

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 3054 of 2021

1. Santosh Kumar Rajwade S/o Matukdhari Ram, Aged About 22 Years R/o Village Sundarpur, Post Sirsi, Tahsil Bhaiyathan, District Surajpur Chhattisgarh
---- **Petitioner**

Versus

1. Chairman, Chhattisgarh State Power Companies Raipur District Raipur Chhattisgarh
2. Chief Engineer, Human Resources Chhattisgarh State Power Distribution Company Limited, Raipur, District Raipur Chhattisgarh,
3. Superintendent Engineer, Chhattisgarh State Power Distribution Company Limited, Ambikapur, District Surguja Chhattisgarh.
4. Executive Engineer, Chhattisgarh State Power Distribution Company Limited, Ambikapur, District Surguja Chhattisgarh

---- **Respondents**

For Petitioner	: Shri C. J. K. Rao, Advocate.
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Hon'ble Shri Justice P. Sam Koshy
Order on Board

19/07/2021

1. Aggrieved by the order Annexure P/1 dated 08.04.2020, the present writ petition has been filed.
2. Vide the impugned order, the petitioner's claim for compassionate appointment has been rejected on the ground of application having been moved at a belated stage.
3. The facts in the present writ petition are that the father of the petitioner was working under the respondents as a Lineman who died in harness way-back on 28.02.2004. At the time of death of the deceased, the petitioner was a minor aged around Six years. He attained the age of majority in the year 2016. Thereafter, the

petitioner had moved an application for compassionate appointment which now vide the impugned order has been rejected.

4. Perusal of the proceedings would clearly reveal that under the policy of compassionate appointment governing the field, it has been specifically prescribed that the period for applying for compassionate appointment is one year. In the instant case, the petitioner admittedly moved an application much beyond a period of one year.
5. From the aforegiven factual matrix itself and what is evidently cleared is that from the time of the death of the deceased employee i.e. in the year 2004, now the petitioner moved an application for compassionate appointment, they could sustain themselves which by itself shows that the petitioner had sufficient source of income. Moreover, no specific reason has been assigned as to why either the widow of the deceased or any other legal heirs of the deceased had not sought for compassionate appointment at that point of time.
6. It is settled position of law that mode of recruitment by way of compassionate appointment is not to be treated as another source of appointment/recruitment. The policy for compassionate appointment is part of a welfare policy granting social protection to the employees and their family members. The purpose of compassionate appointment is to mitigate immediate hardship and distress a family faces on the death of the bread earner. The same has been framed as a welfare scheme on behalf of the welfare State to ensure that family members of the deceased employee may avail the said facility by seeking employment in the event they face any financial crises in

accordance with the policy governing the field. In the instant case there is also a policy for compassionate appointment governing the field. The policy for compassionate appointment prescribes a period of limitation within which an application has to be made. The policy does not provide for a clause whereby in the event one of the legal heirs being minor, his/her claim can be kept live till he/she attains the age of majority.

7. Another fact which needs appreciation at this point of time is that the policy for compassionate appointment applicable in the respondent-establishment is not under challenge. Merely because a death of an employee has occurred by itself would not again give rise to a right for appointment but would only have a right for being considered for employment, subject to the claimants fulfilling other requisite eligibility criteria under the policy for Compassionate Appointment. In case if the other family members are having strong financial background, the claim for compassionate appointment can be considered in favour of somebody more needy.
8. It is settled position of law that a claim for compassionate appointment has to be strictly in accordance with the policy for compassionate appointment applicable in the establishment and the respondents-establishment is always expected to strictly adhere to the conditions stipulated therein.
9. In the instant case firstly the application for compassionate appointment being moved after about more than a decade and half and secondly there being no challenge to the policy for

compassionate appointment. This Court finds it difficult to entertain the writ petition in the given factual backdrop, particularly when the findings given by the respondents in the course of rejecting the application being strictly in accordance with the Policy.

10. The Hon'ble Supreme Court in the case of **Sanjay Kumar v. The State of Bihar and Anr.** {2000 7 SSC 192} in paragraph -3 referring to an earlier decision on the field, has clearly held that unless these provisions specify for the same, a claim for compassionate appointment can not be reserved until a minor attains the age of majority.

11. Similar views have also been taken by the Hon'ble Supreme Court earlier in the case of **Umesh Kumar Nagpal vs State Of Haryana** {1994 4 SSC 138} which has again been followed subsequently in the case of **State Of Manipur vs Md. Rajaodin** {2003 7 SSC 511}. Again in the case of **Steel Authority Of India Ltd vs Madhusudan Das & Ors** {2008 15 SSC 560} wherein again Hon'ble Supreme Court has emphasized the fact that compassionate appointment can not be claimed as a matter of right, the same can be provided only in accordance with the rules/policy governing the field.

12. It is repeatedly held by the Hon'ble Supreme Court that an offer of compassionate appointment as a welfare measure by the employer is only a relaxation and it is an exception to the recruitment rules. In the case of **MGB Gramin Bank V. Chakrawarti Singh** {(2014) 13 SSC 583}, the Hon'ble Supreme Court in paragraphs 06 to 15 has settled

the aforesaid legal position. For ready reference Paragraphs 06 to 15 are being reproduced hereinunder:-

6. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its bread-earner. Mere death of a Government employee in harness does not entitle the family to claim compassionate employment. The Competent Authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

7. In *Umesh Kumar Nagpal v State of Haryana & Ors.*, (1994) 4 SCC 138, this Court has considered the nature of the right which a dependant can claim while seeking employment on compassionate ground. The Court observed as under:- (SCC pp. 140-41, paras 2, 4 & 6)

“2 The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased..... The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs of the family engendered by the erstwhile employment which are suddenly upturned

4.....The only ground which can justify compassionate employment is the penurious condition of the deceased's family.

6..... The consideration for such employment is not a vested right. The object being to enable the family to get over the financial crisis." (Emphasis added)"

8. An 'ameliorating relief' should not be taken as opening an alternative mode of recruitment to public employment. Furthermore, an application made at a belated stage cannot be entertained for the reason that by lapse of time, the purpose of making such appointment stands evaporated.

9. The Courts and the Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulation framed in respect thereof did not cover and contemplate such appointments.

10. In *A. Umarani v Registrar, Co-operative Societies & Ors.*, AIR 2004 SC 4504, while dealing with the issue, this Court held that even the Supreme Court should not exercise the extraordinary jurisdiction under [Article 142](#) issuing a direction to give compassionate appointment in contravention of the provisions of the Scheme/Rules etc., as the provisions have to be complied with mandatorily and any appointment given or ordered to be given in violation of the scheme would be illegal.

11. The word 'vested' is defined in Black's Law Dictionary (6th Edition) at page 1563, as:

"'vested', Fixed; accrued; settled; absolute; complete. Having the character or given in the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent. Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights."

12. In Webster's Comprehensive Dictionary (International Edition) at page 1397, 'vested' is defined as Law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interest. (Vide: *Bibi Sayeeda v*

State of Bihar AIR 1996 SC 516; and J.S. Yadav v State of Uttar Pradesh (2011) 6 SCC 570)

13 Thus, vested right is a right independent of any contingency and it cannot be taken away without consent of the person concerned. Vested right can arise from contract, statute or by operation of law. Unless an accrued or vested right has been derived by a party, the policy decision/ scheme could be changed. (Vide: Kuldeep Singh v Government, NCT Delhi AIR 2006 SC 2652)

14. A scheme containing an in pari materia clause, as is involved in this case was considered by this Court in [State Bank of India & Anr. vs. Raj Kumar](#) (2010) 11 SCC 661. Clause 14 of the said Scheme is verbatim to clause 14 of the scheme involved herein, which reads as under:

“14. Date of effect of the scheme and disposal of pending applications: —The Scheme will come into force with effect from the date it is approved by the Board of Directors. Applications pending under the Compassionate Appointment Scheme as on the date on which this new Scheme is approved by the Board will be dealt with in accordance with Scheme for payment of ex-gratia lump sum amount provided they fulfill all the terms and conditions of this scheme.”

15. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In *State Bank of India & Anr. (supra)*, this Court held that in such a situation, the case under the new Scheme has to be considered.

13. Given the aforesaid legal position as it stands with the catena of authoritative decisions by the Hon'ble Supreme Court, if we look into the impugned order, this Court clearly finds that the decision taken by the respondents seems to be strictly in accordance with Policy governing the field and without there being any exception in the policy or a clause by which the claim could have been kept pending till the minor attains the age of majority. Moreover, the policy itself is not under challenge in the present writ petition.

14. For all the aforesaid reasons, the writ petition therefore fails and is accordingly rejected. The rejection of the writ petition would not preclude the petitioner for approaching the respondents for any sympathetic consideration by the State Government if they so want, upon the petitioner making a suitable representation in this regard.

Sd/-
(P. Sam Koshy)
Judge

Jyotijha