

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 1965 of 2017**

- Sandeep Manikpuri S/o Late Shri L. D. Manikpuri, Aged About 37 Years R/o Gram And Tahsil Bodla, District Kabirdham (Chhattisgarh).

---- Petitioner**Versus**

1. State of Chhattisgarh Through The Secretary, Medical And Health Department, Mahanadi Bhawan, Mantralaya, New Raipur (Chhattisgarh).
2. Chief Medical And Health Officer, District Kabirdham (Chhattisgarh).

---- Respondents

For Petitioner	:	Shri Prateek Sharma, Advocate
For Respondents-State	:	Shri SP Kale, Dy. AG for the State

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****26/04/2017**

1. Petitioner would assail the order Annexure P-1 by which his appointment on the post of Multipurpose Health Worker (Male) has been canceled after 15 years, after issuing a show-cause notice.
2. In view of the judgment rendered by the Supreme Court and the observations made therein in the matter of **Md. Zamil Ahmed Vs. State of Bihar & Ors.**¹, this Court proceeds to decide the matter finally with the consent of learned counsel for the parties.
3. Petitioner was appointed on the subject post on compassionate ground on 31.07.2000. Since thereafter he is continuously working on the post, which has now been re-designated as Rural Health Coordinator and he is

presently working as Rural Health Co-ordinator (Male). On receipt of some complaint against the petitioner's appointment, his service-book was verified to reveal that the petitioner is only 10th Standard pass, whereas the essential qualification for appointment on the post is Higher Secondary i.e. 10+2 examination pass and one year training for Multipurpose Health Worker. The petitioner was thereafter served a show-cause notice as to why his appointment should not be canceled and eventually by the impugned order, the appointment has been canceled.

4. In the matter of **Md. Zamil Ahmed** (supra), the petitioner before the Supreme Court was also appointed on compassionate ground, however, he being brother of the deceased was not falling within the category of dependent entitled to obtain compassionate appointment. His appointment was canceled after rendering 15 years of service. In the said factual background, the Supreme Court observed thus in para 14 & 15 :-

“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 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."

5. Even though in the matter before the Supreme Court, the question was not that the candidate was lacking any qualification, the observation is for a proposition that the State Government having once taken a decision whether it was conscious or by mistake would not permit cancellation of appointment after 15 long years.
6. On due consideration, I am satisfied that instead of canceling petitioner's compassionate appointment, the State Government should have allowed time to the petitioner to acquire the qualification.
7. In view of the law laid down in **Md. Zamil Ahmed** (supra), the writ petition deserves to be and is hereby allowed, however, the petitioner being lacking the qualification, he is directed to acquire the qualification of 12th standard within a period of three years. The State Government shall send the petitioner for one year training as multipurpose health worker after the petitioner clears the 12th Standard/Higher Secondary Examination.

Sd/-

Judge

Prashant Kumar Mishra

Ashu