

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 343 of 2019**

(Arising out of order dated 23.4.2018 passed by learned Single Judge
in WPS No.3239/18)

Judgment Reserved on 25.9.2019**Judgment Delivered on 4-10-2019**

1. Vijay Kumar Vastrakar, S/o Late Vishambhar Prasad Vastrakar, aged about 34 years, resident of Village- Nawapara, Police Station Sarkanda, Tahsil- Takhatpur, District- Bilaspur (CG)

---- Appellant**Versus**

1. Chhattisgarh State Power Distribution Company Limited through its Managing Director, Daganiya, Raipur (CG)
2. The Chief Engineer Welfare Region, Chhattisgarh State Power Distribution Company Limited, Bilaspur, District- Bilaspur (CG)
3. The Superintending Engineer (O&M) Circle Chhattisgarh State Power Distribution Company Limited, Sarsiwa, District- Raipur (CG)
4. The Executive Engineer (Civil) Division (O&M), Dn. Chhattisgarh State Power Distribution Company Limited, Sarsiwa, District- Raipur (wrongly mentioned as District Bilaspur) (CG)

---- Respondents

For Appellant	:	Shri Hemant Kumar Agrawal, Advocate
For Respondents	:	Shri KR Nair, Advocate.

Hon'ble Shri P. R. Ramchandra Menon, CJ**Hon'ble Shri Parth Prateem Sahu, J****C A V Order****Parth Prateem Sahu, J**

1. Challenge in this appeal is to the order dated 23.4.2018 passed by learned Single Judge in WPS No.3239/2018 dismissing writ petition on the ground of delay.

2. Facts of the case, in nutshell, are that appellant's father worked as Assistant Grade-II in the then Madhya Pradesh State Electricity Board and he died in harness on 26.12.1999. Appellant's brother namely Indrakumar Vastrakar applied for appointment on compassionate ground on 18.2.2000 and when his case for compassionate appointment was not considered for sufficient long time, he approached the High Court by filing WP No.2005/05. The said writ petition came to be dismissed as withdrawn vide order dated 29.7.2009 reserving liberty to said Indrakumar Vastrakar to file fresh representation before the respondent authority concerned and in compliance thereof, representation is said to have been filed by said Indrakumar on 17.8.2009, which remained pending with the authorities. Unfortunately, on 22.7.2017 said Indrakumar met with an accident which resulted in his death. Thereafter on 14.11.2017 appellant herein applied for appointment on compassionate ground and the respondent authority concerned vide order dated 5.12.2017 rejected his claim for compassionate appointment on the ground that application has been filed after a long delay of 18 years and therefore he could not be appointed on compassionate ground. Feeling aggrieved by rejection of his claim of compassionate appointment, the appellant has invoked jurisdiction of the High Court under Article 226 of the Constitution of India and prayed that order dated 5.12.2017 be set aside and the respondent authorities be directed to appoint him on compassionate ground. The said writ

petition was dismissed by learned Single Judge vide order impugned on the ground of delay. Hence this appeal.

3. Learned counsel for appellant would submit that appellant was not aware about dismissal of writ petition and he could come to know about the said fact only in the month of May, 2019 and immediately thereafter he obtained certified copy of impugned order and filed the present appeal. Hence, the delay occasioned in filing this appeal may be condoned.

He further submits that as appellant's father died in harness while working with the then Madhya Pradesh State Electricity Board, therefore, initially application for compassionate appointment was filed before the Madhya Pradesh State Electricity Board by his elder brother namely Indra Kumar Vastrakar within time and since no decision was taken by respondent authorities on the said application for a sufficient long time, appellant's brother filed a writ petition before the High Court in the year 2005. Said writ petition was dismissed as withdrawn on 29.7.2009 with liberty to file fresh representation. On 17.8.2009 appellant's brother submitted fresh representation, but respondent department has not taken any pain to consider and decide the said representation. On 22.7.2017 appellant's brother breathed his last and thereafter on 14.11.2017 appellant submitted application for compassionate appointment and the same has been rejected by respondent No.1 vide order dated 5.12.2017 on the ground that as the

application has been filed after a lapse of 18 years from the date of death of deceased employee, therefore, the appellant is not entitled for compassionate appointment. He submits that initially the application for compassionate appointment was promptly made to the department by appellant's brother Indra Kumar Vastrakar i.e. on 18.2.2000, but the same remained pending with the respondent authorities for sufficient long time and therefore the delay cannot be attributed to appellant for filing application for compassionate appointment.

4. Per contra, learned counsel for the respondents submits that present appeal has been filed with inordinate delay of 394 days. No sufficient and proper cause has been offered by appellant for the delay in filing writ appeal. It was the duty of appellant himself to keep in touch with the advocate engaged by him to represent his case before the High Court, but he failed to do so, which shows that appellant has not been prosecuting his case with due diligence and seriousness. He further submits that there is requirement to explain each day's delay in preferring appeal, which appellant utterly failed to do and therefore this appeal is also liable to be dismissed on the ground of delay. He further submits that though as per documents annexed with writ petition, appellant's brother namely Late Indra Kumar applied for compassionate appointment within a few months of the death of his father but before the Madhya Pradesh State Electricity Board and even the writ petition filed by said Indra Kumar was dismissed as withdrawn in the year 2009 with liberty to file fresh

representation. However, there is nothing on record to show that from 2009 to the date on which said Indra Kumar breathed his last i.e. 22.7.2017, said Indra Kumar took any step for getting his claim redressed by the authorities or the Court. He further submits that compassionate appointment is not a mode of recruitment and it is only a welfare measure and basic purpose for grant of compassionate appointment is to provide immediate relief to the dependants of a deceased government employee, who died in harness. In this case, the appellant had applied for compassionate appointment for the first time only on 14.11.2017 i.e. after a lapse of about 18 years from the date of death of deceased employee and therefore appellant is not entitled for appointment on compassionate ground on account of delay and laches. In these circumstances, the impugned order dated 5.12.2007 passed by respondent authorities rejecting claim for compassionate appointment and also the order dated 23.4.2018 passed by the learned Single Judge dismissing writ petition need no interference.

5. We have heard learned counsel for the parties and perused the record.
6. So far as delay in filing writ appeal is concerned, perusal of application for condonation of delay, which is supported with an affidavit, would show that only ground urged by appellant for condoning the delay is that he came to know about the passing of order dated 23.4.2018 only in the month of May, 2019 when

he visited office of the counsel engaged by him and immediately thereafter he obtained certified copy of the impugned order and filed the present appeal. The ground urged by appellant cannot be accepted as a sufficient ground to condone inordinate delay of 394 days in preferring this appeal. Appellant has not only failed to mention the circumstances which prevented him from contacting his counsel during this period of 394 days but also to mention specific date on which he contacted his advocate. This apart, perusal of impugned order would show that application for certified copy of impugned order was made on 3.5.2018 and the same was delivered on 3.5.2018, whereas present appeal has been filed only on 10.7.2019. Thus, looking to the date of supply/delivery of certified copy mentioned in the order impugned, the ground taken by appellant in the application for condonation of delay appears to be an afterthought. Hence, this Court is of the considered view that no sufficient cause has been shown for condonation of delay of 394 days in filing appeal and as such appeal is liable to be dismissed on the ground of delay alone.

7. Coming to the merits of the case, it is not the present appellant who had initially applied for compassionate appointment, rather it is appellant's brother Indra Kumar who submitted application seeking appointment on compassionate ground, but said application remained pending for sufficient long time and therefore the appellant's brother filed a writ petition before the

High Court in the year 2009, which came to be dismissed as withdrawn with liberty to file fresh representation. However, there is nothing on record to show that after withdrawal of writ petition, any representation was submitted by said Indra Kumar, brother of appellant. Annexure A-5 & A-6 filed along with the appeal only demonstrate that representations were prepared on 17.8.2009 & 15.1.2015 respectively, but both these representations do not bear seal of receipt and even any postal receipt or acknowledgement has not been placed on record to show that said representations were received by the office. Except the averment that Indra Kumar, brother of appellant, had pursued his claim for compassionate appointment after dismissal of writ petition in the year 2009, till his death i.e. upto 22.7.2017, there is no documentary evidence on record in this regard.

8. It is the case of appellant himself that on 14.11.2017, for the first time, he applied for compassionate appointment. At the time of making said application, appellant was 34 years old and as such, he must have been married and maintaining his own family. Appellant himself pleaded that upon rejection of claim for compassionate appointment, the dependants of some of deceased employees, who were working with erstwhile Madhya Pradesh Electricity Board and posted in the area falling within the area of State of Chhattisgarh, have approached the High Court by filing various writ petitions. The said writ petitions have been dismissed by the High Court, which was challenged

before the Supreme Court by filing special leave petition and the Supreme Court vide order dated 26.8.2014 disposed off the special leave petition with a direction to the Electricity Board to consider application of applicants therein. Perusal of the orders passed in WPS No.360/15 & 1927/15 by a Single Bench of this Court also shows that the Court had only directed for consideration of representation in accordance with terms & conditions of scheme of compassionate appointment and also the principles governing the field relating to compassionate appointment, as laid down by the Hon'ble Supreme Court and a Division Bench of this High Court. In the instant case, application for grant of compassionate appointment of petitioner/ appellants was considered and rejected.

9. It is settled law that compassionate appointment is an exception to the regular mode of appointment and it cannot be prayed for as a matter of right. The exception on which compassionate appointment is sustained is for the reason that it seeks to tide over the sudden crisis in the family of deceased breadwinner. The object being to enable the family to get over financial crisis which it faces immediately after the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over. Long delay in moving the Court in the matter of compassionate appointment by itself would be sufficient to disentitle the person from seeking a direction for appointment on compassionate ground.

On the aspect of delay in applying for compassionate appointment, the Supreme Court has consistently held that delay in applying for compassionate assistance cannot be condoned, as it would be introducing a concept of condonation of delay, which is otherwise not provided in the scheme of compassionate appointment. In this context, it is worthwhile to extract few decisions of the Supreme Court. In the case of **State of UP v. Paras Nath**, reported in **1998 (2) SCC 412**, the Supreme Court has held that:

“5. The purpose of providing employment to a dependent of a government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointment. The purpose is to provide immediate financial assistance to the family of a deceased government servant. None of these considerations can operate when the application is made after a long period of time such as seventeen years in the present case.

6. We may, in this connection, refer to only one judgment of this Court in the case of *Union of India v. Bhagwan Singh*¹. In this case, the application for appointment on similar compassionate grounds was made twenty years after the railway servant's death. This Court observed:

"The reason for making compassionate appointment, which is exceptional, is to

provide immediate financial assistance to the family of a government servant who dies in harness, when there is no other earning member in the family."

In the case of **Haryana State Electricity Board v. Krishna Devi**, reported in **2002 (10) SCC 246**, the Supreme Court has observed that:

"7. As the application for employment of her son on compassionate ground was made by the respondent after eight years of death of her husband, we are of the opinion that it was not to meet the immediate financial need of the family. The High Court did not consider the position of law and allowed the writ petition relying on an earlier decision of the High Court."

In a subsequent decision in the matter of *State of Manipur v. Md. Rajaodin* reported in (2003) 7 SCC 511, while dealing with the effect of long delay in applying for compassionate appointment, the Apex Court has observed as under

"11. ... The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the breadwinner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the Scheme itself envisages specifically otherwise, to state that as and when such minor becomes a major he can be

appointed without any time consciousness or limit.”

10. In the matter of **Punjab National Bank & ors v. Ashwini Kumar Taneja** reported in **(2004) 7 SCC 265**, has observed as under:-

"4.....It is to be seen that the appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement regarding appointments being made on open invitation of application on merits. Basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden financial crisis."

In the matter of **Santosh Kumar Dubey v. State of UP & ors** reported in **(2009) 6 SCC 481**, the Hon'ble Supreme Court while dealing with the identical issue has held as under:-

“.....The very concept of giving a compassionate appointment is to tide over the financial difficulties that is faced by the family of the deceased due to the death of the earning member of the family. There is immediate loss of earning for which the family suffers financial hardship. The benefit is given so that the family can tide over such financial constraints. The request for appointment on compassionate grounds should be reasonable and proximate to the time of the death of the bread earner of the family, inasmuch as the very purpose of giving such benefit is to make financial help available to the family to overcome sudden economic crisis occurring in the family of the deceased who has died in harness. But this, however, cannot be another source of recruitment. This also cannot be treated as a bonanza and also as a right to get an appointment in Government service. In the present case, the father of the appellant became untraceable in the year 1981 and for about 18 years, the family could survive and

successfully faced and overcame the financial difficulties that they faced on missing of the earning member. That being the position, in our considered opinion, this is not a fit case for exercise of our jurisdiction.....”

11. The principles enunciated in the above said judgements would make it clear that compassionate appointment is not a vested right which can be exercised at any time, in future. Compassionate employment cannot be claimed after a lapse of time as the delay in making a claim for compassionate grounds appointment dilutes the case of immediate financial penury and consequently negates the entitlement for appointment on compassionate grounds. In the case at hand, admittedly, the family of deceased employee has survived for a considerable long period i.e. from 1999 to 2017, without a job on compassionate ground and this fact itself shows that the family members of deceased employee have the necessary wherewithal to survive, notwithstanding with sudden departure of the earning member of the family. If the family is able to survive for long years, the factual inference is to be drawn that the penurious circumstances did not exist. A compassionate appointment is justified when it is granted to provide immediate succour to the family of deceased employee. Thus, the delay in approaching the Court has defeated the very object of claim for compassionate appointment as the purpose of compassionate appointment is to tide over the sudden crises, with which the family members of deceased employee were facing due to sudden death of the father of appellant herein on 26.12.1999.

Thus, even on merits, we find no reason, to interfere with the order dated 5.12.2017 passed by respondent No.1 rejecting claim of appellant for compassionate appointment.

12. In view of the discussions made above in relation to the fact of case as well as the legal precedents settled by the Hon'ble Supreme Court, this Court is of the opinion that this appeal is liable to be dismissed both on the ground of inordinate delay as well as on merits. It is ordered accordingly.

Sd/-
(PR Ramchandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-