

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No.1280 of 2005**

Naveen John, S/o Late Subhash John, Aged about 24 years,
R/o Tiwari Colony, Opp. District Hospital, Daripara, Ambika-
pur, Distt.Surguja Chhattisgarh, Presently working as Shiksha
Karmi Grade-III

----Petitioner**Versus**

1. State of Chhattisgarh, Through-Secretary, Deptt. Of Tribal Welfare and Development, D.K.S. Bhawan, Mantralaya, Chhattisgarh
2. Commissioner, Tribal Welfare and Development, Raipur, Chhattisgarh
3. Assistant Commissioner, Tribal Welfare and Development, Ambikapur, Distt.Surguja, Chhattisgarh
4. Chief Executive Officer, Janpad Panchayat, Surajpur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr.Jitendra Shrivastava, Advocate
For Respondents	:	Mr.Majid Ali, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****27/6/2017**

1. Petitioner's father Shri Subhash John died in harness while working as Head-Master in Government Primary School, Rameshpur, Tahsil Surajpur, District Surguja. The petitioner being son made an application for compassionate appointment, his case was considered and ultimately the Chief Executive Officer, Janpad Panchayat Surajpur by order

dated 22nd September, 2003 granted him compassionate appointment on the post of Shiksha Karmi Grade-III, which he accepted willingly. Thereafter he filed the instant writ petition on 23.3.2005 stating inter-alia that he is entitled for compassionate appointment on the regular post of Government Department as he has been appointed on the post of Shiksha Karmi Grade-III by Janpad Panchayat, Surajpur.

2. Learned counsel for the petitioner would submit that father of the petitioner while working as Head-Master in the Government School died in harness, therefore, he is entitled for compassionate appointment in the Government Department, whereas he has been given appointment by Janpad Panchayat. According to the petitioner, he is entitled for appointment as per circulars dated 1.5.2000 and 10.6.2003.
3. On the other hand, learned State Counsel would oppose the writ petition.
4. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.
5. Petitioner's case for compassionate appointment was considered and permission was granted by Annexure P/5

dated 18.3.2003 to appoint him and thereafter order of appointment was issued to the petitioner on 22nd September, 2003 on the post of Shiksha Karmi Grade-III, which he has accepted & joined and now till this date he is working on the said post. Once the petitioner has been appointed on the post of Shiksha Karmi Grade-III which he accepted without demur or protest, thereafter his right to appoint on the ground of compassion stood exhausted, now he cannot turn around and make claim for further/second consideration on the compassionate ground for the higher post/regular post in government department, which is clearly impermissible being endless compassion.

6. The issue raised in this writ petition is no longer *res integra* and concluded by judgment of Their Lordships of the Supreme Court. The following judgments may be noticed herein usefully & profitably.

6.1 In the matter of State of Haryana Vs. Naresh Kumar Bali¹, Their Lordships of the Supreme Court have held that once the person is considered and appointed against the 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:-

¹ (1994) 4 SCC 448

“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 analyzing the circumstances under which the seven persons mentioned in its judgment came to be appointed as Police Officers (ASI or Inspector), straightway has chosen to conclude that there was discrimination. We are not in a position to appreciate this line of reasoning.....”

6.2 In the matter of Umesh Kumar Nagpal Vs. 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 muchless a post for host held by deceased.”

6.3 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.”

6.4 Later on, in State of Rajasthan Vs. 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 the appointment on compassionate ground was

² (1994) 4 SCC 138

³ (1994) 6 SCC 560

consummated and no further consideration on compassionate ground would ever arise, otherwise it would be a case of “endless compassion”. Para 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 16-03-1988. 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 the case.”

6.5 Later on, in I.G. (Karmik) and others Vs. Prahlad Mani Tripathi⁴, Their Lordships of the Supreme 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.

7. In the light of principle of law laid down by the Supreme Court in the aforesaid cases (supra), the petitioner having been considered for compassionate ground on the post of Shiksha Karmi Grade-III, which he accepted and performing his duties

⁴ (2007) 6 SCC 162

on the said post, thereafter his right to appoint on the ground of compassion stood exhausted, now he cannot turn around and make claim for further/second consideration on different post, which is clearly impermissible being endless compassion as held by Their Lordships of the Supreme Court in the above-stated cases (supra) and thus, this writ petition, being without substance, is liable to be dismissed.

8. As a fall out and consequence of the aforesaid discussion, the writ petition is liable to be and is hereby dismissed. No order as to cost(s).

Sd/-
(Sanjay K.Agrawal)
Judge

B/-