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HIGH COURT OF CHHATTISGARH, BILASPUR**WP (S) No.102 of 2016**

Prashant Shukla S/o Shri Shiv Shanker Shukla, aged about 44 years, R/o Village and Post - Kunra, Police Station - Nandghat, Civil and Revenue District-Bemetara (CG)

---- Petitioner**Versus**

- 1.** State of Chhattisgarh, through-Secretary, School Education Department, Mahanadi Bhawan, Police Station - New Raipur, Tahsil-Raipur, Civil & Revenue District-Raipur (CG)
- 2.** Director, Directorate of Public Instruction Chhattisgarh, at Raipur, Mahanadi Bhawan, Police Station-New Raipur, Tahsil-Raipur, Civil & Revenue District - Raipur (CG)
- 3.** Joint Director, Education Division, Bilaspur, Police Station-Civil Lines, Civil and Revenue District-Bilaspur (CG)
- 4.** District Education Officer, Mungeli, Police Station-Mungeli, Civil District-Bilaspur, Revenue District-Mungeli (CG)

---- Respondents

For Petitioner	:	Mr.Vaibhav Goverdhan, Advocate
For Respondents	:	Mr.Gary Mukhopadhyay, Dy.G.A.
For Intervener	:	Mr.Prateek Sharma and Ms Pragya Pandey, Advocates

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****14/02/2017**

1. Smt.Rajkumari Shukla while working as Assistant Teacher died in harness. The petitioner being adopted son (nephew of the deceased) claimed compassionate appointment as per policy applicable i.e. 10th June, 1994. The Joint Director, (Education), Bilaspur by order dated 23.1.1995 (Annexure P/3) granted compassionate appointment to the petitioner to the post of Assistant Teacher, which the petitioner joined

and started performing his duties. Thereafter, the petitioner's services were regularized also and he was promoted on the post of Teacher by the competent authority. The petitioner was served with the notice dated 16.10.2015 (Annexure P/7) by respondent No.1 to appear before the State Government along with papers with regard to his compassionate appointment. The petitioner filed his detailed reply that he is adopted son of deceased Smt.Rajkumari Shukla and therefore, he has rightly been appointed on the said post on compassionate ground. He was served with the second show-cause notice dated 8.12.2015 (Annexure P/10) that as per circular dated 10.6.1994 widower/husband of the deceased government servant was not entitled to nominate his son or nearest relative for compassionate appointment. Before the petitioner could file his reply, the impugned order dated 31.12.2015 (Annexure P/1) was passed terminating his services relying upon the circular dated 10.6.1994 finding his appointment is contrary to law.

2. Feeling aggrieved against the order of his termination, the petitioner has filed this writ petition under Article 226 of the Constitution of India stating inter-alia that he being confirmed employee his appointment could not have been set aside without holding departmental enquiry. His appointment was fair appointment and in accordance with

the Government policy and the petitioner being adopted son was clearly entitled for appointment and as such, the impugned order deserves to be set aside.

3. Mr. Vaibhav Goverdhan, learned counsel appearing for the petitioner, would submit that order of termination without holding departmental enquiry and without considering the fact he was duly appointed on the post of Assistant Teacher being adopted son is unsustainable and bad in law.
4. On the other hand, Mr. Gary Mukhopadhyay, learned Deputy Government Advocate appearing for the respondents/State, would submit that the petitioner's appointment was contrary to the policy dated 10.6.1994 and 3.1.1995, in which widower/husband of the deceased Smt. Rajkumari Shukla was not entitled to nominate his son or nearest relative for compassionate appointment and order of termination is appealable order before the Appellate Authority. He would further submit that compassionate appointment is not a mode of recruitment. The petitioner is entitled to be considered for compassionate appointment as per policy only and as such, the writ petition deserves to be dismissed.
5. Mr. Prateek Sharma and Ms. Pragya Pandey, learned counsel appearing for the intervener would oppose the writ petition.
6. I have heard learned counsel appearing for the parties,

considered their rival submissions made herein and also gone through the documents appended with the writ petition with utmost circumspection.

7. Smt.Rajkumari Shukla while working as Assistant Teacher died in harness. The petitioner (nephew of the deceased) claiming to be adopted son of the deceased filed an application for compassionate appointment. That was considered by the competent authority and by order dated 23.1.1995 he was appointed on the post of Assistant Teacher. His appointment order clearly states that he is nephew of deceased late Smt.Rajkumari Shukla and since 1995 he continued on that post and even confirmed on the said post and he was promoted as Teacher of the Government School, which is apparent from Annexure P/4. All of sudden, on the complaint made by one Shri Dinesh Kumar Soni, notice dated 16.10.2015 (Annexure P/7) was issued to the petitioner to file the documents regarding his appointment. The petitioner has filed his detailed reply and claimed that he being the nephew of deceased was adopted by deceased Smt.Rajkumari Shukla and in that capacity he has claimed appointment. He has not concealed any fact and was duly considered and granted appointment in the year 1995. Again second show-cause notice dated 8.12.2015 (Annexure P/10) was issued on the ground that since Smt.Rajkumari Shukla died in harness and as per

policy, her widower/husband Shri Shiv Shanker Shukla was not entitled to nominate his son/nearest relative for appointment on compassionate ground, therefore, as to why his services be not terminated and relying on the same ground, his services have been terminated. It is also not the case of the respondents/State that the petitioner has concealed any fact and secured appointment on the said post. Order of appointment clearly states that the petitioner is nephew of Smt. Rajkumari Shukla and in that capacity he was granted compassionate appointment, which has been revoked after the period of 21 years.

8. The question for consideration would be whether termination of the petitioner's appointment is justified ?
9. Very recently the Supreme Court in the matter of **Md. Zamil Ahmed Vs. State of Bihar & Others**¹ Their Lordships have held that in case of compassionate appointment where the State Government has taken a conscious decision dehors rules to give compassionate appointment to brother of deceased government servant for the benefit of family to face the financial hardship, his appointment cannot be set aside after 15 years by holding as under:-

“11.1 Firstly, the appellant and wife of the deceased at the time of seeking compassionate appointment did not conceal any fact and nor

¹ (2016) 12 SCC 342

filed any false or incorrect document/declaration. On the other hand, both of them disclosed their true family relations and conditions prevailing in the deceased family on affidavit.

11.2 Secondly, the appellant, who is the brother of the deceased, undertook to maintain the family of the deceased in the event of his securing the compassionate appointment and he accordingly also gave such undertaking to the State.

11.3 Thirdly, there was no one in the family of the deceased to claim compassionate appointment except the appellant who, as mentioned above, was the close relative of the deceased, i.e., real younger brother and used to live with the deceased. He was otherwise eligible to claim such appointment being major, educated and only male member in the family.

11.4 Fourthly, the appellant after securing the employment throughout maintained the family of the deceased in all respects for the last more than 15 years and he is continuing to do so.

12. In the light of aforementioned reasons, which rightly persuaded the State to grant compassionate appointment to the appellant, we do not find any justification on the part of the State to dig out the appellant's case after 15 years of his appointment and terminate his services on the ground that as per the State policy, the appellant did not fall within the definition of the expression "dependent of deceased" to claim compassionate appointment.

13. The fact that the appellant was younger brother of the deceased was within the knowledge of the State. Similarly, the State was aware that the brother does not fall within the definition of dependent at the relevant time and still the State authorities obtained the undertaking from the appellant that he would maintain the family of the deceased once given the appointment.

14. In our considered view, the aforesaid facts would clearly show that it was a conscious decision taken by the State for giving an

appointment to the appellant for the benefit of the family members of the deceased who were facing financial hardship due to sudden demise of their bread earner. The appellant being the only close relative of the deceased could be given the appointment in the circumstances prevailing in the family. In our view, it was a right decision taken by the State as a welfare state to help the family of the deceased at the time of need of the family.

15. In these circumstances, we are of the view that there was no justification on the part of the State to wake up after the lapse of 15 years and terminate the services of the appellant on such ground. In any case, we are of the view that whether it was a conscious decision of the State to give appointment to the appellant as we have held above or a case of mistake on the part of the State in giving appointment to the appellant which now as per the State was contrary to the policy as held by the learned Single Judge, the State by their own conduct having condoned their lapse due to passage of time of 15 years, it was too late on the part of the State to have raised such ground for cancelling the appellant's appointment and terminating his services. It was more so because the appellant was not responsible for making any false declaration and nor he suppressed any material fact for securing the appointment. The State was, therefore, not entitled to take advantage of their own mistake if they felt it to be so. The position would have been different if the appellant had committed some kind of fraud or manipulation or suppression of material fact for securing the appointment. As mentioned above such was not the case of the State.

16. It is for this reason, we are of the view that action on the part of welfare State in terminating the appellant's service on such ground cannot be countenanced. We, therefore, disapprove the action taken by the State."

10. Thus, the State Government having taken a conscious

decision to appoint the dependent of the deceased to meet the financial hardship, being a welfare State, cannot be allowed to revert back and revoke the appointment after fairly long time particular there being no suppression or omission on the part of dependent to supply any information.

11. In the light of principle of law laid down by the Supreme Court in the above-stated judgment, if the facts of the present case are examined, it is quite vivid that the petitioner has been given appointment by the State Government with an open eyes. Appointment was not secured by making any mis-representation or fraud and the petitioner has maintained the family throughout after appointment. The State Government after taking a conscious decision has appointed the petitioner in which he has worked for 21 years and he has also been regularized on the post of Assistant Teacher and promoted on the post of Teacher, therefore, such an appointment could not have been revoked by the State Government.
12. There is one more ground for not upholding the impugned order. The petitioner was appointed by order dated 21.1.1995 and he was regularized on the said post and was promoted on the post of Teacher also. The petitioner's services have been terminated without making any departmental enquiry, whereas the petitioner has been

regularized and holding regular post and his services could not have been terminated without holding regular departmental enquiry. The Supreme Court in the matter of **Avtar Singh Vs. Union of India and others**² has held that departmental enquiry is necessary before passing the order of termination/removal against confirmed employee on the ground of suppression of information or submitting false information.

13. Thus, the impugned order cannot be sustained and is hereby quashed. The respondents are directed to reinstate the petitioner in service forthwith. The petitioner has also prayed for consequential benefits. The impugned order was passed on 31.12.2015. The petitioner has neither averred in the writ petition nor brought any material on record to hold that during this period i.e. from 31.12.2015 to 14.2.2017, he was not gainfully employed anywhere. The normal rule is a workman whose service has been illegally terminated would be entitled to full back-wages except to the extent during the enforced idleness. (See **M/s. Hindustan Tin Works Pvt. Ltd. Vs. The Employees of M/s. Hindustan Tin Works Pvt. Ltd. and others**³)
Thereafter, in the matter of **M/s. Reetu Marbles Vs. Prabhakant Shukla**⁴, Their Lordships of the Supreme Court have emphasized the need for enquiry/material with

² AIR 2016 SC 3598

³ (1979) 2 SCC 80

⁴ (2010) 2 SCC 70

regard to gainful employment before directing full back-wages particularly when the order is being modified and Their Lordships awarded only 50% of back-wages from the date of termination of service till reinstatement. Following the law laid down in this regard and considering the facts and circumstances of the case, I deem it appropriate to award only 50% back-wages to the petitioner from the date of termination till the petitioner is reinstated in service, however, he will be entitled for other service benefits as per law.

14. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-