

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 6324 of 2018**

Shesh Gajbaye S/o Late Shree Rajeshwar Gajbaye, Aged About 29 Years R/o Sanjay Nagar, Block Kanker, District Uttar Baster Kanker Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Tribal Welfare Department, Naya Raipur District : Raipur, Chhattisgarh
2. Assistant Commissioner, Tribal Welfare Department, District Baster Jagdalpur Chhattisgarh.
3. District Education Officer, District Baster Chhattisgarh.

----Respondents

For Petitioner	:	Mr. Shalvik Tiwari, Advocate
For State	:	Mr. Adhiraj Surana, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****26/09/2018**

1. The challenge in the present writ petition is to the order dated 07.06.2011, whereby the claim for compassionate appointment filed by the petitioner stood rejected.
2. The rejection was on the ground that the claim application was raised after more than 3 years from the date of death of the deceased employee. The facts in brief of the petitioner is that the father of the petitioner was in government employment under the respondents, who died in harness on 13.11.1999. It is contended that the mother of the petitioner had thereafter moved an application for compassionate appointment, but the same was not considered or decided. When the father of the petitioner had died, the petitioner was a minor.
3. Later on since the application of the mother of the petitioner was not considered by the respondents and meanwhile the petitioner had

attained the age of majority, he moved an application for his being considered for compassionate appointment and finally the claim application of the petitioner was rejected vide impugned order (Annexure P/5) dated 07.06.2011. Though the claim application was rejected on 07.06.2011, the present writ petition has been filed after more than 7 years i.e. on 04.09.2018.

4. Without entering into the merits of the case so far as the entitlement of the petitioner is concerned, this Court is of the opinion that the petition suffers from delay and laches. The law on the issue of compassionate appointment is concerned is by now well settled, particularly in respect of the claims, which are made at a belated stage.
5. The very object of the grant of compassionate appointment or the employer framing the scheme for compassionate appointment is with an intention to enable the family of the deceased employee to tide over the sudden crises resulting due to the death of the sole bread earner. The scheme for compassionate appointment is with an intention that the family is not forced to a stage of penury or without any means of livelihood on account of the death of the sole earning member in the family.
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 (2013) 12 SCC 179** 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. In the light of the aforesaid decisions, which have been rendered on the issue when we compare the facts of the case it clearly reflects that the petitioner has filed the present writ petition after more than 7 years from the date of rejection of the claim application. The very fact that the entire family could cope-up since the date of death in the instant case since 13.11.1999 i.e. for almost 20 years in itself is a sufficient indication that the family did not undergo any crises like situation and it also gives an impression that there was sufficient means for the family to sustain.
14. In the given facts and circumstances of the case, this Court does not find any strong case made out by the petitioner calling for an interference with the impugned order dated 07.06.2011 (Annexure P/5). The writ petition therefore fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge