

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 1504 of 2005

Lok Nath Yadav S/o Late Amol Singh Yadav, aged about 27 years,
Occupation L.D.C. (Assitt. Clerk) Government High School Kantahardi,
District Raigarh.

---Petitioner

Versus

1. The State of Madhya Pradesh, through the Secretary, School Education Department, Vallabh Bhawan, Bhopal.
2. Joint Director, School Education, Bilaspur.
3. P.R. Gahiney, Principal, P.G.B.T. College (Officiating Joint Director), Bilaspur.

---Respondents

For petitioner	:	Shri Adil Minhaj, Advocate.
For State	:	Shri Syed Majid Ali, Dy.G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05/10/2018

1. The challenge in the present Writ Petition is to Annexure-A/3 dated 24/01/1997 whereby the services of the petitioner was dismissed.
2. The facts of the case in brief is that, the petitioner was granted appointment on 16/09/1994 on the post of Assistant Clerk on compassionate ground.
3. Annexure-A/1 is the appointment order which specifically had put a note against the name of the petitioner that he should produce the death certificate as also the affidavit of the other family members.
4. The petitioner assumed the duties as per the said appointment order and continued in service till the impugned order Annexure-A/3 was passed

on 24/01/1997 canceling his appointment on the ground that, the petitioner's father had died not in harness, but had died subsequent to his superannuation.

5. The petitioner had initially filed original application before the State Administrative Tribunal which was registered as OA-417/1997 which subsequently stood transferred to this Court on the abolition of the Tribunal and the matter was registered as WP No. 1504/2005.

6. The solitary ground which the petitioner has raised challenging the impugned order is that, the impugned order has been passed in violation of the basic principles of natural justice.

7. According to the counsel for the petitioner, before issuance of the impugned order, no opportunity of hearing much less an enquiry was conducted by the respondents while terminating the services of the petitioner.

8. On a specific query been put to the learned counsel for the petitioner, he fairly admits that it is not in dispute that the father of the petitioner had died subsequent to retirement.

9. On the said submission made by the counsel for the petitioner, what is relevant to be considered is whether any purpose would have served if the petitioner would had been granted an opportunity of hearing.

10. The claim of the petitioner at the outset was for compassionate appointment.

11. It is settled position of law that the compassionate appointment can only be considered in case where there is an untimely death of an employee while in service.

12. If the concerned employee has rendered his complete service with the employer and has also retired and has also been granted the entire retiral benefit, thereafter the family members on account of the death of the deceased ex-employee would not be entitled for compassionate appointment.

13. The compassionate appointment is always given in case where the employee dies in harness leaving behind the family in a state of penury where they are forced to face a situation where the earning member of family has died or the bread earner of family is not available.

14. In the instant case, the admitted position stands that the petitioner's father has rendered his complete service under the respondents and had superannuated, thereafter, he had expired a natural death.

15. True it is that the respondents should have verified this aspect at the first instance itself, but rightly or wrongly, if appointment has been granted to the petitioner that by itself would not mean that the respondents do not have power to verify the authenticity or the veracity of the claim put forth by the petitioner.

16. If during the course of verification it is reflected that the deceased employee had died subsequent to his retirement and the petitioner has been wrongly given employment under a false pretext or under false assumption

on part of the respondents assuming that the father of the petitioner had died in harness that does not mean that the respondents did not have the power to cure the error.

17. It is also settled legal position that the compassionate appointment is never to be treated as an alternative source of recruitment.

18. Given the aforesaid facts and circumstances of the case, this Court does not find any strong illegality on part of the respondents in cancelling the appointment of the petitioner.

19. The Writ Petition thus fails and is accordingly dismissed.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit