

AFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****WPS No. 4903 of 2018**

Lav Kumar Tiwari S/o K.L. Tiwari (Kanhaiya Lal Tiwari), Aged About 28 Years R/o Village Masturi, Police Station Masturi, District- Bilaspur, Chhattisgarh.

----- Petitioner**Versus**

1. State of Chhattisgarh, Through The Secretary, School Education Department, Mantralaya, Mahanadi Bhawan, New Raipur, District- Raipur, Chhattisgarh
2. Commissioner Tribal Development Department, Indrawati Bhawan, New Raipur, District- Raipur, Chhattisgarh.
3. Assistant Commissioner Tribal Development, Korba, District- Korba, Chhattisgarh
4. Collector District- Korba, Chhattisgarh.
5. District Education Officer, Education, District- Korba, Chhattisgarh
6. Block Education Officer Pali, District- Korba, Chhattisgarh.

-----Respondents

For Petitioner	:	Mr. Sachidanand Yadav, Advocate
For State	:	Mr. Shashank Thakur, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

03/08/2018

1. The challenge in the present writ petition is to the order (Annexure P/1) dated 02.09.2008 whereby the claim of the petitioner for grant of compassionate appointment has been rejected by the respondents.
2. The brief facts relevant for adjudication of the present petition is that the father of the petitioner died in harness working as Assistant Grade-II on 17.01.1999. The petitioner for the first time moved an application for compassionate appointment on 17.06.2008. Vide the impugned order dated 02.09.2008, the claim of the petitioner stood rejected. Subsequent to the rejection of the said claim, the petitioner has filed the

present petition now on 25.07.2018 i.e. after more than 10 years from the date of rejection of his claim for compassionate appointment.

3. At the outset, this Court is of the view that the present writ petition suffers from inordinate and unexplained delay and laches in approaching the Court to assail the impugned order (Annexure P/1).
4. The death of the deceased employee in the instant case was of 1999, that itself means it is around 28-29 years, that the writ petition now filed also even from the date of rejection of the claim, has been filed after about 10 years of time.
5. So far as the claim for compassionate appointment is concerned, the law is by now well settled, wherein it has been repeatedly held by the Hon'ble Supreme Court as well as by this Court in a series of writ petitions, wherein it has been held that the claim for compassionate appointment has to be raised at the first available opportunity or atleast within a reasonable period of time. If the claim for compassionate appointment has been filed at an inordinately belated stage, it clearly gives an inference that the family had sufficient means to sustain themselves, which itself is a sufficient ground dis-entitling them for compassionate appointment.
6. The Supreme Court in case of "**State of Gujarat and Others Vs. Arvindkumar T. Tiwari & Another**", 2012 (9) SCC 545, has held as under:

"8. It is a settled legal proposition that compassionate appointment cannot be claimed as a matter of right. It is not simply another method of recruitment. As claim to be appointed on such a ground, has to be considered in accordance with the rules, regulations or administrative instructions governing the subject, taking into consideration

the financial condition of the family of the deceased.however, before a candidate is considered for a post or even for admission to the institution, he must fulfill the eligibility criteria.”

7. The same view has further been re-iterated by the Supreme Court in case of **“State of Uttar Pradesh and Others Vs. Pankaj Kumar Vishnoi (2013(11)SCC 178)”**.
8. The question of delay and laches came to be considered very recently by the Supreme Court in case of **State of Uttaranchal and Another v. Shiv Charan Singh Bhandari and Others** (supra) in which the court has declined to exercise extraordinary jurisdiction in case the petitioner invokes jurisdiction of court with inordinate delay, and held as under :

“In State of T.N. v. Seshachalam[8], this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus: -

...filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.”

9. The Supreme Court in case of **“Eastern Coalfields Limited Vs. Anil Badyakar and Others”**, 2009 (13) SCC 112 has held as under :

“20. The principles indicated above would give a clear indication that the compassionate appointment is not a vested right which can be exercised at any time in future. The compassionate employment cannot be claimed and offered after a lapse of time and after the crisis is over.”

10. Further, in the case of ***“Local Administration Department and Another Vs. M.Selvanayagam @ Kumaravelu”***, 2011 (13) SCC 42, the Supreme Court reiterating the principles relating to compassionate appointment has held as under :

“11. It has been said a number of times earlier but it needs to be recalled here that under the scheme of compassionate appointment, in case of an employee dying in harness one of his eligible dependents is given a job with the sole objective to provide immediate succour to the family which may suddenly find itself in dire straits as a result of the death of the bread winner. An appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14 & 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind.

12. Ideally, the appointment on compassionate basis should be made without any loss of time but having regard to the delays in the administrative process and several other relevant factors.....”

11. In the case of ***“Shreejith L. Vs. Deputy Director (Education) Kerala and Others”***, 2012 (7) SCC 248 it was held as under:

“18.The High Court appears to have confused an application required to be filed within the period stipulated for the purpose with the availability of a vacancy against which such an application could be considered by the Manager. These were two distinctly different matters. What was important was the making of an application for appointment on compassionate basis within the period stipulated for the purpose. Whether or not a vacancy is available had nothing to do with the making of the application itself.

19. An application could and indeed ought to have been made by respondent No.1 within the time stipulated, regardless whether there was a vacancy already available or likely to become available in the near or distant future. Respondent No.1 having failed to do that, could not claim a compassionate appointment especially when there was nothing on record to suggest that the family was in penury notwithstanding the lapse of a considerable period since the demise of the bread-winner;.....”

12. Very recently in case of **“Chennai Metropolitan Water Supply and Sewarage Board and Others v. T.T. Murali Babu” 2014(4) SCC 108** the Supreme Court has clearly held that delay may have impact on others’ ripened rights and may unnecessarily drag others into litigation, and expressed their opinion as under-

“16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant—a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

In the case at hand, though there has been four years’ delay in approaching the court, yet the writ court chose not to

address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons – who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold."

13. For the aforesaid reasons, this Court is of the opinion that the present writ petition suffers from inordinate unexplained delay and laches and the writ petition therefore deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge