

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 2246 of 2015

1. Mohan Singh Raj S/o Late Bodhan Singh Raj Aged About 34 Years R/o Village- Korbi, Post- Beltara, Via Pali, P.S. Beltara, Distt. Bilaspur Chhattisgarh.

---Petitioner(s)

Versus

1. State of Chhattisgarh Through- The Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, New Raipur Chhattisgarh.
2. The State of Madhya Pradesh Through- The Secretary, School Education Department, Vallab Bhai Patel Bhawan, Bhopal M.P.
3. Commissioner Directorate of Public Instruction Department, Raipur, Distt. Raipur Chhattisgarh.
4. Collector Bilaspur Chhattisgarh.
5. District Education Officer Bilaspur Chhattisgarh.

---Respondents

For Petitioner	:	Shri Govind Ram Miri and Shri Basant Kaiwartya, Advocates.
For State	:	Ms. Akanksha Jain, Dy. Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

20.01.2021

1. Challenge in the present writ petition is to the orders dated 23.03.2013, 01.04.2013 and 08.08.2014, collectively marked as Annexure P/1, whereby the claim for compassionate appointment of the petitioner has been rejected.
2. Brief facts relevant for the adjudication of the present dispute is that the father of the petitioner was an employee under erstwhile State of Madhya Pradesh working on the post of Headmaster in a Primary School. He died in harness on 16.12.1994. It is said that when the father of the petitioner died, the petitioner was minor. He attained the age of majority in the year, 1998. The petitioner thereafter moved an application for compassionate appointment which was not considered and subsequently the new State of Chhattisgarh was created w.e.f. 01.11.2000. The petitioner for the first time preferred a Writ Petition (S) No.6657 of 2008 which was disposed of

on 09.01.2009 directing the respondent authorities to consider and decide the representation in respect of compassionate appointment that the petitioner has filed.

3. Subsequently, on account of non compliance of the order dated 09.01.2009 the petitioner preferred a Contempt Petition No.188 of 2013. The said contempt petition finally was disposed of on 19.03.2013. Thereafter the petitioner again preferred a fresh writ petition WPS No.2727 of 2014 which again was withdrawn by the petitioner with liberty to pursue the representation that he has made to the authorities concerned and finally the impugned order have since been passed which is under challenge in the present writ petition.
4. All said and done, the date of death of the deceased employee in the instant case is relevant for consideration. The date of death of the employee is 16.12.1994. So far as the scheme for compassionate appointment by the State is concerned, it was a policy decision of the State that they shall be entertaining the application for compassionate appointment in respect of those cases where the death of the deceased employee took place on or after 01.11.1997 i.e. the State Govt. has accepted the liability for compassionate appointment of cases of 3 years immediately before the State came into existence. The impugned order in the instant case also had been keeping in view the policy decision of the State. What needs to be noted is that the said policy of the State is not under challenge.
5. Another aspect which needs consideration at this juncture is that though the employee died in the year 1994, the petitioner had attained the age of majority in the year 1998 and have moved an application for compassionate appointment in the year, 1998. However, the first writ

petition was preferred by the petitioner only in the year, 2008 followed by series of petition. This also shows that there was a considerable delay on the part of the petitioner in approaching the court for ventilating his grievance.

6. As regards the scheme for compassionate appointment is concerned, the legal position as it stands, it has been time and again laid down by the Supreme Court as also by this court that the scheme for compassionate appointment can only be considered strictly in accordance with the scheme and policy applicable at the relevant point of time. Moreover, it is also settled position of law that compassionate appointment cannot be considered as another mode of recruitment. The very purpose of granting compassionate appointment is to ensure that the family members of the deceased employee are able to meet the immediate financial crises that they face upon the death of the bread earner in the family.
7. In the instant case both on account of there being inordinate delay on the part of petitioner in approaching the court or in availing the remedy available to him and also at the same time on account of the policy decision of the State Govt. restraining entertaining the claim application of those cases where death occurred on or after 01.11.1997, the claim of the petitioner would not be sustainable. Hence for the aforesaid two reasons the rejection by the respondents in the course of passing different orders, collectively marked as Annexure P/1, also cannot be said to be either arbitrary or malafide, nor can it be said to be illegal.
8. Perusal of records particularly the scheme for compassionate appointment at the relevant point of time would reveal that there was no such provision with which the compassionate appointment under such circumstances or the claim for appointment could be kept pending till the minor attains the

age of majority.

- 9.** At this juncture it would be relevant to refer to judgment of Supreme Court in case of Chief Commissioner, Central Excise and Customs, Lucknow and Ors. Vs. Prabhat Singh, 2012(13) SCC 412 whereby dealing on the aspect of the object and intention behind the scheme for compassionate appointment and also taking into consideration the sympathy factor which are usually cited by the courts for grant of relief to the petitioner, in paragraphs 18 & 19 have held as under:

“18.The very object of making provision for appointment on compassionate ground, is to provide succor to a family dependent on a government employee, who has unfortunately died in harness. On such death, the family suddenly finds itself in dire straits, on account of the absence of its sole bread winner. Delay in seeking such a claim, is an ante thesis, for the purpose for which compassionate appointment was conceived. Delay in raising such a claim, is contradictory to the object sought to be achieved.

19. The Courts and Tribunals should not fall prey to any sympathy syndrome, so as to issue directions for compassionate appointments, without reference to the prescribed norms. Courts are not supposed to carry Santa Claus's big bag on Christmas eve, to disburse the gift of compassionate appointment, to all those who seek a court's intervention. Courts and Tribunals must understand, that every such act of sympathy, compassion and discretion, wherein directions are issued for appointment on compassionate ground, could deprive a really needy family requiring financial support, and thereby, push into penury a truly indigent, destitute and impoverish family. Discretion is therefore ruled out. So are, misplaced sympathy and compassion.”

- 10.**It would also be relevant at this juncture to refer Division Bench decision of this court in Writ Appeal No.588 of 2013 (Tamradhwaj Verma Vs. State of Chhattisgarh & Ors., decided on 10.11.2014) wherein dealing with a similar situation has held as under:

“6. Therefore, any consideration of a claim for compassionate appointment has to be strictly in accordance with the policy regulating the same keeping in mind that it has to be made with as sense of urgency due to sudden death of the bread winner leaving the family of the deceased in destituteness and penury. There can be no sustained urgency over the year. The object of the appointment is to provide immediate succor to the family of the deceased. It is not an avenue for employment by avoiding the normal competitive process. Sympathy has no ground to pay or role at all in considering the claim for compassionate appointment merely because the power may have been exercised under Article 226 of the Constitution. Sympathy generates individualized justice rather than justice according to law.

7. The circular dated 30.01.1997 provided that the claim for compassion appointment must be made by the eligible within one year of death. If this period of one year expired during the minority of the appellant because of which he was unable to apply, it cannot be construed that the post was to be kept reserved for him on basis of descent to enable him to apply and considered after he attains majority. The right to apply lost its efficacy after one year from the date of death and the appellant being a minor unable to apply was an irrelevant consideration for the purpose. It is not the case of the appellant that the Rules provided for an application to be submitted within a prescribed time after attaining majority.”

11. In the same judgment the Division Bench has also referred to other judgments of this court in case of Supramprasad (Supra) and have distinguished the same which for ready reference is also reproduced herein:

“10. In Supramprasad (Supra) relief came to be granted on ground of sympathy with regard to which it has been repeatedly observed by the Supreme Court that sympathy cannot supplant the law to grant relief. We regret our inability to follow the same.”

12. The Single Bench of this Court in Sarfaraj Ahmed Vs. State of Chhattisgarh & Ors. 2014 (Lab.I.C.-3789 Chhattisgarh High Court)

decided on 22.07.2014 again in a case where the claim for compassionate appointment was made after the petitioner had attained the age of majority, referring to various judgments of the Supreme Court rendered in the past has rejected the writ petition on the ground that the claim for compassionate appointment cannot be raised at a belated stage merely because the claimant has attained the age of majority at a later stage.

- 13.** In view of the aforesaid legal position as it stands from the judgments of Supreme Court as also from the Division Bench of this Court referred to in the preceding paragraph in case of Tamradhwaj (Supra), this court does not find any strong case made out by the petitioner calling for an interference with the impugned orders.
- 14.** The writ petition therefore being devoid of merit deserves to be and is rejected.

Sd/-
(P. Sam Koshy)
Judge