

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 344 of 2020**

*{Arising out of order dated 10.06.2020 passed by the learned Single Judge in
Writ Petition (S) No. 1527 of 2012}*

- Vijay Kumar Adile, son of Ramadhar Adile, Mother of Smt. Savitri Bai Adile, now aged about 42 years, R/o village Ghonghadih, Tahsil Takhatpur, District Bilaspur (C.G.) at present R/o Peepartarai, Police Station and Tahsil Kota, District Bilaspur (C.G.)

---- Appellant**Versus**

1. State of Chhattisgarh, Through: Secretary, School Education Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, District Raipur (C.G.)
2. District Education Officer, Bilaspur, District Bilaspur (C.G.)
3. Block Education Officer, Bilaspur, District Bilaspur (C.G.)
4. Vimal Kumar, Son of Late Ramadhar Adile, mother of Smt. Agasiya Bai, R/o Ghoghadih, Tahsil Takhatpur, District Bilaspur (C.G.)

---- Respondents

For Appellant	:	Shri B. Madhava Rao, Advocate.
For Respondents/State	:	Shri Vikram Sharma, Deputy Government Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge

Judgment on Board

Per P. R. Ramachandra Menon, Chief Justice

14.09.2020

1. Dismissal of the writ petition, challenging Annexure P/6 order dated 24.09.2008, granting compassionate appointment to the 4th Respondent and the prayer declined to direct the Respondent/State to give compassionate appointment to the Appellant/writ Petitioner from the subject matter of challenge in this appeal preferred by the Appellant/writ Petitioner.
2. Heard Shri B. Madhava Rao, the learned counsel appearing for the Appellant as well as Shri Vikram Sharma, the learned Deputy Government Advocate representing the State.
3. The case of the Appellant is that his father by name Ramadhar Adile who was working as 'Assistant Teacher' in the Education Department died in harness on 27.11.2005. It is contented that the Appellant had submitted an application for compassionate appointment, but without considering the same, Annexure P/3 application preferred by the 4th Respondent was considered and compassionate appointment was given to him as per Annexure P/6 order dated 24.09.2008. It is also the contention of the Appellant that particulars of the order issued to the 4th Respondent were not within the knowledge of the Appellant and that a copy of the said order was obtained only on invoking the remedy under the Right to Information Act, 2005. Immediately after getting a copy, the Petitioner approached this Court by filing Writ Petition (S) No. 1527 of 2012, seeking to set aside the Annexure P/6 order dated 24.09.2008 granting

compassionate appointment to the 4th Respondent and to direct the Respondent authorities to consider the claim of the Petitioner in this regard.

4. The case was put up contending that the deceased father of the Appellant had married his mother by name Savitri Bai and hence the Appellant was the son in the legally wedded wife of the deceased. However, during the father's lifetime, he was living with the mother of the 4th Respondent by name Agasiya Bai. It is further contended that the Petitioner had filed a civil suit against the 4th Respondent and his mother for declaration of title and permanent injunction, which was decreed in his favour as borne by Annexure P/7 dated 12.11.2009. It is with reference to the above proceedings that the pleadings and prayers were moulded. When the matter came up for consideration before the learned Single Judge, reliance was also sought to be placed on a succession certificate issued in favour of the writ Petitioner on 10.06.2013 by the Court of the 4th Civil Judge Class-I, Bilaspur, in Succession Case No. 23/2011.
5. The factual position brought to light from the part of the Respondent/State revealed that in the service records of the deceased, the name of the 4th Respondent was shown as the nominee son and the name of the wife of the deceased was shown as Agasiya Bai *i.e.* the mother of the 4th Respondent. It was also brought to the notice of the learned Single Judge that, the service records did not mention the name of the Petitioner or his mother Savitri Bai anywhere. It was further pointed out that, it is none other than the mother of the 4th Respondent by name Agasiya Bai, who has been receiving the pension on demise of the deceased employee and that the entire retiral benefits were given to the widow Agasiya Bai. It was on the basis of the above facts and figures

brought on record, that the learned Single Judge declined interference and dismissed the writ petition. The observations made in paragraphs 7 and 8 are relevant and they are extracted below for easy reference:

“7. Having heard the contentions put forth on either side and on perusal of record, some of the admitted factual matrix as it stands is that the deceased employee worked with the Education Department as an Assistant Teacher. He died in harness on 27.11.2005. In the service record, the nominee's name as wife and son is that of Agasiya Bai and the respondent No. 4 Vimal Kumar Adile. From the submissions made by the State counsel, it also reflects that the entire death-cum-retiral dues were paid to the said Agasiya Bai and the monthly pension till date is being released to the said Agasiya Bai. Moreover, the order in the succession case has been obtained by the petitioner only on 10.06.2013 i.e. after a period of more than 5 years from the date the respondent No. 4 has been given appointment. Moreover, the granting of the retiral dues as also the release of the pension to the Agasiya Bai has not been questioned or challenged by the mother of the petitioner till date before any competent Court of law, nor has she raised a dispute in this regard before the Department.

8. Even otherwise, if we take into consideration the entire factual matrix, what clearly reflects that the deceased employee in fact had entered into a marriage with Agasiya Bai under the customary law prevailing in the area and in the service record also the name of Agasiya Bai and Vimal Kumar Adile have been entered as the wife and son. This in fact would show that even if Agasiya Bai is considered to be the second wife of the deceased employee, there is no dispute to the fact that the respondent No. 4 is not the son of the deceased employee. Given the fact, if the respondents under the prevailing circumstances and the information as was reflected in the service record, have granted employment to the respondent No. 4, who undoubtedly is the son of the deceased employee, the employment so granted cannot be said to be in any manner arbitrary, illegal or bad in law. Even otherwise the law of equity also is in favour of the respondent No. 4 as by now he has put in more than 12 years of service in addition of being the son of the deceased.”

6. After hearing the learned counsel for the Appellant and on going through

the contents of the judgment under challenge, we find that no sustainable case has been established by the Appellant to call for interference. Pursuant to the demise of the Petitioner's father in the year 2005, all the retiral benefits were given to the persons shown in the service records *i.e.* the 4th Respondent and his mother (who were shown as the son and wife of the deceased). There is also no dispute to the fact that the mother of the 4th Respondent is getting the eligible pension in respect of the deceased Ramadhar Adile, payable as per the service rules. The application preferred by the 4th Respondent for getting the compassionate appointment (immediately after demise of the father) was considered and appointment was given as per Annexure P/6 order dated 24.09.2008. It took more than 4 years to the Petitioner (after giving such employment to the 4th Respondent) to approach the Court by filing the writ petition in the year 2012.

7. Absence of specific pleading is also evident in the writ petition as well as in the writ appeal, insofar as the Appellant/writ Petitioner has not pleaded that he and his mother were living with the deceased during his lifetime and that they were his dependents. On the other hand, it is conceded that the deceased father of the Appellant was living with another lady by name Agasiya Bai, who is the mother of the 4th Respondent. The Appellant has put forth the claims with regard to compassionate appointment, as something which can be inherited by the son in the legally wedded wife. The very purpose of the 'compassionate appointment' is only to see that the dependents of the deceased employee are not thrown to the streets all of a sudden. The very fact that the Appellant was aged 34 years at the time of filing the writ petition in the year 2012, obviously shows his age as 27 years on the date of demise of his father in the year 2005. As such, he was a grown up man,

who has to be held as capable of maintaining himself and his mother.

8. Payment of retirement benefits and pension as per the Service Rules to the mother of the 4th Respondent is not put to challenge. Provision for compassionate appointment also forms part of the service benefits. There is no case that the 4th Respondent is not the son of the deceased.
9. In the above facts and circumstances, we do not find any tenable ground to interdict the finding and reasoning given by the learned Single Judge. The appeal is devoid of any merit. It is dismissed accordingly.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge