
(2018) 09 CHH CK 0150
In the Chhattisgarh High Court
Case No : Writ Appeal No. 537 Of 2015

Pushpendra Nath Sonesare	Vs	APPELLANT
State Of Chhattisgarh And Ors		RESPONDENT

Date of Decision : 10-09-2018

Acts Referred:

Citation : (2018) 09 CHH CK 0150

Hon'ble Judges : Ajay Kumar Tripathi, CJ; Parth Prateem Sahu, J

Bench : Division Bench

Advocate : Amit Soni, UNS Deo

Final Decision : Allowed

Judgement

Ajay Kumar Tripathi, CJ

1. Heard counsel for the parties.
2. The appeal is directed against the order dated 11.09.2015 passed by the learned Single Judge in Writ Petition (S) No.4059 of 2008. The claim for compassionate appointment has been rejected by the learned Single Judge on the ground that the Appellant had moved his application for such consideration after 5½ years of death of deceased employee.
3. No doubt, compassionate appointment is not a fundamental right, however, it is still creature of a policy. So long as the policy exists, the "dos and don'ts" will flow therefrom. As for the present case is concerned, admitted position is that the father of the Appellant was an Assistant Teacher who died in harness on 23.12.2002. At the time of death of the erstwhile employee, the Appellant was minor between 11 or 12 years of age. He moved the authorities for consideration soon after attaining the age of majority for which an application was filed sometimes in August, 2008. It came to be

rejected by the Respondent authorities vide their order dated 16.01.2009 on the ground of delay.

4. The relevant portion of the policy which governs the cases of compassionate appointment is part of the record as Annexure P/5 and dated

10.06.2003. This was supposed to be in operation at the time when consideration of the application of the Appellant was made by the Respondent

authorities. The portion which has significance to the adjudication to the said policy is Clause 9(1) and 9(2) which are reproduced hereinbelow :

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5. From reading of Clause 9(2), it is evident that the State authorities themselves have created an obligation upon the Head of Department to send a

copy of the application form, which is prescribed, alongwith the relevant guidelines to the family members of the deceased employee. If there is no

eligible person capable of being appointed on compassionate ground, then even this information is required to be given to the Head of Department.

6. No such exercise has been done by the State authorities, much less the Head of Department in relation to the issue of providing compassionate

appointment to eligible family member. The mother is said to be an illiterate lady and was incapable of being employed. The Appellant was a minor,

who obviously lacked the full import not only of the death of his father, but also any right for consideration for compassionate appointment. When he

attained majority, he filed the application but then the authorities have taken a hyper-technical view that it is delayed by 5½ years.

7. From reading of Clause 9(1), this Court does not get any indication that any time frame has been fixed for making such application for

compassionate appointment, though there is a time limit fixed for taking of a decision for such application, which is three months.

8. On reading the provisions of Clause 9(1) and 9(2), it is evident that the reason for rejection which is said to be a delay of 5½ years is, therefore,

beyond the ambit of guidelines issued by the State authorities. Not only that, there seems to be violation on their part when they failed to carry out their obligation for sending an application form to the family members of deceased employee or apprising them of their rights and obligations by providing guidelines in this regard.

9. In our opinion, therefore, filing of an application in the year 2008 soon after attainment of majority by the Appellant before the authorities cannot be rejected on the ground of delay. The impugned order therefore dated 16.01.2009 which was Annexure P/1 to the writ application alongwith the order dated 11.09.2015 passed by the learned Single Judge in the writ application are set aside. The matter is remanded back to the competent authority of the State to take a fresh decision on merits, not on the basis of delay which was the reason for rejection of the claim of the Appellant. Such a decision must be taken by the competent authority within a period of three months from the date of receipt or production of certified copy of this order.

10. The appeal is allowed in the aforesaid terms.