

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 303 of 2019**

(Arising out of order dated 18/03/2019 passed by learned Single Judge in WP(S) No. 1906 of 2019)

- Ku. Tapswinee Diwan D/o Late Ranjeet Singh Diwan Aged About 38 Years R/o Village Hardasara, Post Baloda, Tahsil Saraipali, District Mahasamund Chhattisgarh., District : Mahasamund, Chhattisgarh

---- Appellant

Versus

1. State Of Chhattisgarh Through The Secretary, School Education Department, Mantralaya, Mahanadi Bhawan, Capital Complex Naya Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. District Education Officer Mahasamund, District Mahasamund Chhattisgarh., District : Mahasamund, Chhattisgarh
3. Block Education Officer Block Saraipali, District Mahasamund Chhattisgarh, District : Mahasamund, Chhattisgarh

-----Respondents

For Appellant	: Shri Ashok Patil, Advocate
For Respondents/State	: Shri Avinash Singh, Panel Lawyer

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Judgment on Board

Per PR Ramachandra Menon,CJ

22.07.2019

1. Interference declined by the learned Single Judge with regard to the claim for compassionate appointment in the Writ Petition filed in the year 2019, in respect of the demise of the employee occurred in the year 1994, is put to challenge by the writ petitioner in this appeal.
2. Heard Shri Ashok Patil, learned counsel for the appellant; Shri Vaibhav Kartikeya Agrawal, counsel and Shri Avinash Singh, learned Panel Lawyer for the respective respondents.

3. The sequence of events reveals that the father of the appellant/writ petitioner unfortunately passed away on 28.10.1994 while he was serving as an Assistant Teacher under the School Education Department. The appellant was aged 4 years at that time. It is stated that the mother of the appellant had made several applications before the 2nd respondent claiming compassionate appointment, though the said version is not substantiated. The case of the appellant is that, she attained majority in the year 2010 and immediately thereafter moved an application before the 3rd respondent on 07-03-2011 and the 3rd respondent forwarded the application to the 2nd respondent on 10-4-2011 for compassionate appointment. The application preferred by the appellant was never considered and as per the policy of the Government, a copy of which has been produced as Annexure A/2, the appellant was to be offered employment and hence the inaction on the part of respondents was put to challenge by filing Writ Petition before this Court as mentioned above.

4. On going through the materials on record, it is seen that the learned Single Judge has clearly observed that, though the appellant had attained majority in the year 2010, it took another 9 years for her to approach this Court claiming the benefit of compassionate appointment. Placing reliance on the verdicts passed by the Apex Court in **State of Uttaranchal and Another v. Shiv Charan Singh Bhandari and Others**¹, **New Delhi Municipal Council v. Pan Singh and others**² and **Metropolitan Water Supply and Sewerage Board and Others v. TT Murali Babu**³, interference

¹ 2013 (12) SCC 179

² 2007 (9) SCC 278

³ 2014 (4) SCC 108

was declined and the Writ Petition was dismissed, from which arises the present appeal.

5. The learned counsel for the appellant submits that the appellant was virtually made to run from pillar to post and as per the policy, she was assured that she would be granted the appointment after becoming a major. On realising that the appellant would, under no circumstances, be given the benefit, despite the policy, she chose to approach this Court by filing the Writ Petition. The delay in the said circumstance is not attributable to the appellant and the same can't be a reason to reject her candidature, submits the learned counsel. The learned counsel seeks to place reliance on the verdict passed by the Apex Court in **Canara Bank and another v. M Mahesh Kumar**⁴ and a recent one in **State of Himachal Pradesh and Another v. Parkash Chand**⁵.

6. With regard to the position considered by the Apex Court in **Canara Bank** (supra), the crucial question was whether the claim for compassionate appointment was to be considered with reference to the particular scheme which was in existence at the time of demise of the employee concerned or could it be finalised in view of the subsequent scheme. On the date of demise of the employee concerned, the scheme provided for compassionate appointment, and it was also stipulated that, if the claimant was a minor, notwithstanding the payment of terminal benefits at the time of demise, the claim for compassionate appointment could be considered after attaining majority.

⁴ 2015 (7) SCC 412

⁵ 2019 (4) SCC 285

7. The employer- Bank sought to contend that by virtue of the subsequent change, the said scheme was put an end to, substituting the practice of giving compassionate appointment by '*ex-gratia* payment'. There was a subsequent change, when the earlier practice of compassionate appointment was brought back as per a new scheme notified in the year 2014 (superseding the existing scheme providing *exgratia* payment). After detailed evaluation of the facts and figures and the different schemes, the Apex Court held that the claim for compassionate appointment was to be considered as per the scheme which existed at the time of the death of the employee concerned. It was accordingly, that interference was declined with regard to the verdict passed by the High Court and the case filed by the Bank came to be dismissed. The said verdict does not support the case of the appellant herein.

8. Coming to the verdict of the Apex Court in **Himachal Pradesh Case** (supra), the challenge raised by the State of Himachal Pradesh before the Apex Court was that a direction was given by the High Court of Himachal Pradesh to the appellants to consider the application for compassionate appointment of the dependants of the deceased employee, *dehors* the policy which contained the stipulation that where one or more persons of the family were already in the employment of the State Government or of autonomous bodies, Boards, Corporations, etc of the State or the Central Government, employment assistance should not be provided to another member of the family. After referring to the various aspects involved, the learned judges observed in 'paragraph 12' of the Judgment that the father

of the respondent had passed away on 04.01.1997 and that, though the respondent had applied on attaining majority, as permissible under the policy, the application came to be rejected on 25.04.2008; whereas the Writ Petition was filed nearly two years and six months thereafter. The Apex Court held that the High Court was not justified in issuing a direction, which would breach the policy framed by the State and accordingly, the appeal filed by the State was allowed, setting aside the directions given by the High Court. Obviously, in view of the different factual scenario, this case also does not come to the rescue of the appellant/ writ petitioner in any manner.

9. As discussed by the learned Single Judge in paragraph-3 and 4 of the Judgment, and as conceded by the appellant that she attained majority in the year 2010; but she chose to move this Court only after '9 years' from the date of attaining majority and '24 years' after the date of demise of her father, who was the employee concerned. We find no tenable ground to call for interference. The appeal fails, it is dismissed accordingly.

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

Sd/-
(Parth Prateem Sahu)
Judge