

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 122 of 2021**

(Arising out of order dated 03.02.2021 passed by the learned Single Judge in WP(S) No. 225 of 2021)

1. Urmila Devi W/o Premnath Sharma Aged About 70 Years By Caste Brahman, R/o Village Sonhat, P.O. And P. S. Sonhat, District Korea Chhattisgarh
2. Reena Sharma W/o Kartikeya Sharma Aged About 36 Years By Caste Brahman, R/o Village Sonhat, P.O. And P. S. Sonhat, District Korea Chhattisgarh

---- Appellants

Versus

1. The State of Chhattisgarh Through Its Secretary, Department of School Education, Mantralaya, Mahanadi Bhawan, Atal Nagar Nawa Raipur District Raipur Chhattisgarh
2. The Secretary Panchayat And Rural Development Department, Atal Nagar Naya Raipur District Raipur Chhattisgarh
3. Director Public Education Ist Floor, C Block, Indrawati Bhawan, Naya Raipur District Raipur Chhattisgarh
4. District Education Officer District Koriya Chhattisgarh

---- Respondents

For Appellant	:	Mr. Parag Kotecha, Advocate
For Respondents/State	:	Mr. Chandresh Shrivastava, Dy. A.G.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per, P. R. Ramachandra Menon, CJ.

12.04.2021

1. Interference declined by the learned Single Judge to interdict Annexure-P/3 order dated 25.11.2019 passed by the 4th Respondent, rejecting the claim for compassionate appointment, made the writ petitioners to approach this Court by way of this appeal.

2. Heard Mr. Parag Kotecha, the learned counsel for the Appellant as well as Mr. Chandresh Shrivastava, the learned Deputy Advocate General appearing for the Respondents/State.
3. The sequence of events reveals that the husband of the 1st Appellant / father-in-law of the 2nd Appellant was working as an Assistant Teacher in the Government Educational Institution in the erstwhile State of Madhya Pradesh. It is the case of the Appellants that he was found missing from 05.02.1996 and the missing report is stated to have been filed for the first time on 10.12.2002. Admittedly, no case was filed by the widow or children of the person found missing before the competent Civil Court even after expiry of 07 years to presume civil death in terms of Section 108 of the Indian Evidence Act, 1872. No such decree has been obtained so far and the factual position remains that the Employee has abandoned the employment for some or other reason. It is also an admitted position, that no claim was put-forth by the Appellants or the son/children of the person found missing, referring to their frustrating pecuniary circumstances (if any) and claiming for compassionate appointment. About 'two decades' after missing of the person concerned, the State of Chhattisgarh (after formation of the State getting carved out from the erstwhile State of Madhya Pradesh w.e.f. 01.11.2000) widened the scope of consideration for employment under the Compassionate Appointment Scheme, whereby "daughter-in-law" of the deceased person was also brought within the purview of persons eligible for getting the benefit. It was thereafter, that an application dated 09.02.2017 was preferred by the 1st Appellant, claiming for compassionate appointment to be given to the

2nd Appellant – the daughter-in-law; which was forwarded by the authorities concerned for further steps, in accordance with law. The 4th Respondent considered the matter and the claim was turned down as per Annexure-P/3 dated 25.11.2019, holding that it was preferred 'two decades' after the date of missing of the Employee and further that the 2nd Appellant – daughter-in-law was not eligible to be considered for giving compassionate appointment at any time before such inclusion was made in the year 2016. This was sought to be challenged by filing the Writ Petition (S) No.225 of 2020, contending that, as per the law, if a person has not been heard of for seven years by those who would naturally have heard of him if he had been alive, he is liable to be presumed as dead and that the burden to prove it otherwise would be upon the person who contend that he is alive.

4. The matter was considered by the learned Single Judge, who took note of the facts and figures, particularly, as to the date of missing in the year 1996, missing report filed for the first time in year 2002, the amendment brought about to the Compassionate Appointment Scheme bringing the 'daughter-in-law' as well within the list of eligible candidates in the year 2016 and also as to the filing of the application for compassionate appointment for the first time in the year 2017. The learned Single Judge also noted that the writ petitioners had not obtained any decree of civil death of the Employee who was missing from 05.02.1996 and unless there was a decree of civil death declaring a person to be presumed as died, the claim for compassionate appointment itself would not be maintainable; as it can be made only on the death of an Employee in

harness. It was made clear that in the absence of any such decree, the authorities or even the writ petitioners cannot presume that the Employee is no more and that it would only be a case where the Employee has abandoned the service for some reason and hence that the claim is not sustainable. That apart, referring to the inordinate delay of 21 years in raising the claim for compassionate appointment for the first time, the learned Judge observed that, this by itself is a pointer to the fact that the writ petitioners had sufficient means to sustain themselves. It was accordingly, that the writ petition was dismissed as devoid of any merit.

5. It is settled law that Compassionate Appointment Scheme is not a regular channel for appointment and it is only an exception to the general rule of selection of the best among the contestants. The very purpose of such Scheme is to ensure that, because of the unforeseen sudden demise of the bread-earner, the family shall not be thrown to the streets. In the instant case, since the Employee was found missing from 05.02.1996 and admittedly since no claim was made for more than 'two decades', till submission of the application dated 09.02.2017, it is quite evident that the Appellants were able to sustain themselves so far and there was no chance or instance for the family of the missing Employee to have been thrown to the streets.
6. Another aspect to be noted is that the Appellants have not revealed anything as to whether any other members of the family is having proper employment either under the Government or such other Institutions. It also remains a fact that no claim has been put up by the son / children of the employee and the claim is only for and on behalf of the 2nd Appellant

who is admittedly the 'daughter-in-law'. What happened to the son, why he has not made any application, whether he is having any secured employment etc. are not brought on record from the part of the Appellants. Even otherwise, it has to be presumed that the marriage of the 2nd Appellant with the son of the 1st Appellant and the missing Employee took place much after the missing of the Employee on 05.02.1996 (obviously for the reason that the 2nd Appellant who is presently aged about 36 years was only a minor at the time of missing of the Employee). That apart, when the son of the 1st Appellant married the 2nd Appellant, it must be on his firm belief that he was in a position to maintain a family of his own, consisting of his wife and children (if any) based on the source of income available to him. Nothing is stated with regard to the family pension or such other benefits, if any, being enjoyed by the 1st Appellant. Since particulars with regard to the children of the 1st Appellant and the missing Employee have not been made available, this Court does not find it necessary to undertake further scrutiny under this head.

7. As mentioned already, the application for compassionate appointment was preferred only after 21 years of missing of the Employee on 05.02.1996. Whether such a claim is to be entertained and benefit is to be given, was a similar question which came up for consideration, even quite recently, before the Apex Court. This was answered in the 'negative' by the Hon'ble Supreme Court as per judgment dated 09.04.2021 in **Civil Appeal No. 897 of 2021** (*arising out of Special Leave Petition (C) No. 10514 of 2020 Central Coalfields Limited through its Chairman and Managing Director & Ors. Versus Smt. Parden Oraon*).

8. It was a case which is almost similar to the instant case and employee was found missing w.e.f. 03.10.2002. The claim for appointment to the son, in place of father, was rejected which was challenged in the writ petition filed before the High Court of Jharkhand. The claimant had filed a Civil Suit in the Court of the Additional Munsif, Hazaribagh and obtained a decree dated 13.07.2017, declaring the civil death of the missing person w.e.f. the date of the suit i.e. 23.12.2009. It was thereafter, that a representation was filed on 17.01.2013, seeking for compassionate appointment to the son; which came to be rejected on 03.05.2013. This was put to challenge by the wife of the missing employee by filing a writ petition, which came to be allowed as per judgment dated 03.08.2015 and the matter was directed to be considered. Pursuant to the said verdict, the matter was considered and the claim was rejected as per order 03.08.2016, both on merits and also on the ground of delay, besides pointing out that such benefits cannot be provided to the dependents of the 'missing employee' (deemed death). This was set aside by the High Court and the benefit was ordered to be extended; which came to be upheld by the Division Bench as well, thus leading to the appeal preferred before the Apex Court.
9. The Apex Court held that the whole object for granting compassionate appointment is to enable the family to tide over the sudden crisis resulted because of the death of the sole breadwinner and that the authority concerned has to examine the financial condition of the family of the deceased and to get satisfied that but for granting employment, the family would not be able to meet the crisis {placing reliance in ***Umesh Kumar***

Nagpal vs. State of Haryana reported in (1994) 4 SCC 138. Applying the law to the given set of facts and circumstances, the Apex Court concluded in 'paragraph 9' as follows :

“9. It cannot be said that there was any financial crisis created immediately after Respondent's husband went missing in view of the employment of the Respondent. Though the reasons given by the employer to deny the relief sought by the Respondent are not sustainable, we are convinced that the Respondent's son cannot be given compassionate appointment at this point of time. The application for compassionate appointment of the son was filed by the Respondent in the year 2013 which is more than 10 years after the Respondent's husband had gone missing. As the object of compassionate appointment is for providing immediate succour to the family of a deceased employee, the Respondent's son is not entitled for compassionate appointment after the passage of a long period of time since his father has gone missing.”

10. Applying the law to the given facts and circumstances, we are of the view that the issue has been correctly analyzed and decided by the learned Single Judge. There is absolutely no merit to call for interference on any count. The appeal fails. It is dismissed accordingly.

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

Sd/-
(Parth Prateem Sahu)
Judge