

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**REVP No. 86 of 2017**

Zila Panchayat Bilaspur, Through The Chief Executive Officer,
Bilaspur, Chhattisgarh

---- Applicant**Versus**

1. Harish Kumar Khande S/o Late Shri Dukhi Ram Khande, Aged About 21 Years R/o Village And Post Tanda, District Bilaspur, Chhattisgarh
2. State Of Chhattisgarh, Through The Secretary, Department Of Panchayat And Social Services, Mantralaya, Naya Raipur, Raipur, Chhattisgarh
3. The Collector, Bilaspur, District Bilaspur, Chhattisgarh
4. The Chief Executive Officer, Janpad Panchayat Thakatpur, District Bilaspur, Chhattisgarh

----Non-Applicants

For Applicant	:	Mr. Prafull N. Bharat, Advocate
For Respondent No.1	:	Mr. Abhishek Sinha, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****06/03/2018**

1. The present Review petition has been filed seeking review of the order dated 24.03.2017, passed by this Court in WPS No. 1440/2017. While disposing of the writ petition, this Court had made following observations:

“4. However, this aspect stands adjudicated in Writ Petition (S) No. 5780 of 2016 wherein this Court has already held that the circular of the State Govt. dated 24.08.2016 is not justified and set aside the same holding it to be illegal and bad in law.

5. In view of the fact that this Court has already held that the circular dated 24.08.2016 to be bad in law, therefore, case of the petitioner is liable to be considered in accordance with the modified scheme as per circular dated 08.01.2016.

6. Accordingly, the present writ petition stands disposed of with a direction to the respondents to pass an appropriate order after scrutinizing the case of the petitioner in accordance with the rule ignoring the circular dated 24.08.2016. Needless to mention that since the death of the employee was about 5½ years ago, the respondents shall take a decision expeditiously preferably within a period of three months from the date of copy of this order is received by the respondents.”

2. It is noteworthy to mention that while disposing of the writ petition, the petitioner herein i.e. the Zila Panchayat, Bilaspur was not a party to the petition. It was only the Janpad Panchayat, Takhatpur, which was party in the writ petition, though the said Janpad Panchayat was also not heard while disposal of the writ petition.
3. The present review petition has been filed on the ground that the observations made by this Court in holding that the circular of the State Government dated 24.08.2016 stood set-aside by the order passed in WPS No. 5780/2016 is not correct. A similar observation has also been made by this Court in paragraph No. 5 to be enclosed on facts.
4. The counsel for the petitioner referred to the paragraph no.15 of the order passed on 24.01.2017 in WPS No. 5780/2016, which for ready reference is reproduced herein under:-

“15. If the facts of the present case are examined in the light of above-quoted Constitutional provisions and judgment of the Supreme Court, it is quite vivid that circular dated 8.1.2016 has been issued by the State Government in confirmity with Article 166(1) of the Constitution of India expressing it in the name of the Governor, but the memo dated 24.8.2016 has been

issued by the Deputy Secretary to Government. It is not in conformity with Article 166(1) of the Constitution of India as it has not been expressed in the name of the Governor. No counter affidavit has been filed that memo dated 24.8.2016 has been issued by the State Government and there is omission to state the same in the name of the Governor. Therefore, it cannot be held that memo dated 24.8.2016 has been issued by the State Government clarifying the earlier circular dated 1.8.2016.”

5. In the light of the observations made therein, the counsel for the petitioner submitted that the order does not say that the circular of the State Government dated 24.08.2016 stood set-aside or quashed neither was it declared bad in law or illegal. The counsel for the petitioner further submits that the High Court in paragraph No.15 of the judgment in WPS No. 5780/2016 has made that the circular dated 24.08.2016 since it was not in conformity with Article 166(1) of the Constitution of India, therefore it will not have an overriding effect on an earlier circular dated 01.08.2016 issued by the State Government in the name of the Governor. Therefore, since the circular dated 24.08.2016 has not been set-aside the claim of the petitioner would have to be considered in accordance with the guidelines framed in the said circular.
6. Perusal of the observations made by this Court in disposal of the WPS No. 5780/2016 clearly reflects that in very specific terms, this Court has held that the earlier circular dated 01.08.2016 would not lose its sanctity for the reason that the subsequent circular is not in conformity with Article 166(1) of the Constitution of India. It also clearly reflects that since the subsequent circular dated 24.08.2016

was not in conformity to Article 166(1), the same cannot be enforced giving an overriding effect on the earlier circular dated 01.08.2016.

7. Coming back to the judgment, of which the review has been sought, if we read the order what this Court meant while disposing of the writ petition was that since the Writ Court in WPS No. 5780/2016 has already held that the circular dated 24.08.2016 may not have an overriding effect, the same cannot be taken into consideration while considering the claim for compassionate appointment of the petitioner and that as a consequence, the claim of the petitioner has to be considered in the light of the earlier circular dated 08.01.2016.
8. This Court has disposed of the writ petition with a direction to the respondents to consider the case of the petitioner for compassionate appointment ignoring the circular dated 24.08.2016. Even if the contention of the counsel for the petitioner is accepted that the Writ Court in WPS No. 5780/2016 has not set-aside or quashed the circular dated 24.08.2016, but it is emphatically clear that the mandate of the Writ Court in WPS No. 5780/2016 was that the circular dated 24.08.2016 cannot be given an overriding effect and the claim of the petitioner would have to be considered in the light of the circular dated 08.01.2016. It is this, what was meant by this Court while disposing of the writ petition.
9. The order review of which is sought for thus stands corrected to the extent that the observations made in paragraphs No. 4 & 5 to the extent that this Court has held that the circular dated 24.08.2016 has been set-aside and has been held to be illegal and bad in law would be read down as, the said circular would not have an overriding effect over the circular dated 08.01.2016. Thus as a consequence so

far as the claim of the petitioner is concerned it would not have any adverse effect and his claim has to be considered in accordance with the circular dated 08.01.2016.

10. Needless to mention that since almost one year has been lapsed from the disposal of the writ petition, the respondents shall take prompt appropriate steps.
11. The Review Petition thus stands disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved