

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 29 of 2021**

(Arising out of order dated 4.7.2018 passed by learned Single Judge in WPS No.4368/2018)

- Vinod Kumar Nag, S/o Late Shri Kodu Ram Nag, aged about 39 years, R/o Village Dhelkabod, Post Kokpur, Tehsil & District South Bastar Kanker (CG)

---- Appellant/Petitioner**Versus**

1. State of Chhattisgarh, through the Secretary, Department of School Education, Mantralaya, Mahanadi Bhawan, Atal Nagar Naya Raipur District Raipur (CG)
2. District Education Officer, South Bastar Kanker (CG)

---- Respondents

For Appellant	:	Mr. Rakesh Pandey, Advocate
For Respondents	:	Mr. Siddharth Dubey, Deputy Govt. Advocate

Hon'ble Shri PR Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board**Per Parth Prateem Sahu, J****29.1.2021**

1. Declination to interdict the order dated 6.1.2017 (Annexure P-1) by the learned Single Judge made the appellant to approach this Court by way of instant writ appeal.
2. This appeal has been filed with inordinate delay of 876 days for which I.A. No.1/21 has been filed, which is an application for condonation of delay in preferring this writ appeal.
3. Appellant has only mentioned in IA No.1/21 that he is facing

financial crisis, therefore, he could not approach this Court in time. No other explanation, much less satisfactory explanation, has been offered.

4. Appellant is seeking compassionate appointment on account of death of his father, who was working as Assistant Grade-II in the School Education Department and died in harness on 31.8.2016. The mother of appellant might be getting pension and they might have also received dues like GPF, Gratuity etc. after the sad demise of father of appellant. Hence, the reason assigned by appellant in the application seeking condonation of delay is not acceptable.

5. So far as the merits of the case is concerned, after the death of appellant's father in harness on 31.8.2016, the appellant filed an application on 21.11.2016 for grant of appointment on compassionate ground, as pleaded in writ petition. Referring to the Circular No.F-7-1/2012/1-3 Naya Raipur dated 29.08.2016, respondent No.2 vide order dated 6.1.2017 (Annexure P-1) rejected the claim of appellant for compassionate appointment on the ground that one of the family members of appellant i.e. younger brother of appellant by name Shri Gumesh Kumar Nag, is already in government job/service. This made the appellant to file writ petition before the High Court.

6. The learned Single Judge taking note of the relevant clause of the Circular dated 29.8.2016 and considering that the

Circular dated 29.8.2016 has not been challenged in the writ petition, dismissed writ petition holding that the authorities cannot travel beyond the contents of the scheme/policy of compassionate appointment.

7. Mr. Rakesh Pandey, learned counsel for appellant vehemently argued that reference with regard to employment of younger brother of appellant, made in the order of rejection of the application, cannot be taken into consideration for denying compassionate appointment to appellant because younger brother of appellant is residing separately and not providing any financial assistance to him or his mother. He submits that the respondent authority concerned as also the learned Single Judge both have not taken into consideration very specific ground taken by the appellant in the writ petition while rejecting application and dismissing writ petition.

8. Per contra, Mr. Siddharth Dubey, learned Deputy Government Advocate for the State submits that except oral submissions made by learned counsel for appellant and pleadings made in writ petition, there is no material even to accept the ground raised by appellant. He further submits that the State Government has framed scheme/policy vide Circular dated 29.8.2016 in which there is a specific clause/condition that if one of the family members is already in government job, then other family members will not be entitled for compassionate appointment. He submits that the learned Single Judge has rightly held that as the particular

clause of policy/Circular dated 29.8.2016 is not under challenge, the petitioner/appellant is not entitled for any relief.

9. We have heard learned counsel for the parties and also perused the record.

10. In view of very specific condition/clause mentioned in the policy / Circular dated 29.8.2016 providing compassionate appointment to one of the family members of the deceased government employee and undisputed fact that younger brother of appellant namely Gunesh Kumar Nag is under employment with the government. As per the scheme, if any of the family member is already in government employment, benefit of compassionate appointment to other family members is not to be extended. Compassionate appointment cannot be claimed as a matter of right. It is provided to any one of the family members under the scheme framed by the employer to provide immediate succour. An employer cannot be directed to give compassionate appointment contrary to scheme. For this view, we find support from the ruling of the Hon'ble Supreme Court in case of **Food Corporation of India vs. Ram Kesh Yadav & another** reported in (2007) 9 SCC 531, relevant part of which is extracted below;-

“9. There is no doubt that an employer cannot be directed to act contrary to the terms of its policy governing compassionate appointments. Nor can compassionate appointment be directed *de hors* the policy. In Life Insurance Corporation of India Vs. Asha Ramchandra Ambedkar [1994 (2) SCC 718], this Court stressed the need to examine the terms of the Rules/ Scheme governing

compassionate appointments and ensure that the claim satisfied the requirements before directing compassionate appointment.....”

11. In view of above, we do not find any infirmity in the order impugned passed by the learned Single Judge. The appellant is not having any case on merits also.

12. The writ appeal is accordingly dismissed on both counts i.e. on the ground of limitation as well as on merits.

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

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-