

(2009) 12 CHH CK 0003
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 7144 of 2009

Chandra Shekhar Prasad Gupta

APPELLANT

Vs

State of CG and Others

RESPONDENT

Date of Decision : 07-12-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2009) 12 CHH CK 0003

Hon'ble Judges : S.K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.K. Agnihotri, J.

Heard.

1. The petitioner, being dependent son of late Shri Gopal Prasad Gupta, who while working as Assistant Teacher, died in harness on 26.9.2000, made an application for appointed on compassionate basis. According, the petitioner was appointed on compassionate basis on the post of Shiksha Karmi Grade-III by order dated 5.7.2005 (Annexure P/3).

2. Learned counsel appearing for the petitioner submits that the post of Shiksha Karmi is a temporary post, In view of the Circular dated 12th February, 2008 (Annexure P/4) the petitioner is entitled to be appointed in a regular post i.e. Assistant Grade-III.

3. Be that as it may the law on compassionate appointment is very clear. The appointment on compassionate basis has been held by a catena of decisions as a backdoor entry. Compassionate appointment depends on the availability of the posts and other considerations. It is well settled that the appointment on compassionate ground is not a method of recruitment, but, is a facility to provide for immediate rehabilitation of the family in distress for relieving the dependent

family members of the deceased employee from destitution. In other words, the object of compassionate appointment is to enable penurious family to tide over the sudden financial crisis and is not to provide employment.

4. It is also well settled that mere death of the employee does not entitle his family to claim compassionate appointment if the family members could sustain themselves financially from other sources of income. The compassionate appointment is granted only in the event, if an employee dies in harness and on account of sudden death, the dependent family has become penurious on sudden demise of the bread earner of the family, The compassionate appointment itself is a backdoor entry. It is a departure from the general rule of employment, as provided under the provisions of Article 14 and 16 of the Constitution of India. The appointment on compassionate basis is not in accordance with the constitutional scheme of employment but in order to sub-serve the above stated purpose. This provision has been made under the Rules framed by the State Government (see *Commissioner of Public Instructions and Others Vs. K.R. Vishwanath*, , *State of Jammu & Kashmir and Others Vs. Sajad Ahmed Mir*, , *National Institute of Technology and Others Vs. Niraj Kumar Singh*, .

5. The further contention of the petitioner is that several other similarly situated persons have been appointed on the post of Assistant Grade-III (Annexure P/5). This amounts to discrimination as the petitioner also stands on the same footing. 6. As stated above, the law on compassionate appointment is very clear it has been held the appointment on compassionate basis is not a legal appointment but it is a backdoor entry and as such, whether the petitioner can claim regular appointment on the post of Assistant Grade-III and any right is accrued to him, is a question involved in this petition..

7. Having regard to the case on hand that the appointment of the petitioner is not in accordance with the constitutional scheme by inviting applications from the public at large, he has been appointed on compassionate basis to provide for immediate succor to the family in distress for relieving the dependent family members of the deceased employee from destitution, the petitioner has no right either to be appointed on regular basis or a particular post according to his choice.

8. The circular dated 12th February 2008 (Annexure P/4), wherein it is provided that the dependent of the regular employee may be granted appointment on regular establishment is concerned, that may be against the constitutional scheme, as it has been held that compassionate appointment is a backdoor entry. Thus the contention of learned counsel that the other similarly situated employees have been appointed to the regular post, hence non-appointment of the petitioner on regular post is discriminatory and violative of the principles of Article 14 of the constitution of India, is noticed to be rejected.

9. The law is very settled that the parity can be claimed only on a positive effect, The Supreme Court in *General Manager, Uttaranchal Jal Sansthan Vs. Laxmi Devi*

and Others, , in para 34 observed that "Submission of the learned counsel that persons similarly situated have been appointed is again of not much relevance. Apart from the fact that the High Court in its impugned judgment did not proceed on the said basis, it is now well settled that Article 14 of the constitution of India carries with it a positive effect. Equality clause cannot apply in a case where it arises out of illegality."

10. In view of the foregoing, I do not find any merit in the petition. Accordingly, the writ petition is dismissed. No order as to costs.