

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA
ON THE 4th OF AUGUST, 2023
WRIT PETITION No. 25155 of 2022**

BETWEEN:-

**VARSHA SINGH BUNDELA S/O SHRI UMMED
PRATAP SINGH BUNDELA, AGED ABOUT 40
YEARS, OCCUPATION NIL, R/O GANDHI WARD
12, BEHIND MAYA DELUX HOTEL, BENISAGAR,
PANNA, DISTRICT PANNA (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI JAYANT PRAKASH PATEL- ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
THROUGH PRINCIPAL SECRETARY
DEPARTMENT OF PUBLIC HEALTH
ENGINEERING, VALLABH BHAWAN,
BHOPAL (M.P.) (MADHYA PRADESH)**
- 2. CHIEF ENGINEER, PUBLIC HEALTH
ENGINEERING DEPARTMENT, GWALIOR
ZONE, GWALIOR (MADHYA PRADESH)**
- 3. THE COLLECTOR PANNA, DISTRICT
PANNA (MADHYA PRADESH)**
- 4. EXECUTIVE ENGINEER, PUBLIC HEALTH
ENGINEERING, BLOCK PANNA, DISTRICT
PANNA (MADHYA PRADESH)**

5. SUPERVISING ENGINEER, PUBLIC HEALTH ENGINEERING DEPARTMENT, PANNA MANDAL, DISTRICT PANNA (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI ANUBHAV JAIN- GOVERNMENT ADVOCATE)

This petition coming on for admission this day, the court passed the following:

ORDER

This petition under Article 226 of Constitution of India has been filed seeking the following reliefs:-

- a. That, the Hon'ble court may kindly be please to quash orders dated 13.11.2000 (P/3) and 24.06.2002 (P/5);
- b. Direct the Respondents to consider the application of the petitioner for the compassionate appointment within a time bound period;
- c. Any other relief/order, which this Hon'ble court deemed fit looking to the facts and circumstances of the case in the end of justice.”

2. It is submitted by counsel for petitioner that on 30.09.1996, father of the petitioner who was working as meter reader in the department of Public Health Engineering, Panna Block died in harness. At that time, petitioner was minor and accordingly after attaining majority, she applied for grant of appointment on compassionate ground on 05.09.2000. By letter dated 13.11.2000, the application was rejected. Thereafter, petitioner again moved an application for appointment on compassionate ground, which was rejected by order dated 24.06.2002 on the ground that petitioner has already got married and married

daughter is not entitled for appointment on compassionate ground. It is submitted that now petitioner has once again made an application for appointment on compassionate ground, therefore, respondents may be directed to decide the same.

3. Heard learned counsel for parties.

4. The father of the petitioner had died in the year, 1996. Her first application for appointment on compassionate ground was rejected in the year, 2000. Her second application was rejected in the year 2002. Now, without any legal provision, petitioner has made a third application for appointment on compassionate ground. Appointment on compassionate ground is not an alternative mode of direct recruitment. It is an exception to the constitutional scheme as enshrined under Article 14 and 16 of Constitution of India. Delay in appointment on compassionate ground by itself is fatal to the scheme of appointment on compassionate ground. If a person can survive for a long time, after the death of bread winner, then the very purpose of appointment on compassionate ground would get frustrated.

5. The Supreme Court in the case of **The State of West Bengal Vs. Debabrata Tiwari and Ors. Etc. Etc., decided on 3rd March, 2023 in Civil Appeal Nos.8842-8855 of 2022** has held as under:-

“7.2. On consideration of the aforesaid decisions of this Court, the following principles emerge:

i. That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must be resorted to only in order to achieve the stated objectives,

i.e., to enable the family of the deceased to get over the sudden financial crisis.

ii. Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependants of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.

iii. Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over.

iv. That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

v. In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits if any, received by the family, the age, dependency and marital status of its members, together with the income from any other source.

7.3. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis due to the death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be in a position to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Having regard to such an object, it would

be of no avail to grant compassionate appointment to the dependants of the deceased employee, after the crisis which arose on account of death of a bread-winner, has been overcome. Thus, there is also a compelling need to act with a sense of immediacy in matters concerning compassionate appointment because on failure to do so, the object of the scheme of compassionate would be frustrated. Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and thus lose its significance and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out for consideration.

7.4. As noted above, the sine qua non for entertaining a claim for compassionate appointment is that the family of the deceased employee would be unable to make two ends meet without one of the dependants of the deceased employee being employed on compassionate grounds. The financial condition of the family of the deceased, at the time of the death of the deceased, is the primary consideration that ought to guide the authorities' decision in the matter.

7.5. Considering the second question referred to above, in the first instance, regarding whether applications for compassionate appointment could be considered after a delay of several years, we are of the view that, in a case where, for reasons of prolonged delay, either on the part of the applicant in claiming compassionate appointment or the authorities in deciding such claim, the sense of immediacy is diluted and lost. Further, the financial circumstances of the family of the deceased, may have changed, for the better, since the time of the death of the government employee. In such circumstances, Courts or other relevant authorities are to be guided by the fact that for such prolonged period of delay, the family of the deceased was able to sustain themselves, most probably by availing gainful employment from some other source. Granting compassionate appointment in such a case, as noted by this Court in Hakim Singh would amount to treating a claim for

compassionate appointment as though it were a matter of inheritance based on a line of succession which is contrary to the Constitution. Since compassionate appointment is not a vested right and the same is relative to the financial condition and hardship faced by the dependents of the deceased government employee as a consequence of his death, a claim for compassionate appointment may not be entertained after lapse of a considerable period of time since the death of the government employee.

8. Laches or undue delay, the blame-worthy conduct of a person in approaching a Court of Equity in England for obtaining discretionary relief which disentitled him for grant of such relief was explained succinctly by Sir Barnes Peacock, in *Lindsay Petroleum Co. vs. Prosper Armstrong, (1874) 3 PC 221* as under:

“Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation, in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute or limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of Justice or injustice in taking the one course or the other, so far as it relates to the remedy.”

Whether the above doctrine of laches which disentitled grant of relief to a party by Equity Court of England, could disentitle the grant of relief to a person by the High Court in the exercise of its power under Article 226 of our Constitution, came up for consideration before a Constitution Bench of this Court in *Moon Mills Ltd. vs. M. R. Meher, President, Industrial Court, Bombay, AIR 1967 SC 1450*. In the said case, it was regarded as a principle that disentitled a party for grant of relief from a High Court in the exercise of its discretionary power under Article 226 of the Constitution.

In *State of M.P. vs. Nandlal Jaiswal, (1986) 4 SCC 566* this Court restated the principle articulated in earlier pronouncements in the following words:

“9. ... the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the Petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this Rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.”

While we are mindful of the fact that there is no period of limitation provided for filing a writ petition under

Article 226 of the Constitution, ordinarily, a writ petition should be filed within a reasonable time, *vide Jagdish Lal vs. State of Haryana, (1997) 6 SCC 538; NDMC vs. Pan Singh, (2007) 9 SCC 278.*

9. Further, simply because the Respondents-Writ Petitioners submitted their applications to the relevant authority in the year 2005-2006, it cannot be said that they diligently perused the matter and had not slept over their rights. In this regard, it may be apposite to refer to the decision of this Court in *State of Uttaranchal vs. Shiv Charan Singh Bhandari, (2013) 12 SCC 179*, wherein the following observations were made:

“19. From the aforesaid authorities it is clear as crystal that **even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time.**”

(emphasis by us)

6. Father of petitioner had died in the year 1996 and 27 years have passed thereafter and in the meanwhile, petitioner has also got married. Therefore, by no stretch of imagination, it can be said that petitioner is in need of appointment on compassionate ground.

7. Accordingly, no case is made out warranting interference.

8. Petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE