

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 568 of 2017**

Rajeev Tiwari S/o Late Kamta Prasad Tiwari, Aged About 36 Years R/o House No 10, Piyush Colony, Amlidih, Raipur, Police Station New Rajendra Nagar, Raipur, District Raipur (Chhattisgarh).

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Higher Education, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur (Chhattisgarh).
2. State Of Chhattisgarh, Through The Secretary, Department Of General Administration Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur (Chhattisgarh).
3. Commissioner, Higher Education Directorate, Govt. Science College, Parisar, Raipur, District Raipur (Chhattisgarh).
4. Assistant Director, Higher Education Directorate, Indrawati Bhavan, Block-3, 4th Floor, New Raipur, District Raipur (Chhattisgarh).
5. The Principal, Government Lahidi College, Chirmiri, District Korea (Chhattisgarh).

---- Respondents

For Petitioner	:	Shri Pushpendra Kumar Patel, Advocate.
For Respondent/State	:	Shri Bhaskar Pyasi, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****02/03/2017**

1. The petitioner seeks to challenge the order dated 04.06.2009 whereby the claim of the petitioner for compassionate appointment has been rejected.
2. The relevant facts in brief is that, the father of the petitioner died in harness on 29.08.2000. The petitioner moved an application for grant of compassionate appointment on 10.01.2008 after about 8 years from the date of death of deceased employee. The said application was after due consideration rejected by the respondent authorities on 04.06.2009. The present petition has been filed on 30.01.2017 i.e. after more than 8 years

from the date of rejection of claim application as also after about 16 years from the date of death of the deceased employee.

3. The law in this regard is well settled that the claim for compassionate appointment cannot be kept vacant till eternity. Any claim for compassionate appointment has to be made promptly. The object of issuance of compassionate appointment is to meet out immediate financial crisis that the family faces.
4. The very fact that the petitioner for the first time raised his claim after a period of 8 years and the writ petition has been filed after a period of more than 16 years from the date of death of deceased employee itself forces this court to draw an inference against the petitioner not having sufficient source of income.
5. The Supreme Court in case of State of Gujarat and Others Vs. Arvindkumar T. Tiwari & Another, 2012 (9) SCC 545, has held as under:

“8. It is a settled legal proposition that compassionate appointment cannot be claimed as a matter of right. It is not simply another method of recruitment. As claim to be appointed on such a ground, has to be considered in accordance with the rules, regulations or administrative instructions governing the subject, taking into consideration the financial condition of the family of the deceased.however, before a candidate is considered for a post or even for admission to the institution, he must fulfill the eligibility criteria.”
6. The same view has further been re-iterated by the Supreme Court in case of State of Uttar Pradesh and Others Vs. Pankaj Kumar Vishnoi (2013(11)SCC 178).
7. The question of delay and laches came to be considered very recently by

the Supreme Court in case of **State of Uttarakhand and Another v. Shiv Charan Singh Bhandari and Others**¹ in which the court has declined to exercise extraordinary jurisdiction in case the petitioner invokes jurisdiction of court with inordinate delay, and held as under :

"In State of T.N. v. Seshachalam[8], this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus: -

...filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant."

8. The Supreme Court in case of **Eastern Coalfields Limited Vs. Anil Badyakar and Others**, 2009 (13) SCC 112 has held as under :

"20. The principles indicated above would give a clear indication that the compassionate appointment is not a vested right which can be exercised at any time in future. The compassionate employment cannot be claimed and offered after a lapse of time and after the crisis is over."

9. Further, in the case of **Local Administration Department and Another Vs. M.Selvanayagam @ Kumaravelu**, 2011 (13) SCC 42, the Supreme Court reiterating the principles relating to compassionate appointment has held as under :

"11. It has been said a number of times earlier but it needs to be recalled here that under the scheme of compassionate appointment, in case of an employee dying in harness one of his eligible dependents is given a job with the sole objective to provide immediate succour to the family which may suddenly find itself in dire straits as a result of the death of the bread winner. An appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14 & 16 of the Constitution and hence, quite bad and illegal. In

¹ 2013 (12) SCC 179

dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind.

12. Ideally, the appointment on compassionate basis should be made without any loss of time but having regard to the delays in the administrative process and several other relevant factors.....”

10. In the case of **Shreejith L. Vs. Deputy Director (Education)**

Kerala and Others, 2012 (7) SCC 248 it was held as under:

“18.The High Court appears to have confused an application required to be filed within the period stipulated for the purpose with the availability of a vacancy against which such an application could be considered by the Manager. These were two distinctly different matters. What was important was the making of an application for appointment on compassionate basis within the period stipulated for the purpose. Whether or not a vacancy is available had nothing to do with the making of the application itself.

19. An application could and indeed ought to have been made by respondent No.1 within the time stipulated, regardless whether there was a vacancy already available or likely to become available in the near or distant future. Respondent No.1 having failed to do that, could not claim a compassionate appointment especially when there was nothing on record to suggest that the family was in penury notwithstanding the lapse of a considerable period since the demise of the bread-winner;.....”

11. Very recently in case of **Chennai Metropolitan Water Supply and**

Sewarage Board and Others v. T.T. Murali Babu², the Supreme Court

has clearly held that delay may have impact on others’ ripened rights and

may unnecessarily drag others into litigation, and expressed their opinion

as under-

“16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the

² 2014 (4) SCC 108

litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant—a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

In the case at hand, though there has been four years’ delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others’ ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons – who compete with ‘Kumbhakarna’ or for that matter ‘Rip Van Winkle’. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.”

12. The law with regard to compassionate appointment stands well settled and judicial precedents on the principles abound. Nonetheless, claims without any substance or merit continue to be made, fall in the category of clear frivolous litigation burdening the Courts unnecessarily. The present is a classic case of a completely frivolous litigation for a claim regarding compassionate appointment seeking ways and means to find a Government job with the least effort through litigation rather than to compete for obtaining a secure employment in a competitive world.
13. Essentially, the petitioner seeks a back door appointment without having to face competition and doggedly pursues his claim for compassionate appointment notwithstanding the fact that it has no merit at all.
14. A claim for compassionate appointment is an exception to the

constitutional mandate under Article 14 of the Constitution that all appointments in the Government or Semi-Government organizations must be made by open advertisement and competitive merit selection so as to provide equal opportunity to be considered to all who may be eligible, as employment in the Government constitutes a national wealth. A limited exception has been made to this principle by providing for compassionate appointment which is primarily aimed as a part of social constitutional philosophy of the Government to provide succor to the family of the deceased faced with sudden penury and destituteness due to untimely loss of the bread winner. It is therefore patent that there is always an urgency in a claim for compassionate appointment. If a claim is legitimately made within stipulated time and consideration is belated, different issues may arise for determination. Such is not the case presently.

15. It has repeatedly been held that compassionate appointment is not a constitutionally sanctioned mode of appointment in Government service. Any claim therefore has to be strictly in terms of the policy or circulars regulating the same. The Court cannot consider claims for compassionate appointment on the basis of sympathy.
16. Thus, the petition being devoid of merit is liable to be and is hereby dismissed.

Sd/-
(P.Sam Koshy)
Judge