

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO.2619 OF 2011**

Kishan Yadav, aged about 20 years, S/o Shri Raju Yadav R/o Hospital Ward Hospital Quarter Govt. Hospital Durg (CG).

...Petitioner(s)

Versus

1. State of Chhattisgarh Through The Secretary, Public Health and Family Welfare Department, DKS Bhawan, Raipur (CG).
2. The Director of Public Health Services, DKS Bhawan Parisar, Raipur (CG).
3. Chief Medical and Health Officer, Durg (CG).

... Respondent(s)

For Petitioner	:	Shri Ajay Shrivastava, Advocate.
For Respondent-State	:	Shri Mazid Ali, Dy. Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

10.10.2018

1. Challenge in this petition is to the order dated 06.04.2011 whereby the claim of the petitioner for compassionate appointment has been rejected. The rejection of the claim was on the ground that it was not moved within a period of six months as is required under the policy of the State Govt. as per circular dated 02.02.2006.
2. The relevant facts necessary for adjudication of the dispute is that the father of the petitioner was an employee under the respondents who died in harness on 22.02.2003. Barely a few months later the mother of the petitioner i.e. widow of the deceased employee also expired on 23.07.2003. On the death of parents, there were three children who were surviving. The petitioner being the eldest was aged around 12-13 years in the year, 2003. The date of birth of the petitioner is 06.08.1991.
3. Immediately on the death of the parents, some relatives of the petitioner had intimated the department that the claim of the petitioner be kept alive as the petitioner is minor and he would move the application for compassionate appointment on his attaining the age of majority. The

petitioner attained the age of majority on 06.08.2009 and immediately he applied for compassionate appointment on 05.04.2010.

4. What is relevant to take note of at this juncture is that the State of Chhattisgarh had for the first time framed a scheme for compassionate appointment on 10.06.2003 where there was no period of limitation prescribed for applying for grant of compassionate appointment. What is also relevant at this juncture is that the new policy of the State also came much after the death of the deceased employee and on the date when the employee died i.e. on 22.02.2003, it was the policy which was framed by the erstwhile State of Madhya Pradesh dated 10.06.1994 which was in force. In the 1994 policy, the condition stipulated was that in the event if the legal heirs of the deceased employee were minor, then appropriate application for compassionate appointment can be made on their attaining the age of majority.
5. The contention of the petitioner is that, under both the policy the petitioner who was minor on the date of death of deceased employee could apply for compassionate appointment on his attaining the age of majority. Likewise, it was also contended that even under the new policy of the State Govt. dated 10.06.2003 as there was no period of limitation prescribed, the petitioner had a right to apply on his attaining the age of majority i.e. on 06.08.2009. Further contention of the petitioner is that the circular which has been adopted or relied upon by the respondents while rejecting the claim of the petitioner dated 02.02.2006 would not be applicable in the case of the petitioner for the reason that it would be the policy which was in force on the date of death of the deceased employee which would be relevant for considering the claim of the petitioner.

6. This contention of the petitioner does have much force as the same stands fortified from the decision of the Supreme Court in case of Canara Bank & Another Vs. M. Mahesh Kumar, 2015(7) SCC 412.
7. It is also necessary to take note of another judgment of Supreme Court in case of Syed Khadim Hussain Vs. State of Bihar & Ors. 2006(9) SCC 195 wherein some what under similar circumstances the Supreme Court had allowed the writ petition of the claimant directing the employer to consider for grant of compassionate appointment.
8. Very recently, the Division Bench of this High Court in case of Pushpendra Nath Sonesare Vs. State of Chhattisgarh & Another, Writ Appeal No.537 of 2015, decided on 10.09.2018 setting aside the order of Single Bench in paragraph 7 to 9 held as under :

“7. From reading of Clause 9(1), this Court does not get any indication that any time frame has been fixed for making such application for compassionate appointment, though there is a time limit fixed for taking of a decision for such application, which is three months.

8. On reading the provisions of Clause 9(1) and 9(2), it is evident that the reason for rejection which is said to be a delay of 5½ years is, therefore, beyond the ambit of guidelines issued by the State authorities. Not only that, there seems to be violation on their part when they failed to carry out their obligation for sending an application form to the family members of deceased employee or apprising them of their rights and obligations by providing guidelines in this regard.

9. In our opinion, therefore, filing of an application in the year 2008 soon after attainment of majority by the Appellant before the authorities cannot be rejected on the ground of delay. The impugned order therefore dated 16.01.2009 which was Annexure P/1 to the writ application alongwith the order dated 11.09.2015 passed by the learned Single Judge in the writ application are set aside. The matter is remanded back to the competent authority of the State to take a fresh decision on merits, not on the basis of delay which was the reason for rejection of the claim of the Appellant. Such a decision must be taken by the competent authority within a period of three months from the date of receipt or production of certified copy of this order.”

9. Given the aforesaid facts situation of the case particularly taking note of the fact that the policy which was in force on the date of death of the

deceased employee do not have period of limitation prescribed and it also had a clause of the minor claiming for compassionate appointment on attaining the majority, this court is of the opinion that the rejection of the petitioner's claim for compassionate appointment invoking the circular dated 02.02.2006 is bad in law, the same is not sustainable and therefore set aside/quashed.

10. The respondents are directed to consider the claim of the petitioner for compassionate appointment, provided that the petitioner fulfills all other eligibility criteria in accordance with the policy prevailing at the relevant point of time.

11. The writ petition accordingly stands allowed and disposed of.

Sd/-
(P. Sam Koshy
Judge