

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 226 of 2017

1. Mukesh Kumar Dubey S/o Shri Satanand Prasad Dubey, Aged About 36 Years R/o 43/672, Subhash Nagar, Kukri Para, Raipur, District Raipur (Chhattisgarh).

---- Appellant

Versus

1. The State Of Chhattisgarh Through : Secretary, Department Of Technical Education, Mahanadi Bhawan, Naya Raipur, District Raipur (Chhattisgarh).
2. Commissioner-Cum- Director, Technical Education, Directorate, Indrawati Bhawan, Naya Raipur, District Raipur (Chhattisgarh).
3. Principal, Gopal Rao Pawar, Govt. Polytechnic College, Dhamtari, District Dhamtari (Chhattisgarh).
4. Principal,. Govt. Polytechnic College, Raipur, District Raipur (Chhattisgarh).

---- Respondents

For Appellant	: Shri Atanu Ghosh, Advocate
For Respondent/State	: Shri UNS Deo, Govt. Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Sharad Kumar Gupta, Judge

Order On Board

Per Thottathil B. Radhakrishnan, CJ.

05/07/2017

1. The application for condonation of delay supported by an affidavit which discloses the cause, is sufficient enough to condone the delay of 02 days. The application for condonation of delay is accordingly allowed.
2. This writ appeal against the judgment of the learned Single Judge

refusing to come to the aid of the appellant in his pursuit to obtain compassionate appointment on a ground referable to unfortunate demise of his brother in harness.

3. We have heard the learned counsel for the appellant and the learned Govt. Advocate for the State.

4. The petitioner's brother died on 01/02/2016 while in government service. The petitioner, then about 35 years of age, applied for appointment on compassionate ground on the plea that he is the brother of the deceased and was his dependant. This was rejected by the Government. The plea raised by the appellant is that the Government had modified its rule or circular relating to compassionate appointment thereby taking away all claims of compassionate appointment in relation to any particular government employee if at least one relative to the deceased government employee is employed with the Government. According to the learned counsel for the appellant such prescription would not apply to the appellant because the death of the appellant's brother occurred before the coming into force of such modified rule/circular w.e.f. 29/08/2016.

5. The decision to grant compassionate appointment is regulated in the executive administrative domain through circulars/rules. They are also governed by the plethora of judgments rendered by the Apex Court and the different High Courts. Two important elements relevant to this area are that the eligibility to appointment on

compassionate ground cannot be treated as statutory right as if it is a claim by inheritance and that compassionate appointment is to be given only on assessing the entire facts and circumstances on the basis of which a reasonable and legitimate decision has to be taken as to whether the applicant is entitled to compassionate appointment. With this in mind, we cannot, but say that the inclusion or exclusion of any category of persons as per rules from 29/08/2015 is not decisive on the facts of the case in hand. We say this because the appellant's father is in government service. To our query we are told that he works in Class III, meaning thereby that he is a Clerk in the Government. That being so, the petitioner who is a sibling of the deceased could not have held out a legitimate claim, on facts, to compassionate appointment.

6. Profitable in the aforesaid context is the Full Bench decision of the Patna High Court in ***'State of Bihar vs. Rajeev Ran Vijay Kumar' (2010) SCC online Patna 1608*** wherein it was held that the dependents of a deceased government employee do not have any legal right to be appointed in government posts. The Hon'ble Supreme Court of India through the judgment in ***'Mukesh and another vs. State of Bihar and others' 2017 (5) SCC 383*** noticed the said decision of the Full Bench of Patna High Court and also reaffirmed the principle that compassionate appointments are not a source of the recruitment and they are to be made only to provide succor to the family of an employee who dies in harness.

7. The Government being the competent authority, has taken the

decision that the petitioner is not eligible to compassionate appointment. Learned Single Judge has affirmed it. We do not find any error of law or on facts or any count of jurisdiction, warranting interference with the decision of the learned Single Judge through this intra court appeal in terms of provision of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006.

8. In the result writ appeal is dismissed.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge