

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 108 of 2013**

Pawan Kumar Sharma S/o Lt. Ram Gopal Sharma, Aged About 23 Years
Present Address R/o Gram Nagla Prohit, Post Berari Saiyan, Tahsil
Khairagarh, Police Station Saiyan, District Agra, Uttar Pradesh

---- Petitioner**Versus**

1. State of Chhattisgarh, Through Secretary, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh.
2. The Commissioner, Adim Jati Tatha Anusuchit Jati Vikas, Chhattisgarh, District Raipur Chhattisgarh
3. The Deputy Director, Adim Jati Tatha Anusuchit Jati Vikas, Chhattisgarh, District Raipur Chhattisgarh
4. The Assistant Commissioner, Adivasi Vikas, Korla, District Korla, Chhattisgarh
5. The Principal, Government Higher Secondary School, Charcha, Kolri, Vikashhand Baikunthpur, District Korla, Chhattisgarh

----Respondents

For Petitioner	:	Mr. Shailendra Dubey, Advocate
For State	:	Mr. S.P. Kale, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****26/07/2018**

1. The challenge in the present writ petition is to the order (Annexure P/5) dated 14.09.2009, whereby the claim for compassionate appointment of the petitioner has been rejected by the respondents.
2. The brief facts of the case is that the father of the petitioner namely Ram Gopal Sharma while working on the post of Physical Education Teacher in the Govt. Higher Secondary School, Charcha Colliery, Baikunthpur and he died in harness on 26.06.2001.
3. The petitioner herein who was a minor at the relevant point of time had moved an application immediately for grant of compassionate appointment and the Principal under whom the petitioner's father was

working had processed the case of the petitioner and found him to be suitable but could not grant appointment on the ground that the petitioner was a minor at the relevant point of time and the Principal vide his noting dated 26.09.2001 ordered for keeping the claim application of the petitioner alive till the petitioner attains the age of majority. Immediately on attaining the age of majority, the petitioner revised his claim for compassionate appointment which subsequently stands rejected vide order Annexure P/5 on 14.09.2009 leading to the filing of the present writ petition.

4. The counsel for the petitioner submits that the period of limitation for claiming compassionate appointment is 3 years as is clear from the policy of the compassionate appointment applicable in the State of Chhattisgarh. He further submits that since the application of the petitioner came for consideration after more than 3 years, his claim has been rightly rejected by the respondents.
5. The State counsel also took the contention that the petitioner's claim has already been rejected on an earlier occasion on 23.07.2003, therefore the present writ petition suffers from delay and laches as well and thus prayed for rejection of the petition.
6. From the submissions put forth by the either side and on perusal of the record what is not in dispute is :
 - (i) The father of the petitioner was working as Physical Education Teacher at Government Charcha Colliery, Block Baikunthpur.
 - (ii) The father of the petitioner Ram Gopal Sharma died in harness on account of an accident on 26.06.2001.

- (iii) On the date of the employee the family consisted of his widow and three children.
7. The petitioner was the second child in the family and the eldest male member in the family and therefore the petitioner had moved an application in the year 2001 itself. The respondents did not reject his claim application and on the contrary the Principal of the school recommended the claim of the petitioner and ordered for keeping his application alive till the petitioner attains the age of majority. Subsequently, on attaining the age of majority, the petitioner immediately revived his application which stood rejected vide Annexure P/5 on 14.09.2009. Though the State counsel submits that the claim of the petitioner was already rejected in the year 2003, but there is no documents either in possession of the State counsel or enclosed along with the return of the State to show that it was rejected in the year 2003. Moreover in the year 2003 again the petitioner would still had been a minor and his case could not had been considered in the light of Annexure P/2, which is the noting of the Principal for keeping the claim of the petitioner alive till he attains the age of majority.
8. From the given facts and circumstances of the case what clearly reflects is that the reply of the State is silent on the aspect of the endorsement made by the Principal on 26.09.2001 (Annexure P/2). There is no averment as to whether the order of Principal was ever recalled by the State Government or whether the action of the Principal was held to be without power, competence and authority.
9. As long as the order was not recalled or modified, the petitioner was under the bonafide belief of his claim being kept alive till he attains the

age of majority and on attaining the age of majority, immediately the petitioner is said to have moved an application. Under the circumstances, this Court does not find any strong reason for the respondents to have rejected his claim application on the ground of it being time barred or the claim application having being moved after three years. It is a case where the claim application was promptly initiated by the respondents, and which had never been rejected prior to the impugned order (Annexure P/5) dated 14.09.2009. It is not a case where the State has disputed the claim application having being filed by the petitioner with the Principal in the year 2001 and if there already was an application made in the year 2001, then the contention of the respondents that the application has been filed beyond three years cannot be accepted to be a strong ground.

10. It would be relevant at this juncture to refer to the judgment of Division Bench of this Court passed in the case of ***“Supram Prasad v. State of Chhattisgarh & Another”*** reported in 2012(4) CGLJ 137, wherein in paragraphs No. 7 & 8 it has been held as under:

“7. In our view, here is a case of the appellant, which should have been considered by the State Authorities on pure and simple sympathetic approach rather than with legalist approach. A person has died while he was in his early forties leaving behind one illiterate widow and minor children. He left the world leaving the family in total financial hardship to suffer with no one to look after and maintain them during their minority and at the same time, there was no one in the family to take up the State employment due to circumstances prevailing in the family.

8. In our view, we have no hesitation in recording a finding that cause of hardship persisted and continued to exists till date in the appellants family and if in these

circumstances, the appellant being the only major son applied for giving him compassionate appointment in State Services immediately on his attaining the majority, then it ought to have been given to him to over come the cause of hardship in the family of late Kanhiya Prasad. The State Authorities should have realized that if the post is less remunerative then the hardship becomes more to the person concerned and to those who have suffered. This is what has happened in this case and hence we can not ignore this hard realities faced by the family for all these years by the survivors of the family members. In our opinion it had to be taken into consideration in the facts of the case regardless of any circulars for providing some solace.”

11. Considering the aforesaid view of the Division Bench of this Court and taking note of the noting of the Principal in Annexure P/2 dated 26.09.2001, this Court is of the opinion that the finding of the respondents in holding that the application for compassionate appointment by the petitioner has been filed beyond three years is not sustainable and as a consequence the order (Annexure P/5) dated 14.09.2009 is not sustainable and the same deserves to be and is accordingly set-aside.
12. The respondents are directed to consider the claim of the petitioner for compassionate appointment ignoring the aspect of limitation and to consider his claim on merits provided he fulfills all other eligibility criteria. The respondents are directed to scrutinize the claim of the petitioner within an outer limit of 90 days from the date of service of the order of this Court.

Sd/-
(P. Sam Koshy)
Judge