

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.2916 of 2016

Waseem Khan, S/o Late Mr. Mahmood Khan, aged about 24 years, R/o Mohalla Rasulpur, Vikaskhand Ambikapur, Tahsil Ambikapur, District Sarguja (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Home Ministry, Mahanadi Bhawan, New Raipur, District Raipur (C.G.)
2. State of Chhattisgarh, Through the Secretary, Department of Tribes & Scheduled Caste Development, Mahanadi Bhawan, New Raipur, District Raipur (C.G.)
3. State of Chhattisgarh, Through Deputy Secretary, Govt. of CG, General Administration Department, New Raipur (C.G.)
4. Director, Department of Tribes & Scheduled Caste Development, Mahanadi Bhawan, New Raipur, District Raipur (C.G.)
5. Commissioner, Department of Tribes & Scheduled Caste Development, Block 4D, Ground Floor, Indrawati Bhawan, New Raipur (C.G.)
6. Additional Commissioner, Department of Tribal Development, Ambikapur, District Sarguja (C.G.)
7. Collector, District Sarguja (C.G.)
8. Additional Collector, Ambikapur, District Sarguja (C.G.)
9. Chief Executive Officer, Janpad Panchayat, Ramchandrapur, PO Ramanujganj, District Sarguja (C.G.)

---- Respondents

For Petitioner: Mr. Achyut Tiwari, Advocate.

For State/Respondents No.1 to 8: -

Mr. Aditya Sharma, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

08/02/2017

1. Father of the petitioner died in harness while working as Government servant on 24-4-2010. The petitioner along with his mother applied for appointment. The respondent State Department by order dated 3-11-2010 appointed the petitioner on the post of Peon on compassionate basis. The petitioner worked on the said post for fairly long time and after coming to know that the post of Assistant Grade-III was vacant at the time of his appointment, he has filed an application for grant of appointment to him on the post of Assistant Grade-III, as the post is lying vacant and that application has been rejected by the State on the ground that there is no provision for change of post once the appointment is made. Feeling aggrieved against that order, the instant writ petition has been filed under Article 226/227 of the Constitution of India by the petitioner.
2. Learned counsel for the petitioner submits that the post of AG-III was lying vacant at the time of his appointment and at that time the petitioner was misled by the respondent Department as such, he is entitled to be appointed on the post of AG-III by amending his earlier appointment order.
3. Learned State counsel would submit that the petitioner having accepted appointment on the post of Peon willingly and without

any demur and protest, cannot be allowed to claim appointment on higher post as that would amount to the case of endless compassion which is not permissible.

4. I have heard learned counsel for the parties and considered the rival submissions made herein and also gone through the record with utmost circumspection.
5. The issued raised in this writ petition is no longer *res integra* and concluded by judgments of Their Lordships of the Supreme Court. Following judgments in this regard may be noticed herein usefully & profitably.

5.1) 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. Para 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. ...”

1 (1994) 4 SCC 448

5.2) In the matter of **Umesh Kumar Nagpal v. State of Haryana**², 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 deceased. ...”

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

“If the dependent of deceased employee 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.”

5.4) Later on, in the matter of **State of Rajasthan v. Umrao Singh**³, 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 the 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”.

Para 8 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

2 (1994) 4 SCC 138

3 (1994) 6 SCC 560

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.”

5.5) Later on, in the matter of **I.G. (Karmik) and others v. Prahlad Mani Tripathi**⁴, Their Lordships of the Supreme Court have clearly held that once the right is exhausted, any further or second consideration for the higher post on the ground of compassion would not arise.

6. In the light of the ratio of law laid down by the Supreme Court in the above referred cases (supra), if the facts of the present case are examined, it is quite vivid that the petitioner has already been considered on compassionate ground and appointment has been given to him on the post of Peon vide order dated 3-11-2010 which he has very well accepted and joined and is performing duty on the said post since 3-11-2010. Thus, the petitioner's right to be appointed on compassionate ground stood exhausted and now, he cannot turn around and make claim for further / second consideration on compassionate ground for higher post / change of post, which is clearly impermissible being endless compassion as held by Their Lordships of the Supreme Court in

4 (2007) 6 SCC 162

the above-stated cases (supra) and thus, this petition being without substance is liable to be dismissed.

7. As a fall out and consequence of aforesaid discussion, the writ petition is held to be devoid of merit and required to be dismissed and is, therefore, dismissed. There shall be no order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge