

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 4207 of 2018

Aman Kumar Pandey S/o Late Kunj Bihari Pandey, aged about 22 years, R/o Gandhi Chowk, Ward No. 6, Deokar, Civil and Revenue District Bemetara, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary, Department of School Education, Mantralaya, Mahanadi Bhawan, P.O. Rakhi, Naya Raipur, District Raipur, Chhattisgarh
2. The District Education Officer, Bemetara, Chhattisgarh
3. The Principal, Govt. Girls Higher Secondary School, Deokar, District Bemetara, Chhattisgarh

---- Respondents

For Petitioner	:	Shri M. P. S. Bhatia, Advocate
For Respondent/State	:	Shri Shashank Thakur, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

28.06.2018

Challenge in the present writ petition is to Annexure P-1 dated 27.10.2017 whereby the claim of the petitioner for grant of compassionate appointment has been rejected on the ground that his mother is in government employment and also that their annual income is more than 4 lakh rupees.

2. Grievance of the petitioner is that the claim for compassionate

appointment was on the death of his father namely Kunj Bihari Pandey who died in harness working as a lecturer on 23.07.2011. On the date of death of his father, the petitioner was minor and immediately on attaining the age of majority, he claimed for compassionate appointment. Contention of the petitioner is that initially his claim application was rejected on the ground of being filed belatedly which was subjected to challenge in a writ petition i.e. WPS No. 2157 of 2014. Pending the writ petition before this Court, the authority concerned ordered for reconsideration of the case of petitioner. Accordingly, the writ petition which was filed stood dismissed as withdrawn. Later on, the impugned order has been passed rejecting his claim.

3. Contention of the counsel for the petitioner is that the action on the part of the respondents is nothing but an eyewash so far as their stand that they had taken in the earlier round of litigation. He submits that the petitioner has been victimized unnecessarily by not granting compassionate appointment particularly when in the other districts, the said clause of family members in government employment is not being strictly construed for granting of compassionate appointment and the authorities are granting appointment in other districts. He submits that the respondents in this case ignoring those instances have rejected the claim of the petitioner on the ground that the policy does not permit. He further submits that pending the earlier round of litigation there was an assurance given by the authorities to reconsider the claim of the petitioner. If they intended to reject the claim application, they should not have initiated a reconsideration at all which itself smacks malafides on the part of the respondents.

4. Having heard the counsel for the petitioner and on perusal of the record what clearly reflects is that death of the deceased employee was 23.07.2011. On the said date, the petitioner was only around 15-16 years old. The petitioner attained the age of majority in 2013 and the claim application was filed on September, 2013. The claim was initially rejected on 12.12.2013 holding it to be filed beyond the period of limitation. Subsequently, the authority concerned took a decision for reconsidering all such cases which were rejected earlier on the ground of delay. In the process, the case of the petitioner also was ordered to be reconsidered. Accordingly, the writ petition filed by the petitioner was disposed of with a direction that the case of the petitioner would also be considered. Thereafter, all those cases were reconsidered and in the process of consideration, it was found that the mother of the petitioner was already in government employment and was drawing salary of more than rupees 39,000/- a month and the annual income of the family was more than 4 lakh rupees. It was then the authorities issued the impugned order as per the scheme of compassionate appointment wherein it has been mentioned that in case of any family member being in government employment and that the annual income of the family exceeds more than rupees 4 lakhs then they shall not be entitled for compassionate appointment. Accordingly the claim of the petitioner was rejected.

5. So far as the contention of the petitioner that some persons have been granted similar benefit in other districts is concerned, this Court is of the opinion that the same may not come to the rescue of the petitioner as it is impermissible to grant relief to the petitioner on the

ground of negative equality invoking the powers of this Court under Article 226 of the Constitution of India. Another aspect which has to be seen is that the policy of the State Government regarding compassionate appointment or the clause which was invoked for rejecting the claim of the petitioner is not under challenge in the present petition. In the absence of challenge of the scheme or the clause by which the claim has been rejected, the decision taken in accordance with scheme and the clause cannot be said to be bad in law or in any manner malafide. It is settled position of law that compassionate appointment can always be granted purely in accordance with the scheme that has been framed by the department. The claim of the petitioner would stand only in case of his candidature or claim meets all the requirement under the scheme for compassionate. In the instant case, it appears that the petitioner is being adversely affected by one of clauses. The petitioner in his pleading nor in his submission has made a statement of the said finding to be either erroneous or a wrong finding.

6. Given the said facts, this Court does not find a strong case made out by the petitioner for interference with the impugned order. Thus, the petition being devoid of merit deserves to be and is accordingly dismissed.

**Sd/-
P. Sam Koshy
Judge**