

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.793 of 2016**

Ku. Jyoti Sahu D/o late Shri Gopal Sahu, Aged about 19 years, R/o Ward No.6, Yadav Mohalla, Tifra, PS Civil Lines, District Bilaspur (CG).

---- Petitioner

Versus

1. Chhattisgarh State Power Holding Company Limited A Government Of Chhattisgarh Undertaking A Successor Company Of CSEB, Daganiya, Head Office At Daganiya, District Raipur, Chhattisgarh.
2. The Executive Director, Extra High Tension (E H T) (C& M) CSPTL, At Daganiya, District Raipur, Chhattisgarh.
3. The Deputy General Manager, Human Resources- II, CSPDCL, At Daganiya, District Raipur, Chhattisgarh.
4. Executive Engineer Store, CSPDCL, Tifra, District Bilaspur, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Palash Tiwari, Advocate
For Respondents	:	Shri K.R. Nair, Advocate

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****19/06/2018**

1. The challenge in the present writ petition is to the order dated 24.09.2015 (Annexure P/2) and also order dated 18.01.2016 (Annexure P/1) whereby the claim for compassionate appointment moved by the petitioner stood rejected on the ground of same having been moved beyond the period of limitation.
2. The facts leading to filing of the writ petition is that father of the petitioner i.e. Gopal Sahu, working as Line Attendant Grade-II under the office of respondent No.1 died in harness on 02.08.2006. It is said that the petitioner on the date of death of her father was a minor

and therefore she moved an application for compassionate appointment on 11.11.2013 immediately on her attaining the age of majority. However, the same has been turned down by the respondents on the ground that the claim for compassionate appointment should have been made only within one year from the date of death of the deceased employee and beyond that the authorities cannot consider her claim application.

3. The contention of the petitioner is that the respondents should not have refused consideration of her claim for compassionate appointment as the minimum age prescribed under the recruitment rules of the respondent itself is 18 years and therefore immediately on attaining the age of majority she had applied for compassionate appointment. Since the petitioner was a minor at the relevant point of time, the question of her application being rejected on the ground of not having moved within one year would not be applicable and that it would be applicable only from the date she attains the age of majority.
4. According to counsel for the petitioner, it was also the duty and responsibility of the respondent authorities to have intimated and informed the dependents of the deceased employee in respect of the scheme of compassionate appointment so that the family members of the deceased would have availed the benefit so provided in the scheme. Having not done so and the mother of the petitioner being an illiterate lady, the petitioner could not take prompt steps for claiming compassionate appointment. Therefore, the claim of the

petitioner should have been entertained and considered in its proper perspective. Since, the petitioner was minor at the relevant point of time and that no compassionate appointment being granted on the death of the deceased employee, the harness and hardship of the family continued and as such the department should have taken a more liberal and pragmatic approach.

5. The petitioner relied upon the judgment of Division Bench of this High Court in case of Supramprasad Vs. State of Chhattisgarh and Others, 2012 (4) CGLJ-137. He also relied upon the judgment of Supreme Court in case of Syed Khadim Hussain Vs. State of Bihar & Ors., 2006(9) SCC 195.
6. According to the petitioner, since the hardship and harness persisted and continued till date, the respondents should have allowed her application and granted her appointment on compassionate ground showing real compassion to the family members of the deceased employee. Having not done so, Annexure P/1 and P/2 both being bad in law deserve to be set aside.
7. Per contra, the counsel for the respondents submitted that the respondent is a separate legal entity and is not a department of the State Govt. It is a company by itself incorporated under the Companies Act and it is an autonomous body. The service conditions governing the respondent-company is one which is framed and regulated by the Company itself and that the rules and regulations of the State Govt. does not automatically apply upon the respondent. Unless they are separately adopted, the rules and regulations would

not be made applicable in the respondent-organization. The respondent-company has its own scheme for compassionate appointment. According to the respondents, since there is already a scheme for compassionate appointment in the respondent-establishment, the claim of the petitioner can be strictly construed in accordance with provisions envisaged in the said scheme.

8. The respondent is in itself a juristic person distinct from the department of the State Govt. The respondents have in itself the powers of laying down the service conditions for its employees without being in any manner influenced by the decisions of the State Govt. or the rules and regulations made applicable for the government employees. The circulars, notification and the orders issued by the State Govt. from time to time would not ipso facto apply upon the respondents.
9. According to respondents, since the scheme for compassionate appointment emphatically lays down that the claim for compassionate appointment has to be raised within a period of one year from the date of death of the deceased employee and that there being no specific provision in the scheme for keeping the claim in respect of a minor live till she attains the age of majority, the respondents could not have taken a different stand than it has taken vide Annexure P/2 and P/1. It is by now well settled position of law that claim for compassionate appointment has to be considered strictly in accordance with the scheme applicable in the department-establishment.

10. The counsel for the respondents referred to scheme for compassionate appointment applicable in the department at the relevant point of time wherein in clause-5 under the general conditions it has been held as under:

“5. अनुकंपा नियुक्ति हेतु आवेदन निर्धारित प्रपत्र में मृतक कर्मचारी के निधन की तिथि से एक वर्ष के अंदर उस कार्यालय में प्रस्तुत करना होगा जहां मृतक कर्मचारी कार्यरत था। एक वर्ष के पश्चात प्राप्त आवेदनों पर कोई कार्यवाही नहीं की जायेगी। ऐसे आवेदक जो इस परिपत्र के अनुसार अनुकंपा नियुक्ति की पात्रता रखते हैं परंतु यदि उनके द्वारा अभी तक आवेदन प्रस्तुत नहीं किया जा सका है वे भी दिनांक 31.08.2004 तक अपना आवेदन प्रस्तुत कर सकते हैं।”

11. According to the respondents, the scheme does not reflect or envisage a provision wherein the claim for compassionate appointment could be kept alive till the family member of the deceased attains the age of majority. It is also argued that there were other dependents also available in the family of the deceased employee who could have sought compassionate appointment instead of waiting for the present petitioner on her attaining the age of majority. The other dependents having not availed the benefit, the action on the part of the respondents cannot be said to be bad in law. Thus, for all the aforesaid reasons, the petition deserves to be dismissed.

12. Having heard the contentions put forth on either side and on perusal of records indisputably the death of the deceased employee took place on 02.08.2006 i.e. about 12 years ago. The petitioner for the first time applied for compassionate appointment after more than 7

years from the date of death of deceased employee. From the details of the family members provided by the petitioner it reflects that there was also her mother and elder sister available at the time of death of the deceased who could have sought for appointment. Though the petitioner has in her claim application shown the elder sister to have been married, it is not clear as to whether she got married after death or during the lifetime of the deceased employee. Even otherwise, the mother could have claimed for compassionate appointment.

13. Another aspect which cannot be brushed aside is that death took place in August, 2006 and there has been no application whatsoever put forth by the petitioner requesting for compassionate appointment or even making petitioner's claim be kept alive till she attains the age of majority. Perusal of records particularly the scheme for compassionate appointment at the relevant point of time would reveal that there was no such provision with which the compassionate appointment under such circumstances or the claim for appointment be kept pending till the minor attains the age of majority.
14. At this juncture it would be relevant to refer to judgment of Supreme Court in case of Chief Commissioner, Central Excise and Customs, Lucknow and Ors. Vs. Prabhat Singh, 2012(13) SCC 412 whereby dealing on the aspect of the object and intention behind the scheme for compassionate appointment and also taking into consideration the sympathy factor which are usually cited by the courts for grant of relief to the petitioner, in paragraphs 18 & 19 have held as under:

“18.The very object of making provision for appointment on compassionate ground, is to provide succor to a family

dependent on a government employee, who has unfortunately died in harness. On such death, the family suddenly finds itself in dire straits, on account of the absence of its sole bread winner. Delay in seeking such a claim, is an ante thesis, for the purpose for which compassionate appointment was conceived. Delay in raising such a claim, is contradictory to the object sought to be achieved.

19. The Courts and Tribunals should not fall prey to any sympathy syndrome, so as to issue directions for compassionate appointments, without reference to the prescribed norms. Courts are not supposed to carry Santa Claus's big bag on Christmas eve, to disburse the gift of compassionate appointment, to all those who seek a court's intervention. Courts and Tribunals must understand, that every such act of sympathy, compassion and discretion, wherein directions are issued for appointment on compassionate ground, could deprive a really needy family requiring financial support, and thereby, push into penury a truly indigent, destitute and impoverish family. Discretion is therefore ruled out. So are, misplaced sympathy and compassion."

15. It would also be relevant at this juncture to refer Division Bench decision of this court in Writ Appeal No.588 of 2013 (Tamradhwaj Verma Vs. State of Chhattisgarh & Ors., decided on 10.11.2014) wherein dealing with a similar situation has held as under:

"6. Therefore, any consideration of a claim for compassionate appointment has to be strictly in accordance with the policy regulating the same keeping in mind that it has to be made with as sense of urgency due to sudden death of the bread winner leaving the family of the deceased in destituteness and penury. There can be no sustained urgency over the year. The object of the appointment is to provide immediate succor to the family of the deceased. It is not an avenue for employment by avoiding the normal competitive process. Sympathy has no ground to pay or role at all in considering the claim for compassionate appointment merely because the power may have been

exercised under Article 226 of the Constitution. Sympathy generates individualized justice rather than justice according to law.

7. The circular dated 30.01.1997 provided that the claim for compassion appointment must be made by the eligible within one year of death. If this period of one year expired during the minority of the appellant because of which he was unable to apply, it cannot be construed that the post was to be kept reserved for him on basis of descent to enable him to apply and considered after he attains majority. The right to apply lost its efficacy after one year from the date of death and the appellant being a minor unable to apply was an irrelevant consideration for the purpose. It is not the case of the appellant that the Rules provided for an application to be submitted within a prescribed time after attaining majority.”

16. In the same judgment the Division Bench has also referred to other judgments of this court in case of Supramprasad (Supra) and have distinguished the same which for ready reference is also reproduced herein:

“10. In Supramprasad (Supra) relief came to be granted on ground of sympathy with regard to which it has been repeatedly observed by the Supreme Court that sympathy cannot supplant the law to grant relief. We regret our inability to follow the same.”

17. The Single Bench of this Court in Sarfaraj Ahmed Vs. State of Chhattisgarh & Ors. 2014 (Lab.I.C.-3789 Chhattisgarh High Court) decided on 22.07.2014 again in a case where the claim for compassionate appointment was made after the petitioner had attained the age of majority, referring to various judgments of the Supreme Court rendered in the past has rejected the writ petition on the ground that the claim for compassionate appointment cannot be

raised at a belated stage merely because the claimant has attained the age of majority at a later stage.

18. In view of the aforesaid legal position as it stands from the judgments of Supreme Court as also from the Division Bench of this Court referred to in the preceding paragraph in case of Tamradhwaj (Supra), this court does not find any strong case made out by the petitioner calling for interference with the impugned orders.
19. So far as judgment in case of Syed Khadim (Supra) is concerned, the said judgment is distinguishable on its facts itself as the mother of the petitioner therein had promptly moved an application for grant of compassionate appointment which stood rejected on the ground of the same not being in proper formate. Hence, the principles laid down in the said judgment cannot be made applicable to the facts of the present case as there was no claim made by the petitioner for seven years immediately after the death of the deceased employee.
20. Accordingly, the writ petition stands dismissed.

Sd/-
(P. Sam Koshy)
Judge