

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO. 2508 OF 2018**

Vikrant Sahu S/o Late Shri Harnarayan Sahu Aged About 21 Years
R/o Village Ghivra Via Birra, Tahsil Jaijaipur District Janjgir Champa
Chhattisgarh.

...Petitioner(s)

Versus

1. State Of Chhattisgarh Through The Secretary Department Of School Education Mahanadi Bhawan Post Office Mantralaya Post Station Rakhi Naya Raipur District Raipur Chhattisgarh.
2. The Collector Janjgir Champa District Janjgir Champa Chhattisgarh.
3. The District Education Officer Janjgir Champa Old S. P. Office District Janjgir Champa Chhattisgarh.

... Respondent(s)

For Petitioner	:	Shri Vipin Tiwari, Advocate.
For Respondent-State	:	Shri Mazid Ali, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy

Order

Delivered on 14.08.2018

1. The challenge in the present writ petition is to the order dated 14.11.2017 passed by the respondents whereby the application of the petitioner for compassionate appointment has been rejected on the ground of there being no policy in respect of son of the deceased being a minor at the time of death, entitled for being considered for compassionate appointment on his attaining the age of majority.
2. The brief facts leading to filing of the present writ petition is that, the father of the petitioner late Harnarayan Sahu working on the post of Assistant Teacher at Govt. Primary School Dabhrakhurd died in harness on 12.06.2000. On the date of death of the deceased, the petitioner was a minor.

3. The contention of the petitioner is that, in the year, 2002 the mother of the petitioner had made a request with the respondents to keep the claim of compassionate appointment alive till the petitioner, her child, attains the age of majority. It is contended that it is only in the year, 2014 that the petitioner attained the majority and he passed his higher secondary examination also in March, 2014 and thereafter the petitioner has made an application on 18.01.2016.
4. The counsel for the petitioner submits that the respondent authorities could not have refused consideration of the petitioner for compassionate appointment as admittedly on the date of death of the employee he was a minor and that immediately on attaining majority he had applied. Therefore, under the circumstances, the clause of limitation prescribed under the scheme for compassionate appointment would not be applicable. According to him, it would also be not applicable for the reason that the petitioner at the relevant point of time being a minor could not have applied for employment.
5. The petitioner further submits that on the date of death of deceased i.e. 12.06.2000, the circular dated 10.06.1994 issued by the State pertaining to compassionate appointment was applicable and in the said circular it has been envisaged that if at the time of death of government employee the family members are minor then the claim of compassionate appointment can be considered when he attains the age of majority. He relied upon the judgment of Division Bench of this High Court in 2012 (2) CGLJ 137 and also subsequent decision passed in WPS No.6188 of 2014, decided on 30.01.2015.

6. The State counsel have filed their return and in the return they have taken a stand that compassionate appointment can only be granted as per the policy framed in this regard and that the conditions attached to the policy have to be strictly adhered to and as per the policy prevailing at the time application was made, the scheme had a period of limitation prescribed. The State relied upon the order passed by this court in WPS No.1487 of 2017 decided on 28.03.2017 so also the judgment of Supreme Court in case of Sanjay Kumar Vs. State of Bihar, 2001(1) MPHT-1.
7. According to State, the very purpose of keeping the claim for compassionate appointment alive till the petitioner or the claimant reaches the age of majority itself will defeat the very purpose and object of providing the scheme for compassionate appointment. The purpose of framing scheme for compassionate appointment is to meet the immediate financial crisis which the family members of the deceased would face on the death of the deceased employee. The claim for compassionate appointment should always be made within a reasonable period from the date of death of the employee. The fact that the claim is not made within reasonable period and further during all these period the family could pull along well itself is sufficient indication of there being sufficient means available with the petitioner and his family members to sustain themselves. Thus, if at a later stage when the application has been decided in accordance with then prevailing policy, the same cannot be found fault with and the petition deserves to be rejected.

8. Having heard the contentions put forth on either side, the only issue which needs to be considered is as to whether the rejection of the petitioner's claim on the ground of scheme not providing or envisaging a clause of keeping the claim of family members of the deceased employee alive till he attains the age of majority is just proper and legal.
9. What is necessary to appreciate is the fact that death of the deceased was on 12.06.2000 and the present writ petition has been filed on 15.03.2018 i.e. after 18 years from the date of death of the employee. The petitioner attains the age of majority in the year, 2015 and it is thereafter that the application has been moved on 18.05.2016. On the date of death of the employee the scheme for compassionate appointment applicable was the one framed on 10.06.1994. In the said scheme infact there was a clause for keeping the claim of a minor claimant alive till he attains the age of majority.
10. The said scheme however has since been revised and modified time and again on various occasions and the latest policy which was applicable on the date on which the petitioner had applied for compassionate appointment i.e. in the year 2016, was a policy prescribing the period of limitation for raising claim within three years from the date of death of the deceased employee. Likewise, in the policy which was applicable in the year 2016 when the petitioner had applied, there was no provision for keeping the claim alive till he attains the majority.

11. Another aspect which cannot be brushed aside is the fact that from 2000, the year from which the father of the petitioner has expired till the date of application made by the petitioner for compassionate appointment, much water has since flown on the issue of the claim for compassionate appointment.
12. Of course this court is quite aware of the fact that the law that would be applicable in the case of compassionate appointment is the scheme that was in force on the date of death of employee. However, at the same time, what also cannot be lost sight of is the fact that the compassionate appointment is not be treated as an alternative source of recruitment. It is also a settled law that the post which fell vacant on the death of the employee or for that matter the vacancy which arose on the death of the employee cannot be kept vacant till the family members or the claimant in the family of the deceased employee attains the majority. The very purpose of enacting scheme for compassionate appointment is for ensuring the immediate support to be provided to the family members of the deceased where the family has lost the bread earner.
13. The object behind the compassionate appointment is also to tide away immediate financial crisis which the family faces on the death of earning member in the family. The compassionate appointment is not to be considered as an alternative source of employment. Some of the judgments of the Supreme Court on this issue in the recent past is that of State of Jammu & Kashmir Vs. Sajad Ahmed Mir, 2006(5)SCC766, Sanjay Kumar Vs. State of Bihar, 2007(7)SCC192,

Punjab National Bank Vs. Ashwani Kumar Taneja, 2004 (7)SCC 265.

14. In case of Bhawani Prasad Sonkar Vs. Union of India, 2011(4)SCC 209, in paragraph 15, the Supreme Court has held as under :

“15. Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee’s family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognised as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve. ...”

15. It is always required while considering the claim for compassionate appointment that it should be seen whether the application has been preferred without undue delay and has been made within a reasonable period of time. The employer also should keep in mind that the compassionate appointment is granted to meet the sudden crisis occurring in the family on account of death of the bread winner while in service. The compassionate appointment cannot be granted as a matter of course by way of largesse irrespective of financial conditions of the family of the deceased. This view has also been

reiterated by the Supreme Court in recent landmark judgment on compassionate appointment in case of Canara Bank Vs. M. Mahesh Kumar, 2015(7) SCC 412.

16. Another aspect which may be borne in mind is the fact that 16-18 years from the date of death of the deceased employee is quite a substantial period. In present day time it is simply unexpected for an employer to keep a post vacant to be filled up by a legal representative of the deceased employee who died in harness when the legal heir was a minor to raise his claim on his attaining the age of majority. If at all if the family of the deceased employee were in a stage of penury then the widow of the deceased could have easily claimed for compassionate appointment at the relevant point of time. As discussed earlier, the widow could not have taken the claim for compassionate appointment, treating it to be an alternative source of employment and in the process she moved an application to grant compassionate appointment only on petitioner's attaining the age of majority and in between about 18 years have lapsed.
17. For the aforesaid discussions and legal positions as it stands, the rejection of the petitioner's claim for compassionate appointment cannot be held to be either bad in law or illegal.
18. The writ petition being devoid of merit deserves to be and accordingly stands dismissed.

Sd/-
(P. Sam Koshy
Judge