it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. 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

dependant 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."

9. The Supreme Court in **State of J & K and others Vs. Sajad Ahmed Mir** reported in **(2006) 5 SCC 766** in para 11 has held as under:

"11.....it is that such an appointment is an exception to the 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 inconsonance 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."

10. In the light of the above authoritative decision given by the Supreme Court and indisputably in the present case the claim for compassionate appointment has been filed by the Petitioner after

the prescribed period of 3 years from the date of death of the deceased employee. It cannot be said that authorities have committed any illegality or infirmity in rejecting the claim application.

11. In view of the aforesaid authoritative decision claim of compassionate appointment and the rejection of the same by the respondents does not warrant any interference. Thus, the claim of the petitioner so far as grant of compassionate appointment is concerned stands rejected.

12. However so far as relief No.2 is concerned i.e. the release of GPF amount in respect of father of the Petitioner, this Court does not find any good reason why the same should not be released to the family members of the deceased employee unless there is any sort of order not to release the same, which in the instant case does not seem to be.

13. The return of the Respondent also does not reflect anything so far as the release of GPF amount is concerned. As such the only inference which can be drawn is that there is no objection so far as release of GPF amount is concerned. Accordingly the claim of the Petitioner to that extent is allowed.

14. Let the Respondent No.2, the Collector immediately process the case of the Petitioner in respect of the GPF amount of the father of the Petitioner who had died in harness as Sikaha Karmi at Primary School Dhodhari Block Manpur District, Rajnandgaon on 25.09.2006. In case GPF amount has not been released till now necessary instructions be issued for release of the same. It is also ordered that in the event of amount has not been paid the

said amount shall carry interest at the rate of 10% from the date it fell due to the family members of the deceased employee till the date of actual payment.

15. The Petitioner shall also be at liberty to move an application / representation to Respondent No.2, the Collector in case any other monetary dues have also not been settled so far as the deceased employee is concerned. The same shall also be considered by the Collector as expeditiously as possible.
16. With the aforesaid observation the Writ Petition stands partly allowed.

Sd/-

(P. Sam Koshy)
JUDGE