

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE**

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 30th OF JUNE, 2023

WRIT PETITION No.14288 of 2023

BETWEEN:-

**DEEPMALA BHARTI D/O LATE KISHAN, AGED
ABOUT 32 YEARS, OCCUPATION: UNEMPLOYED
R/O PARASIA ROAD SARVOTTAMNAGAR
CHHINDWARA (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI AMIT SAHU - ADVOCATE)

AND

- 1. WESTERN COALFIELDS LTD. THROUGH
DIRECTOR (P) COAL ESTATE, CIVIL LINES,
NAGRPUR (MAHARASHTRA)**
- 2. AREA PERSONNEL MANAGER WESTERN
COALFIELDS LTD. KANHAN AREA, PO
DUNGARIA DISTRICT CHHINDWARA
(MADHYA PRADESH)**
- 3. THE COLLIERY MANAGER WESTERN COAL
FIELD LTD. GORHAWARI COLLIERY,
KANHAN AREA, DISTRICT CHHINDWARA
(MADHYA PRADESH)**

.....RESPONDENTS

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

ORDER

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

“(i) issue a writ and call the entire records
relating to present issue of compassionate
appointment.

(ii) Quash the impugned order dt.25.5.2023
Annexure-P/1

(iii) issue a writ in the nature of mandamus directing the respondents to grant compassionate appointment to the petitioner within stipulated time as granted by this Hon'ble Court in view of the judgment passed in the case of SECL Vs. Asha Pandey & anr upheld by the Hon'ble Supreme Court as well as judgment passed in WA 126 of 2022.

(iv) Any other relief which this Hon'ble Court may deem fit and proper may kindly be granted together with the cost of writ petition.”

2. It is the case of the petitioner that the father of the petitioner was working on the post of Clipman in Ghorawari colliery No.1 of WCL Kanhan Area. The mother of the petitioner was granted monetary compensation and as the petitioner was minor at the relevant time, therefore the mother of the petitioner requested for keeping her on live roster for consideration of her candidature for compassionate appointment. The said request of the mother of the petitioner was not accepted by the respondents on the ground that they are not having any provision for keeping a female child of the deceased employee on live roster. Thereafter on 13/03/2010, the mother of the petitioner made an application for grant of compassionate appointment to the petitioner. The matter was processed by the area and sent to Company Headquarters for approval. Company Headquarters held that as the petitioner has got married on 24/02/2011, therefore she is not entitled for employment. It is submitted that various judgments have been passed by different High Courts to the effect that even a married daughter is entitled for appointment on compassionate ground. The judgment passed by the Full Bench of this Court in the case of

Meenakshi Dubey Vs. M.P. Poorva Kshetra Vidyut Vitaran Company Ltd. And others decided on 02/03/2020 in **Writ Appeal No.756/2019** was also referred for claiming that the claim of the petitioner was wrongly rejected. It is further submitted that in view of the law laid down by the Courts, the petitioner filed Writ Petition No.7722/2023 and the co-ordinate Bench of this Court by order dated 01/05/2023 directed the respondents to consider the representation of the petitioner and by order dated 25/05/2023, the representation of the petitioner has been rejected.

3. Challenging the order passed by the Authorities, it is submitted by the counsel for the petitioner that since the rejection of the claim of the petitioner on the ground that she is a married daughter amounts to gender discrimination therefore, same is liable to be quashed.

4. Heard the learned counsel for the petitioner.

5. Few dates are important. The father of the petitioner died in harness on 24/11/2003. The petitioner attained majority in the year 2009. An application for grant of appointment on compassionate ground was made for the first time in the year 2010. The petitioner got married on 24/02/2011. The claim of the petitioner was rejected by order dated 13/01/2012. Thereafter, the petitioner went in hibernation and filed Writ Petition No.7722/2023 and on a direction given by this Court, the impugned order dated 25/05/2023 has been passed.

6. The moot question for consideration is as to whether the married daughter can be said to be dependent on the deceased employee or not?

7. The question is no more *res integra*.

8. The Supreme Court in the case of **The Director of Treasuries in**

Karnataka and another Vs. Somyashree decided on **13th September, 2021** passed in **Civil Appeal No.5122/2021** has held that the married daughter cannot be treated as a dependant on the deceased employee. Paragraph 8.2 and 8.3 of the judgment reads as under:

“8.2 Apart from the above one additional aspect needs to be noticed, which the High Court has failed to consider. It is to be noted that the deceased employee died on 25.03.2012. The respondent herein – original writ petitioner at that time was a married daughter. Her marriage was subsisting on the date of the death of the deceased i.e. on 25.03.2012. Immediately on the death of the deceased employee, the respondent initiated the divorced proceedings under Section 13B of the Hindu Marriage Act, 1955 on 12.09.2012 for decree of divorce by mutual consent. By Judgment dated 20.03.2013, the Learned Principal Civil Judge, Mandya granted the decree of divorce by mutual consent. That immediately on the very next day i.e. on 21.03.2013, the respondent herein on the basis of the decree of divorce by mutual consent applied for appointment on compassionate ground. The aforesaid chronology of dates and events would suggest that only for the purpose of getting appointment on compassionate ground the decree of divorce by mutual consent has been obtained. Otherwise, as a married daughter she was not entitled to the appointment on compassionate ground. Therefore, looking to the aforesaid facts and circumstances of the case, otherwise also the High Court ought not to have directed the appellants to consider the application of the respondent herein for appointment on compassionate ground as ‘divorced daughter’. This is one additional ground to reject the application of the respondent for appointment on compassionate ground.

8.3 Even otherwise, it is required to be noted that at the time when the deceased employee died on 25.03.2012 the marriage between the respondent and her husband was subsisting. Therefore, at the time when the deceased employee died she was a married daughter and therefore, also cannot be said to be 'dependent' as defined under Rule 2 of the Rules 1996.....”

9. Furthermore, in the present case, the father of the petitioner had died in the year 2003. The application of the petitioner was rejected on 13/01/2012. Then the petitioner went in hibernation and all of sudden woke up in the year 2023 and filed a Writ Petition which was disposed of by directing the respondents to decide the representation and by the impugned order dated 25/05/2023, the representation of the petitioner has been decided in the light of the direction given by this Court.

10. Now the only question for consideration is as to whether the present petition suffers from delay and laches or not?

11. The Supreme Court in the case of **Steel Authority of India Limited Vs. Gouri Devi** by judgment dated 18/11/2021 passed in **Civil Appeal No.6910/2021** has held that delay in pursuing claim and approaching Court would militate against claim for compassionate appointment as very objective of providing immediate amelioration to family would stand extinguished.

12. The Supreme Court in the case of **State of J&K and Others Vs. Sajad Ahmed Mir** reported in **(2006) 5 SCC 766** has held as under:-

“**11.** We may also observe that when the Division Bench of the High Court was considering the case of the applicant holding that he had sought “compassion”, the Bench ought to

have considered the larger issue as well and 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 be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of 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.

12. In *State of Haryana v. Rani Devi (1996) 5 SCC 308* it was held that the claim of the applicant for appointment on compassionate ground is based on the premise that he was dependent on the deceased employee. Strictly this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution. However, such claim is considered reasonable as also allowable on the basis of sudden crisis occurring in the family of the employee who had served the State and died while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative instructions which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right.

13. In *LIC of India v. Asha Ramchandra Ambekar (1994) 2 SCC 718* it was indicated that the High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make

appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplate such appointments.

14. In *Umesh Kumar Nagpal v. State of Haryana (1994) 4 SCC 138* it was ruled that public service appointment should be made strictly on the basis of open invitation of applications and on merits. The appointment on compassionate ground cannot be a source of recruitment. It is merely an exception to the requirement of law keeping in view the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases, the object is to enable the family to get over sudden financial crisis. Such appointments on compassionate ground, therefore, have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. This favourable treatment to the dependant of the deceased employee must have clear nexus with the object sought to be achieved thereby i.e. relief against destitution. At the same time, however, it should not be forgotten that as against the destitute family of the deceased, there are millions and millions of other families which are equally, if not more, destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectation, and the change in the status and affairs of the family engendered by the erstwhile employment, which are suddenly upturned.

15. In *Sushma Gosain v. Union of India (1989) 4 SCC 468* it was observed that in the claims of appointment on compassionate grounds, there should be no delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to the death of the breadwinner in the family. Such

appointments should, therefore, be provided immediately to redeem the family in distress.

16. Recently, in *Commr. of Public Instructions v. K.R. Vishwanath* (2005) 7 SCC 206, one of us (Pasayat, J.) had an occasion to consider the above decisions and the principles laid down therein have been reiterated.”

13. Thus, it is clear that in spite of death of bread earner, if the family survived and substantial period is over, then there is no necessity to by-pass the normal rule of appointment in violation of Article 14 and 16 of the Constitution of India. Furthermore, the first application of the petitioner was rejected by order dated 13/01/2012. Thereafter, the petitioner woke up in the year 2023. Thus, it is clear that the petition suffers from delay and laches.

14. Delay disentitles the party to the discretionary relief under Article 226 of the Constitution of India. Although there is no period of limitation for filing a Writ Petition but the same has to be done within a reasonable period.

15. The Supreme Court in the case of **New Delhi Municipal Council Vs. Pan Singh and Others** reported in (2007) 9 SCC 278 has held as under:-

“17. Although, there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, ordinarily, writ petition should be filed within a reasonable time. (See *Lipton India Ltd. v. Union of India* (1994) 6 SCC 524 and *M.R. Gupta v. Union of India* (1995) 5 SCC 628.)

18. In *Shiv Dass v. Union of India* (2007) 9 SCC 274 this Court held : (SCC p. 277, paras 9-10)

“9. It has been pointed out by this Court in a number of cases that representations would not be adequate explanation to take care of delay. This was first stated in *K.V. Rajalakshmia Setty v. State of Mysore* [AIR 1967 SC 993]. There is a limit to the time which can be considered reasonable for making representations and if the Government had turned down one representation the making of another representation on similar lines will not explain the delay. In *State of Orissa v. Pyarimohan Samantaray* (1977) 3 SCC 396 making of repeated representations was not regarded as satisfactory explanation of the delay. In that case the petition had been dismissed for delay alone. (See also *State of Orissa v. Arun Kumar Patnaik* (1976) 3 SCC 579.)

10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit the appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

19. We, therefore, are of the opinion that it was

not a fit case where the High Court should have exercised its discretionary jurisdiction in favour of the respondents herein.”

16. It is next contended by the counsel for the petitioner that since the representation of the petitioner has been decided by order dated 25/05/2023, therefore there is no delay in filing the petition.

17. Heard the learned counsel for the petitioner.

18. The question for consideration is as to whether the decision on the representation made by the petitioner in the light of the direction given by this Court would give rise to fresh cause of action or not?

19. This Court is unable to convince itself that an old, stale and dead case can be reopened merely because the representation made by the petitioner was decided by the Authorities in compliance of the direction given by this Court.

20. The Supreme Court in the case of **State of Uttaranchal and Another Vs. Shiv Charan Singh Bhandari and Others** reported in (2013) 12 SCC 179 has held as under:-

“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.

* * *

28. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all

circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the Tribunal and accepted by the High Court.”

(Underline Supplied)

21. The Supreme Court in the case of **C. Jacob Vs. Director of Geology and Mining and Another** reported in **(2008) 10 SCC 115** has held as under:-

“10. Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.”

22. The Supreme Court in the case of **Union of India and Others Vs. M.K. Sarkar** reported in **(2010) 2 SCC 59** has held as under:-

“15. When a belated representation in regard to a “stale” or “dead” issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the “dead” issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed

in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.”

(Underline Supplied)

23. The Supreme Court in the case of **State of T.N. Vs. Seshachalam** reported in **(2007) 10 SCC 137** has held as under:-

“16. Some of the respondents might have filed representations but filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant. Opinion of the High Court that GOMs No. 126 dated 29-5-1998 gave a fresh lease of life having regard to the legitimate expectation, in our opinion, is based on a wrong premise. Legitimate expectation is a part of the principles of natural justice. No fresh right can be created by invoking the doctrine of legitimate expectation. By reason thereof only the existing right is saved subject, of course, to the provisions of the statute. (See *State of H.P. v. Kailash Chand Mahajan 1992 Supp (2) SCC 351.*)”

24. Under these circumstances, this Court is of the considered opinion that not only the petitioner is not eligible for her appointment on compassionate ground as her marital status is married but the

petitioner has approached after 21 years of death of her father.

25. It is well established principle of law that the appointment on compassionate ground is not an alternative mode of direct recruitment and the appointment on compassionate ground is granted by way of concession to the family members of the breadwinner.

26. Viewed from every angle, this Court is of the considered opinion that no case is made out warranting interference in the matter.

27. The petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

Shubhankar/