

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4869 of 2019**

Manoj Kumar Usendi, S/o. Late Jai Singh Usendi, Aged About 32 Years, R/o. 59, Post Office, Vyaskongera, Viyas Kongera, Kanker Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through The Secretary / Upper Secretary, Department Of General Administration, Mantralaya, New Raipur, District Raipur Chhattisgarh.
2. State Of Chhattisgarh, Through The Secretary / Upper Secretary, Department Of School Education, Mahanadi Bhawan, Mantralaya, New Raipur District Raipur Chhattisgarh.
3. Collector, District Kanker, Kanker, Chhattisgarh.
4. District Education Officer, District Kanker, Chhattisgarh.
5. Government High School Lendara, Block Narharpur, District Kanker, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Raza Ali, Advocate
For State/Respondents	:	Mr. Ravish Verma, Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****19.02.2020**

1. The present petition is against the order dated 26.11.2016 (Annexure P-1). The undisputed facts are that the father of the petitioner Jai Singh Usendi died in harness on 27.02.2015, thereafter, the petitioner applied for compassionate appointment on 16.03.2015, which was pending adjudication at the end of the State and eventually on 10.10.2016, the petitioner was appointed to the post of Assistant Grade-III in the Government School

Lendra, Block Narharpur by Annexure P-4. Subsequently, the appointment of the petitioner was canceled on the ground that as per the subsequent circular issued on 29.08.2016 (Annexure R-1) one member of the petitioner's family was already in the government job.

2. Learned counsel for the petitioner would submit the said cancellation of service of the petitioner on 26.11.2016 is completely illegal as the cause of action on the basis of compassionate appointment arose on 27.02.2015 on the date of death and subsequently on 16.03.2015 when application for compassionate appointment was filed. He relied on the law laid down in case of *Canara Bank & Anr. v. M. Mahesh Kumar* reported in (2015) 7 SCC 412, and would submit in the like nature of the case, the appointment having been made, the cause of action would decide the fate.
3. Per contra, learned State counsel would submit that while the application for compassionate appointment was made, the petitioner completely concealed the fact that one member of the family of the petitioner is already in service; therefore, having know the fact, the cancellation of the service was made.
4. The petitioner appears to have been appointed on compassionate ground after death of his father. The father of the petitioner died on 27.02.2015 and subsequently the application for compassionate appointment was filed on 16.03.2015 and on that date the circular dated 29.08.2016 (Annexure R-1) was not

in existence. The application for compassionate appointment was kept pending at the end of the respondents and eventually on 10.10.2016, he was appointed as Assistant Grade-III by Annexure P-4.

5. After perusal of the facts, it shows that the issue raised is covered by the judgment rendered in case of ***Canara Bank & Another v. M. Mahesh Kumar and other connected cases*** reported in ***(2015) 7 SCC 412*** wherein it is categorically enunciated by the Supreme Court that the claim for compassionate appointment can not be decided on the basis of a scheme/claim or circular which came into force much after the date of death or much after the date on which the claim was made. This High Court also in the case of ***Lileshwar Prasad Tiwary v. State of Madhya Pradesh & Ors.***, passed in WPS No.1695 of 2005, decided on 18.03.2008, while deciding the similar issued held as under :

“(7). It is not in dispute that the date on which the father of the petitioner died, the earlier circular dated 24-03-1975 (Annexure A-12) was in force and in existence. The said policy of considering the case for grant of compassionate appointment in case of death of a government servant within three years from the date of his retirement was superseded by issuance of circular dated 10-06-1994 (Annexure A-13). It appears that initially when the petitioner was given appointment, he was found eligible in view of the policy contained in circular dated 24-03-1975, but later on, the Joint Director opined that the petitioner is not entitled to such appointment and his services were terminated. It is apparent that this decision to terminate the services of

the petitioner was founded on application of policy contained in circular dated 10-06-1994 (Annexure A-13). This is reflected from averments contained in the return to the effect that the petitioner ought not to have been appointed as Lower Division Clerk on compassionate ground as the father of the petitioner had died after his retirement.

(8) In the case of *Abhishek Kumar Versus State of Haryana and others*, (2006) 12 Supreme Court Cases 44, while considering a case relating to compassionate appointment, where the government servant had expired on 10-02-2001, it was held that the case was required to be considered in terms of the Rules which were in existence in the year 2001. In that case, it was found that the subsequent notification dated 28-02-2003 was relied upon by the employer to resist the claim of compassionate appointment and on that basis, petition was dismissed by the High Court. In the aforesaid context, the Supreme Court observed as under:-

"The appellant herein had sought for appointment on compassionate grounds at a point of time when the 2003 Rules were not in existence. His case, therefore, was required to be considered in terms of the Rules which were in existence in the year 2001."

6. A similar matter again came up for hearing before this Court in WPS No. 4383 of 2016, wherein again this High Court while deciding the said issue vide Judgment dated 06.10.2017 relying upon the Judgment passed in the case of *Lilleshwar Prasad Tiwary (supra)* in paragraph 5 held as under:

"5. Therefore, the circular which was in force on the date of death would be applicable. According to the disclosure made by the parties before this Court, the circular which was in force on the date of death of the employee was issued on 14.06.2013. A perusal of such

circular shows that there was no such condition that in case there is any other member of the family in the Government employment, benefit of compassionate appointment would not be applicable. This was, in fact, subsequently added by circular dated 29.08.2016 i.e. prior to death of the Government employee. Therefore, the obvious that it was circular of 2013 which would be applicable and not the circular of 2016”

7. By application of the ratio as aforesaid, which shows that the petitioner filed an application for compassionate appointment and the cause of action arose after death of his father on 27.02.2015, at that time, the circular on which the State relies Annexure R-1 dated 29.08.2016 was not in force. The said circular contemplates that when someone from family is already in the government job then any other cannot be considered for compassionate appointment. If the application for compassionate appointment of the petitioner was kept pending then the petitioner cannot be subsequently held liable for the same. Had there been a quick decision for appointment on compassionate ground this occasion would not have been arisen at all. Further, reading of Annexure P-1 would show that simplicitor termination order was passed, neither any enquiry was conducted nor any show cause ever was issued to put forth the facts on behalf of the petitioner. Consequently, the order dated 26.11.2016 (Annexure P-1) being arbitrary and illegal is set aside. In the result, the appointment of the petitioner as per order dated 10.10.2016 (Annexure P-4) is restored.

8. In view of the above, the writ petition is allowed to the above extent.

**Sd/-
(Goutam Bhaduri)
Judge**

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