

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA
ON THE 4th OF JULY, 2023
WRIT PETITION No. 14580 of 2023**

BETWEEN:-

VINA KUMARI@ LAXMI SINGH D/O LATE SHRI PREMSINGH,
AGED ABOUT 40 YEARS, OCCUPATION: UNEMPLOYED R/O
VILLAGE DARSAGAR POLICE STATION BHALUMADA
TEHSIL KOTMA DISTRICT ANUPPUR (MADHYA PRADESH)

....PETITIONER

(BY SHRI VIKAS KUMAR SHARMA - ADVOCATE)

AND

1. SOUTH EASTERN COAL FIELD LTD. THROUGH ITS
CHAIRMAN-CUM-MANAGING DIRECTOR SEEPAT
ROAD BILASPUR DISTRICT BILASPUR
(CHHATTISGARH)

2. SOUTH EASTERN COAL FIELD LTD., THROUGH ITS
GENERAL MANAGER JAMUNA AND KOTMA AREA,
DISTRICT ANUPPUR (MADHYA PRADESH)

3. SUB AREA MANAGER, SUB AREA JAMUNA (HARAD),
O.C.M. SOUTH EASTERN COAL FIELD LTD., OFFICE
ADDRESS - AT GENERAL MANAGERS OFFICE,
JAMUNA AND KOTMA AREA, P.S. BHALUMADA,
DISTRICT ANUPPUR (MADHYA PRADESH)

....RESPONDENTS

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

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 against the order dated 19.03.2013 passed by Sub Area Manager, Sub Area Jamuna (Harad) O.C.M., South Eastern Coalfields Limited, Anuppur in File No.S.E.C.L./Ushe.Pra/Jamuna OCM/2013/199 by which the prayer of the petitioner for grant of appointment on compassionate ground has been rejected.

2. The facts necessary for disposal of the present petition in short are that the father of the petitioner died in harness on 06.04.2008. She moved an application for appointment on compassionate ground and ultimately she filed a writ petition before this Court which was registered as W.P.1852/2013 and was disposed of by order dated 29.01.2013 with a direction to the respondent to decide the representation. Accordingly, by the impugned order dated 19.03.2013 the application filed by the petitioner was rejected.

3. Challenging the order passed by the authority, it is submitted by the counsel for the petitioner that the application of the petitioner has been rejected on the ground that deceased Prem Singh had three wives. Dhyan Singh was born from the first wife whereas Mathur Singh and Vina Kumari @ Laxmi Singh (petitioner) were born from the second wife and third wife Dular Bai was issueless. The name of Dular Bai has been mentioned in the service record of deceased Prem Singh. Later on, Prem Singh deleted the name of Vina Kumari from LTC. Accordingly, it was held that since the name of the petitioner has been deleted from the service record of Prem Singh, therefore, it would be appropriate to grant her appointment on compassionate ground. It is further submitted by the

counsel for the petitioner that since there was a dispute with regard to succession, therefore, the third wife of Prem Singh namely Smt. Dular Bai filed an application for succession in which the petitioner was also made a party as respondent No.2. The succession proceedings were finally decided by order dated 17.03.2011 and it was directed that the third wife of deceased Prem Singh is entitled for receiving the amount belonging to late Prem Singh which is lying with South Eastern Coalfields Limited as well as Koyla Khan Bhavishya Nidhi and it was directed that Dular Bai would keep 1/3rd share of the amount saved and 1/3rd of the amount shall be paid to Mathur Singh. It is submitted that merely because the name of the petitioner was deleted from the LTC by her late father cannot a criteria for rejecting the claim for grant of appointment on compassionate ground. The appointment on compassionate ground is to be given to the dependants of the deceased employee in order to get over the financial crises faced by the dependents.

4. Heard the learned counsel for the parties.

5. It is well established principle of law that appointment on compassionate ground is not an alternative mode of direct recruitment. It is to be provided to meet out the unfortunate situation faced by the dependants of the bread earner.

6. The father of the petitioner died in harness on 06.04.2008. A succession certified was issued in favour of Dular Bai and Mathur Singh on 17.03.2011 The petitioner moved an application on 30.09.2011 for appointment on compassionate ground. By order dated 29.01.2013 this Court directed the respondent to decide the representation. By order dated 19.03.2013 the application was rejected.

7. It is the case of the petitioner that the impugned order dated 19.03.2013 was not communicated to the petitioner. Therefore, she filed a

contempt petition and in reply to the said contempt proceedings the impugned order was placed on record.

8. It is well established principle of law that delayed approach of the dependents to the Court, the survival of the dependants for a considerable long time etc. are relevant considerations for deciding the claim for appointment on compassionate ground.

9. It is clear that at least 14 long years have passed after the death of father of the petitioner. During the course of arguments it was fairly conceded by the counsel for the petitioner that petitioner is married. However, the name of her husband has not been disclosed in the writ petition. Similarly, the address of her matrimonial house has also not been disclosed.

10. 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.....”

11. The application for grant of appointment was rejected by order dated 19.03.2013. However, the contempt petition was filed in 2022. Thus, it is clear that after getting direction from the Court regarding early disposal of application, the petitioner thereafter did not pursue the matter and went in liberation for approximately 11 years. This shows that the petitioner was not in need of any appointment. Furthermore, no explanation has been given for delay. Clause 4 of this petition reads as under:

“Delay, if any, in filing the petition and explanation therefore:

The petitioner declares that no delay has been occurred for filing the instant writ petition.”

12. Thus, it is clear that the petition suffers from delay and laches and the delay has also wiped out the need of urgency.

13. The Supreme Court in the case of **The State of West Bengal vs. Debabrata Tiwari & Ors.** by judgment dated 03.03.2023 passed in **Civil Appeal Nos.8842-8855/2022** has held as under:-

“7.1.

v. There is a consistent line of authority of this Court on the principle that appointment on compassionate grounds is given only for meeting the immediate unexpected hardship which is faced by the family by reason of the death of the bread earner *vide Jagdish Prasad vs. State of Bihar, (1996) 1 SCC 301*. When an appointment is made on compassionate grounds, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion, *vide I.G. (Karmik) vs. Prahalad Mani Tripathi, (2007) 6 SCC 162*. In the same vein is the decision of this Court in *Mumtaz Yunus Mulani vs. State of Maharashtra, (2008) 11 SCC 384*, wherein it was declared that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis.

vi. In *State of Jammu and Kashmir vs. Sajad Ahmed Mir, AIR 2006 SC 2743*, the facts before this Court were that the government employee (father of the applicant therein) died in March, 1987. The application was made by the applicant after four and half years in September, 1991 which was rejected in March, 1996. The writ petition was filed in June, 1999 which was dismissed by the learned Single Judge in July, 2000. When the Division Bench decided the matter, more than fifteen years had passed from the date of death of the father of the applicant. This Court remarked that the said facts were relevant and material as they would demonstrate that the family survived in spite of death of the employee. Therefore, this Court held that granting compassionate appointment after a lapse of a considerable amount of time after the death of the government employee, would not be in furtherance of the object of a scheme for compassionate appointment.

vii. In *Shashi Kumar*, this Court speaking through Dr. D.Y. Chandrachud, J. (as His Lordship then was) observed that compassionate appointment is an exception to the general rule that appointment to any public post in the service of the State has to be made on the basis of principles which accord with Articles 14 and 16 of the Constitution. That the basis of the policy is that it recognizes that a family

of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service. That it is the immediacy of the need which furnishes the basis for the State to allow the benefit of compassionate appointment.

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)

10. Applying the said ratio to the facts of the present case, we hold that the Respondents-Writ Petitioners, upon submitting their applications in the year 2006-2005 did nothing further to pursue the matter, till the year 2015 i.e., for a period of ten years. Notwithstanding the tardy approach of the authorities of the Appellant-State in dealing with their applications, the Respondent-Writ Petitioners delayed approaching the High Court seeking a writ in the nature of a mandamus against the authorities of the State. In fact, such a prolonged delay in approaching the High Court, may even be regarded as a waiver of a remedy, as discernible by the conduct of the Respondents-Writ Petitioners. Such a delay would disentitle the Respondents-Writ Petitioners to the discretionary relief under Article 226 of the Constitution. Further, the order of the High Court dated 17th March, 2015, whereby the writ petition filed by some of the Respondents herein was disposed of with a direction to the Director of Local Bodies, Government of West Bengal to take a decision as to the appointment of the Respondents-Writ Petitioners, cannot be considered to have the effect of revival of the cause of action.

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13. The sense of immediacy in the matter of compassionate appointment has been lost in the present case. This is attributable to the authorities of the Appellant-State as well as the Respondents-Writ Petitioners. Now, entertaining a claim which was made in 2005-2006, in the year 2023, would be of no avail, because admittedly, the Respondents-Writ Petitioners have been able to eke out a living even though they did not successfully get appointed to the services of the Municipality on compassionate grounds. Hence, we think that this is therefore not fit cases to direct that the claim of the Respondents-Writ Petitioners for appointments on compassionate grounds, be considered or entertained.”

14. The Supreme Court in the case of **Steel Authority of India Ltd. 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 the court would militate against claim for compassionate appointment as very objective of providing immediate amelioration to family would stand extinguished. In the case of **State of J & K and others Vs. Sajad Ahmed Mir** reported in **(2006) 5 SCC 766**, the Supreme Court has held that: -

“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 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 5 Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed except where compelling circumstances demand, such as, death of sole bread earner and likelihood of the family suffering because of the set back. Once it is proved that in spite of death of bread earner, the family survived and substantial period is over, there is no necessity to say 'goodbye' to normal rule of appointment and

to show favour to one at the cost of interests of several others ignoring the mandate of Article 14 of the Constitution.

12. In **State of Haryana and Ors. v. Rani Devi and Anr.**, it was held that the claim of 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 **Life Insurance Corporation of India v. Asha Ramchandra Ambekar (Mrs.) and Anr.**, it was indicated that High Courts and 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 and Ors.**, 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 employee while in 6 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 rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. This favorable treatment to the dependent 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 **Smt. Sushma Gosain and Ors. v. Union of India and Ors.** it was observed that in 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 death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress.

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

17. In the case on hand, the father of the applicant died in March, 1987. The application was made by the applicant after four and half years in September, 1991 which was rejected in March, 1996. The writ petition was filed in June, 1999 which was dismissed by the learned single Judge in July, 2000. When the Division Bench decided the matter, more than fifteen years had 7 passed from the date of death of the father of the applicant. The said fact was indeed a relevant and material fact which went to show that the family survived in spite of death of the employee. Moreover, in our opinion, the learned single Judge was also right in holding that though the order was passed in 1996, it was not challenged by the applicant immediately. He took chance of challenging the order in 1999 when there was inter-departmental communication in 1999. The Division Bench, in our view, hence ought not to have allowed the appeal.”

(Underline Supplied)

15. Since a considerable long time has passed after the death of father of the petitioner and the petitioner being a married woman cannot be said to be dependent on her father and furthermore, the petitioner has suppressed her marital status as well as the name of her husband and address of her matrimonial house.

16. Be that as it may.

17. The appointment on compassionate ground is not an alternative mode of direct recruitment and the petitioner has failed to make out any good ground for grant of appointment. Further, appointment on compassionate ground cannot be granted after 14 long years of the death of bread earned. Accordingly, no case is made out warranting interference.

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

(G.S. AHLUWALIA)
JUDGE

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