

(2009) 11 CHH CK 0031
In the Chhattisgarh High Court
Case No : Writ Petition No. 1069 of 2004

Ghanshyam Dewangan

APPELLANT

Vs

State of Chhattisgarh and others

RESPONDENT

Date of Decision : 06-11-2009

Acts Referred:

Citation : (2010) 1 CGLJ 421

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

Bench : Division Bench

Advocate : Farah Minhaz, for the Appellant; P.K. Bhaduri, Panel Lawyer for State, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Agnihotri, J.—With the consent of learned Counsel appearing for the parties, the petition is heard finally.

Late Shri Rameshwar Prasad Dewangan, while working as Cook in the Department of Tribal Development and posted at Harijan Kanya Chhatrawas, Kawardha, died in harness on 29-1-1991. The petitioner claiming himself to be the dependant/son of the deceased employee made an application for grant of appointment on compassionate basis on 28-8-2000. The case of the petitioner was considered and by letter dated 4-10-2001 (Annexure-P/2) it was recommended by the Deputy Commissioner, Tribal Welfare for consideration of the case of the petitioner to appoint on the post of Assistant Grade - III, as according to the Deputy Commissioner, there was a post vacant. Thereafter, on 1.1.2002 (Annexure-P/4) the District Organiser, office of the Collector, Kawardha, in response to the letter dated 4-10-2001 of the Deputy Commissioner, Tribal Welfare, informed that there was no vacant post and appointment on compassionate basis cannot be granted to the petitioner.

2. Being aggrieved by the aforesaid action of the respondent-authorities, the petitioner preferred the present writ petition before this Court on 6-4-2004

seeking a direction to the respondent-authorities to appoint the petitioner on the post of Assistant Grade - III on compassionate basis.

3. During pendency of this petition, on 5-7-2006 the District Organiser, Tribal Welfare, Kawardha, was present in the Court and submitted that there was a vacancy of Shiksha Karmi. Accordingly, by order dated 14-7-2006 (Annexure-D/1) the petitioner was appointed on the post of Shiksha Karmi Grade - III on probation for a period of three years.

4. Ms. Farah Minhaz, learned Counsel appearing for the petitioner, would submit that still vacant post of Assistant Grade III is available in the respondent Department. The Officer was not correct in providing the information before this Court on 5-7-2006 that only post of Shiksha Karmi was vacant. Even on that date, post of Assistant Grade III was vacant; therefore, the respondent-authorities may be directed to consider the case of the petitioner for appointment on the post, of Assistant Grade III.

5. I have heard learned Counsel appearing for the parties, perused the pleadings and the documents appended thereto.

6. It is well settled principle of law that 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.

7. In Haryana State Electricity Board and another Vs. Hakim Singh, the Supreme Court held that the whole object of any compassionate appointment schemes is to give succour to the family to tide over the sudden financial crisis befallen the dependents on account of the untimely demise of its sole earning members."

8. In State of Manipur v. Md. Rajaodin AIR 2003 SCW 4339 : 2003 (12) AIC 133 (SC) the Supreme Court, after having heard various cases on compassionate appointment, observed as under:

11. In Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, it was observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointments on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in (sic). The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisage specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was reiterated (sic) Smt. Phoolwati Vs. Union of India and Others, and Union of India (UOI) and Others Vs. Bhagwan Singh, . In Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, it was observed that in matter of

compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependant of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision.

9. The Supreme Court in *State of Jammu & Kashmir and Others Vs. Sajad Ahmed Mir*, in para 11 has held as under:

11. ...it is that such an appointment is an exception to the general rule. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should not be departed from except where compelling circumstances demand, such as, death of the sole bread winner, the family survived and the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say "goodbye" to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution.

10. In view of the above well settled principles of law, applying to the facts of the case on hand, the petitioner is not entitled to any relief on the basis that the post of Assistant Grade III is still available because as per the circular dated 10-6-2003 (Annexure- R/1) only 10% vacancies can be filled on the basis of compassionate ground whereas in the present case it comes beyond 10% of vacancies. There is no merit in this petition. The petition is accordingly dismissed. No order as to costs.