

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 294 of 2019

(Arising out of order dated 18.03.2019 passed by learned Single Judge in WPS No. 1916 of 2019)

- Ashok Kumar Dongre S/o Late Shri Manohar Lal Dongre Aged About 23 Years R/o Village Bhimkholiya, Post Salar, Tahsil Sarangarh, District Raigarh Chhattisgarh.

---- Appellant

Versus

1. State of Chhattisgarh Through The Secretary, School Education Department, Mantralaya Mahanadi Bhawan, Capital Complex, Naya Raipur, District Raipur Chhattisgarh.
2. Director Public Education Directorate, New Raipur Chhattisgarh.
3. District Education Officer Dhamtari, District Dhamtari Chhattisgarh
4. District Collector District- Dhamtari, Chhattisgarh.

---- Respondents

For Appellant : Shri Ashok Kumar Patil, Advocate.
For State/Respondents : Shri Siddharth Dubey, Deputy Government Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Sanjay K. Agrawal, Judge

Judgment on Board

Sanjay K. Agrawal, J.

27.06.2019

1. Heard Mr. Ashok Kumar Patil, learned counsel for the Appellant and Mr. Siddharth Dubey, learned Deputy Government Advocate for the State / Respondents on question of admission of this writ appeal.
2. This writ appeal is directed against the order dated 18.03.2019 passed by the learned Single Judge in WPS No.1916 of 2019, whereby the writ petition has been dismissed. His prayer for directing the Respondent authorities to consider his application for grant of compassionate appointment has been rejected.
3. The Appellant father Mr. Manohar Lal Dongre, while working as an Upper Division Teacher in School Education Department, died in harness on 06.11.1997 and at that time the Appellant was a minor aged about 2 years, he could not claim for compassionate appointment in place of this father being minor as per policy applicable thereto. But, when the Appellant became major in

the year 2013 then also he did not make any application for grant of compassionate appointment. He only filed an application for grant of compassionate appointment on 11.07.2017, which was rejected by the District Education Officer on 15.03.2018. Questioning the order rejecting his application for appointment, the Appellant preferred Writ Petition (S) No. 1916 of 2019 claiming the rejection is arbitrary and that he is entitled for compassionate appointment, which the learned Single Judge has dismissed basically on the ground that the Appellant has claimed the compassionate appointment with a great delay, therefore, his application cannot be entertained.

4. Mr. Ashok Patil, learned counsel for the Appellant submits that learned Single Judge is absolutely unjustified in rejecting the writ petition declining the consideration for compassionate appointment only on the ground of delay. As such after attaining the age of major, he has claimed for appointment on 11.07.2017.
5. Mr. Siddharth Dubey, learned Deputy Government Advocate for the State would support the impugned order.
6. We have heard the learned counsel for the parties, considered the rival contentions raised hereinabove and went through the record with utmost careful and caution.
7. Appellant's father died in harness on 06.01.1997. Admittedly, the Petitioner was minor, he could not claim for appointment on compassionate ground at that time on account of being minor. But, he became major in the year 2013 and even if three years period is added in that period, which came to an end in the year 2016, within that period also he did not make any application for compassionate appointment. He made an application for compassionate appointment only on 11.07.2017, which was rejected by the Authority as well

as by the learned Single Judge holding that the grant of compassionate appointment is meant to tide over the immediate crisis that the family faces on the death of the bread earner or the earning member of the family and that cannot be made regular or another source of recruitment. We fully agree with the view taken by the learned Single Judge.

8. It is well settled principle of law as held by their Lordships of the Hon'ble Supreme Court in several authoritative pronouncement including pronouncement in the case of **State of Himachal Pradesh and Another vs. Shashi Kumar; (2019) 3 SCC 653** in which reiterating and revisiting the law, their Lordships clearly held that there is no right to compassionate appointment and the compassionate appointment is exception to general rule that appointment to any public post in service of State must be made in accordance with Articles 14 and 16 of the Constitution of India. It is further been held by their Lordships that basis for the policy is immediacy of need for financial assistance faced by family of the deceased employee consequent to his untimely death. Their Lordships have also considered and held that delay of more than seven years in approaching the Court evidently lost sense of immediacy by delay on part of dependant in seeking compassionate appointment and held as under :

“35. Insofar as the individual facts pertaining to the respondent are concerned, it has emerged from the record that the Writ Petition before the High Court was instituted on 11 May 2015. The application for compassionate appointment was submitted on 8 May 2007. On 15 January 2008 the Additional Secretary had required that the amount realized by way of pension be included in the income statement of the family. The respondent waited thereafter for a period in excess of seven years to move a petition under Article 226 of the Constitution. In *Umesh Kumar Nagpal* {(1994) 4 SCC 138}, this Court has emphasized that the basis of a scheme of compassionate appointment lies in the need of providing immediate assistance to the family of the deceased employee. This sense of immediacy is evidently lost by the delay on the part of the dependant in seeking compassionate appointment.

36. We are not impressed with the submission that delay should not be taken into account since Paragraph 8 of the Scheme contemplates that in a situation where all the dependant children of the deceased employee have yet to attain the age of majority, the time limit for submission of an application is extended until the first of the children attains the age of twenty one years. A case where each of the children is a minor falls in a different class altogether. This cannot be equated with a situation where a dependant of a deceased employee who was a major on the date of death fails to submit an application within a reasonable period of time from the death of the employee. This aspect of delay has been dealt with in other decisions of this Court, including *State of J&K Vs. Sajad Ahmed Mir* {(2006) 5 SCC 766} and *Local Administration Department Vs. M. Selvanayagam* {(2011) 13 SCC 42}.

37. We see no reason or purpose in now directing the State to reconsider its decision in the case of the respondent which would only result in another round of fruitless litigation. In our view, the respondent is debarred from seeking compassionate appointment by the delay as well as by the lapse of time which has taken place.”

9. In the considered opinion of this Court and following the principle of law laid down in the aforesaid case of **Shashi Kumar** (supra) which is squarely and factually applies to the facts of the present case and also considering the delay in making the application and the finding recorded by the learned Single Judge, we are unable to take view other than the view taken by the learned Single Judge and ultimately finding no merit in the writ appeal, it is liable to be rejected and is hereby rejected.
10. Finally, the writ appeal is dismissed leaving the parties to bear their own cost(s).

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge