

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 84 of 2019**

Bhagwat Sai Sidar S/o Late Hari Shankar Sai Sidar Aged About 40 Years
R/o Village Chidora, Post Pogro, Tahsil Bagicha, District Jashpur,
Chhattisgarh., District : Jashpur, Chhattisgarh

---- **Petitioner**

Versus

1. State Of Chhattisgarh Through The Secretary Department Of Tribal Welfare, Mantralaya, Mahanadi Bhawan, Capital Complex, New Raipur, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. Assistant Commissioner Tribal Welfare Department, Jashpur, District Jashpur, Chhattisgarh., District : Jashpur, Chhattisgarh
3. Collector District Jashpur, Chhattisgarh., District : Jashpur, Chhattisgarh

---- **Respondents**

For petitioner	:	Shri Ashok Patil, Advocate.
For State	:	Shri Rahul Mishra, Dy. GA

Hon'ble Shri Justice P. Sam Koshy

Order on Board

09/01/2019

1. The grievance of the petitioner in the present writ petition is to the inaction on the part of the respondents in considering the case of the petitioner for compassionate appointment.
2. The facts relevant for adjudication of the dispute is that the father of the petitioner late Shri Harishankar Sai sidar was working as teacher at the government School at Jashpur. He dies harness on 30/07/1998. Undisputedly the petitioner was major on the date of death of his father. It is said that the petitioner has moved an application for compassionate appointment at that point of time but the same has till date not been finalized. The petitioner tried to draw the attention of the Court to Annexure (P-1) whereby the Assistant Commissioner in the department of Tribal Welfare, District Jashpur has made certain recommendations in favour of the petitioner. Thereafter there has no effective orders passed so far as the claim of the petitioner is concerned.
3. Considering the facts of the case what clearly reflects is that the present writ petition has been filed after more than 20 years from the date of death of

deceased employee. The writ petition also has been filed after more than 12 years from the date of Assistant Commissioner, Tribal Welfare Department, had made certain correspondence vide Annexure (P-1) dated 24/04/2006. Both these orders would show that the writ petition presently filed has been raised at a much belated stage 12 years from the date of correspondence made by the Assistant Commissioner is quite a lot of period particularly when the claim in respect of the compassionate appointment.

4. The very fact that the petitioner for the first time raised his claim after a period of 12 years from Annexure P-1 and the writ petition has been filed after a period of more than 20 years from the date of death of deceased employee itself forces this court to draw an inference against the petitioner having sufficient source of income.

5. 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.”

6. 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)**.

7. 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.”

8. 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.”

9. 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. Very recently in case of **Chennai Metropolitan Water Supply and Sewerage 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.”

12. The law with regard to compassionate appointment stands well settled and judicial precedents on the principles abound. Nonetheless, claims without any substance or merit continue to be made, fall in the category of clear frivolous litigation burdening the Courts unnecessarily. The present is a classic case of a completely frivolous litigation for a claim regarding compassionate appointment. The petitioner is looking for ways and means to find a Government job with the least effort through litigation rather than to compete for obtaining employment in this competitive world.
13. Essentially, the petitioner seeks a back door appointment without having to face competition and doggedly pursues his claim for compassionate appointment notwithstanding the fact that it has no merit at all.
14. A claim for compassionate appointment is an exception to the constitutional mandate under Article 14 of the Constitution that all appointments in the Government or Semi-Government organizations must be made by open advertisement and competitive merit selection so as to provide equal opportunity to be considered to all who may be eligible, as employment in the Government

constitutes a national wealth. A limited exception has been made to this principle by providing for compassionate appointment which is primarily aimed as a part of social constitutional philosophy of the Government to provide succor to the family of the deceased faced with sudden penury and destituteness due to untimely loss of the bread winner. It is therefore patent that there is always an urgency in a claim for compassionate appointment. If a claim is legitimately made within stipulated time and consideration is belated, different issues may arise for determination. Such is not the case presently.

15. It has repeatedly been held that compassionate appointment is not a constitutionally sanctioned mode of appointment in Government service. Any claim therefore has to be strictly in terms of the policy or circulars regulating the same. The Court cannot consider claims for compassionate appointment on the basis of sympathy.

16. Thus, the petition being devoid of merit is liable to be and is hereby dismissed.

Sd/-

(P. Sam Koshy)
JUDGE

Rohit