

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 525 of 2019**

*(Arising out of order dated 05.09.2019 passed by the learned Single Judge in
WPS No. 1078 of 2005)*

- Sanjay Yadav S/o Arjunlal Yadav Aged About 25 Years R/o Village Pandadah, Tahsil Kawardha, District Rajnandgaon, Chhattisgarh (Petitioner)

---- Appellant**Versus**

1. State of Madhya Pradesh Now Chhattisgarh Through Secretary, Higher Education Department, Mantralaya, Police Station Rakhi Tahsil And District Raipur Chhattisgarh
2. Shri P. K. Verma Joint Director, Lok Shiksha (School Education), Durg, District Durg Chhattisgarh
3. Harish Kumar (Died) Through Legal Heirs-
 - 3.1 - (A) Smt. Asha Yadu, W/o Late Harish Kumar Aged About 45 Years
 - 3.2 - (B) Rahi Yadu S/o Late Harish Kumar Aged About 25 Years
 - 3.3 - (C) Kumar Khusbu D/o Late Harish Kumar Aged About 19 Years
 - 3.4 - (D) Kumari Devika D/o Late Harish Kumar Aged About 13 Years
4. Dy. Director Lok Shikshan (School Education) Kawardha, District Rajnandgaon, Chhattisgarh.....(Respondents)

---- Respondents

For Appellant : Shri Rupesh Shrivastava, Advocate
 For Respondent-State : Shri Chandresh Shrivastava, Dy. Advocate General

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****P. R. Ramachandra Menon, CJ.****29.01.2020**

1. Interference declined by the learned Single Judge with regard to the compassionate appointment sought for is put to challenge in this appeal.

2. Heard Shri Rupesh Shrivastava, the learned counsel for the Appellant as well as Shri Chandresh Shrivastava, the learned counsel representing the State.
3. The sequence of events reveals that the Uncle of the Appellant by name Lakhanlal, who was working as Head Master in the Government service, took his last breath on 26.12.1991. Pursuant to that, an application was preferred by the Appellant in his capacity as 'nephew of the deceased', seeking for compassionate appointment. Somehow or the other, it was considered and appointment was given to the Appellant 01.11.1994. Shortly thereafter, the 3rd Respondent, who is no more, came up with a claim that he was the adopted son of the deceased and was having a better claim for compassionate appointment. The matter was considered and the appointment given to the Appellant was cancelled as per order dated 24.02.1995. The Appellant approached the Administrative Tribunal, Jabalpur in March, 1995 by filing an Original Application No.805/1995, which was subsequently transferred and re-numbered as WPS No.1078/2005 before this Court. In the meanwhile, the Appellant had filed a Civil Suit No.91A of 1997 against the 3rd Respondent for declaration of the 'Adoption Deed dated 14.10.1992' as null and void and on completion of the trial, a judgment and decree was passed on 07.05.2008, whereby the Suit was allowed and the 'Adoption Deed' was declared as null and void. As appeal was preferred by way of Civil Appeal No.12A of 2008, which came to be dismissed on 23.06.2008, from which Second Appeal No.611 of 2016 has been preferred before this Court, which is stated as still pending. The case of the Appellant in the writ petition is that, the

verdict passed by the Civil Court is still in operation, by virtue of which the appointment given to the 3rd Respondent was liable to be cancelled and the Petitioner ought to have been given appointment. It is also brought to the notice of this Court that during the pendency of the above proceedings, the 3rd Respondent also took his last breath on 15.05.2015. Pursuant to his demise, the widow filed an application for granting compassionate appointment to her, which was considered by the Department and compassionate appointment was given to the widow of the 3rd Respondent.

4. The sequence of events was considered by the learned Single Judge and it was observed that the writ petitioner was only the 'nephew' of the deceased and as such, he was not entitled to have any compassionate appointment. It was also observed that the 3rd Respondent remained in service for about 20 years from 09.11.1994 i.e. till his death on 15.05.2015 and thereafter, his widow was continuing in service by virtue of the compassionate appointment given to her. Interference was declined in the said circumstance by the learned Single. The observation given in paragraph 4 of the judgment is relevant to be noted and hence it is reproduced below :

“4. It is worth notice that Harish Kumar was offered appointment way back on 09.11.1994 thus, Harish Kumar remained in service for about 20 years till his death in the year 1995 and thereafter his widow Asha Yadu is presently in service on compassionate ground after death of Harish Kumar. It will be taking the issue too far away if it is held that Harish Kumar was not entitled for appointment in 1995, therefore, after his demise his widow is not entitled for appointment on compassionate ground in 2015-16. More so when petitioner himself is not the adopted son of Lakhanlal

and Rama Bai. Jurisdiction under Article 226 of the Constitution of India being equitable jurisdiction, the same cannot be invoked in favour of a person whose eligibility for the subject post is in doubt. It cannot be invoked also to set aside an order of appointment issued more than 20 years back. The present is not a case wherein both the parties are claiming appointment on merits pursuant to a recruitment process. Appointment on compassionate ground is an exception to the rule of equality and the principle of selection through a competitive recruitment. That being the case, in the facts and circumstances of the present writ petition, quashing the appointment of Harish Kumar for academic purposes and thereafter on the said basis quashing the compassionate appointment of his widow-Asha Yadu, would not serve any purpose.”

5. During the course of hearing, we put a specific question to the learned counsel for the Appellant as to whether there is any provision in the scheme for compassionate appointment of the 'nephew' of the deceased; to which the learned counsel fairly conceded that there is no such provision. That apart, the learned counsel concedes that the age of the Appellant is more than 50 years.
6. In the above facts and circumstances, the reasoning given by the learned Single Judge to decline interference and dismiss the writ petition does not warrant any interference. Appeal fails. It is dismissed accordingly.

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

Sd/-
(Parth Prateem Sahu)
Judge