

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 407 of 2021**

Lawkeshwar Chouhan, S/o Late Itwari Prasad Chouhan, aged about 35 years, R/o Village Banipathar, Tahsil Kharsia, District Raigarh (C.G.)

---- Appellant

Versus

1. State of Chhattisgarh Through – The Secretary, Panchayat & Rural Development Department, Mantralaya, Atal Nagar, New Raipur, District–Raipur (C.G.)
2. The Collector, Raigarh, District Raigarh (C.G.)
3. The Assistant Commissioner Tribal Development, Raigarh (C.G.)
4. The Chief Executive Officer, Janpad Panchayat Kharsia, District Raigarh (C.G.)

---- Respondents

(Cause-title taken from Case Information System)

For Appellant	:	Mr. Jeet Ram Patel, Advocate.
For Respondents/State	:	Mr. Siddharth Dubey, Deputy Government Advocate.

Hon'ble Shri Arup Kumar Goswami, Chief Justice

Hon'ble Shri Justice N.K. Chandravanshi, Judge

Judgment on Board

Per Arup Kumar Goswami, Chief Justice

30.11.2021

Heard Mr. Jeet Ram Patel, learned counsel for the appellant. Also heard Mr. Siddharth Dubey, learned Deputy Government Advocate appearing for the respondents.

2. This appeal is directed against an order dated 23.12.2015 passed by the learned Single Judge in Writ Petition (S) No. 4226 of 2012.
3. The writ appeal was preferred on 25.11.2021. There is a delay of 1326 days.
4. In the application of condonation of delay, registered as I.A. No. 1 of 2021, it is stated that the counsel for the appellant did not appear in the case when the matter was taken up for final consideration and that he was not aware of the out come of the writ petition and only when he came to know about the dismissal of the writ petition, immediately, the writ appeal was filed.
5. Though there is considerable delay in preferring the appeal, Mr. Siddharth Dubey, learned Deputy Government Advocate submits that as the writ petition came to be dismissed in absence of the counsel for the petitioner, this Court may pass such order as may be considered appropriate on the application for condonation of delay.
6. Since this is a matter for compassionate appointment and as the writ petition came to be dismissed in absence of the counsel for the petitioner on merit, we deem it appropriate to condone the delay. Accordingly, delay stands condoned. I.A. No. 1 of 2021 stands disposed of.
7. We have also taken up the case, as agreed upon by the learned counsel for the parties, for admission hearing.
8. At the outset, we may record that if the counsel does not appear in a writ petition when the matter is taken up for consideration, the court can, at best, dismiss the case for non-prosecution and the court ought not to proceed to decide the *//s* on merits. On this ground alone, we could have set aside the order of the learned Single Judge and remand the case for fresh consideration. However, instead of taking that course, we have decided to hear the parties on

merits of the case, having regard to the fact that the appellant had instituted the case in the year 2012, preceeded by another writ petition filed in the year 2011, registered as Writ Petition (S) No. 4747 of 2011.

9. The father of the appellant died on 22.06.1997 while serving in the office of the Chief Executive Officer, Janpad Panchayat, Kharsia, District Raigarh under the State of Madhya Pradesh.

10. It is relevant to note that State of Chhattisgarh was carved out of State of Madhya Pradesh on 01.11.2000.

11. When the father of the appellant died, it is claimed by the appellant that he was a minor and that after he attained majority, he applied to the respondents on 20.01.2004 and also on 05.07.2005 for compassionate appointment. The same having not evoked any response, he filed an application before this Court, registered as Writ Petition (S) No. 4747 of 2011, which came to be disposed of on 19.08.2011 providing that the appellant may submit a representation to the authorities, and in the event of making such representation, the same would be decided in accordance with law.

12. The appellant submitted a representation which came to be rejected by an order dated 26.09.2011 by placing reliance on clause (12)5 of Scheme of compassionate appointment dated 10.06.2003, which provided that prayer for compassionate appointment would be considered in respect of only those employees who had died within a period of 3 years prior to formation of the State of Chhattisgarh on 01.11.2000. As the death of the father of the appellant was prior to 01.11.1997, the said scheme did not cover his case.

13. Learned counsel for the appellant is unable to show how the reason assigned for rejecting the application is bad in law. Admittedly, the father of the appellant was an employee under the State of Madhya Pradesh.

However, the State of Chhattisgarh decided to extend the benefit of compassionate appointment to the dependents of erstwhile employees of State of Madhya Pradesh who had died within a period of 3 years prior to its formation. Such cut-off period was known to the appellant when the representations were submitted by the appellant.

14. In the facts and circumstances as noted hereinabove, we see no ground to take a view other than the one taken by the learned Single Judge.

15. Resultantly, writ appeal is dismissed. No cost.

Sd/-
(Arup Kumar Goswami)
Chief Justice

Sd/-
(N.K. Chandravanshi)
Judge