



**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

&

HON'BLE SHRI JUSTICE ASHISH SHROTI

ON THE 1st OF AUGUST, 2025

WRIT APPEAL No. 714 of 2024

SUNNY SEN

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri D. S. Rajawat, Advocate for the appellant.

Shri B.M. Patel, Government Advocate for respondents/State.

JUDGMENT

Per: Justice Gurpal Singh Ahluwalia

This writ appeal, under Section 2(1) of the Madhya Pradesh Uchch Nyayalaya (Khand Nyayneethon Ko Appeal) Adhiniyam, 2005 has been filed against the order dated 07.02.2024 passed in W.P. No. 12082/2021.

2. Facts necessary for disposal of the present appeal, in short, are that father of appellant, namely Sheshnarayan Sen, was working as Assistant Teacher in the respondent/department. While serving at Government Primary School, Khutiyavad, District Guna, he died in harness on 25.10.2007. At that



time, the petitioner was a minor, therefore, no application for grant of compassionate appointment was made. Later, on 17.10.2019, he moved an application seeking appointment on compassionate grounds. It was rejected by order dated 11.12.2019. Being aggrieved by the rejection of his claim, petitioner approached this Court by filing W.P. No. 12082 of 2021. The learned Single Judge, by order dated 07.02.2024, dismissed the petition primarily on the ground that family of the deceased employee was not facing any financial distress and the application was filed belatedly i.e., almost after 3 years of attaining majority.

3. Challenging the order passed by the learned Single Judge, it is submitted by counsel for appellant that the appellant had filed an affidavit of himself and his family members in the year 2017, and therefore the finding recorded by the learned Single Judge that appellant had moved an application on 17.10.2019 is factually incorrect.

4. Heard learned counsel for the appellant.

5. By order dated 11.12.2019, the application filed by appellant for appointment on compassionate ground was rejected on the ground that although father of the petitioner had expired on 25.10.2007, but he moved an application only on 17.10.2019, whereas he attained majority on 06.12.2016. The appointment on compassionate grounds is to provide immediate financial help to the distressed family who might be facing financial crisis because of untimely death of their breadwinner. Late Sheshnarayan Sen died on 25.10.2007. Petitioner has filed copies of certain affidavits filed by his family members which are dated 23.12.2017. From the aforesaid affidavits, it is clear that the eldest sister of petitioner was aged about 25 years, and another elder sister was aged about 22 years on 23.12.2017 when the so-called affidavits were executed. If the survivors of the late employee Sheshnarayan Sen were



facing financial distress, then whesewy sisters of petitioner did not move an application for their appointment on compassionate ground?

6. Be that whatever it may be.
7. 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. Prahala 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 Uttarakhand 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.

* * *

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.”

8. The Supreme Court in the case of **Canara Bank Vs. Ajithkumar G.K.** decided on **11/2/2025** in **Civil Appeal No. 30532/2019** has held as under:-

11. Decisions of this Court on the contours of appointment on compassionate ground are legion and it would be apt for us to consider certain well-settled principles, which have crystallized through precedents into a rule of law. They are (not in sequential but contextual order):
 - a) Appointment on compassionate ground, which is offered on humanitarian grounds, is an exception to the rule of equality in the matter of public employment [see **General Manager, State Bank of India v Anju Jain** (2008)8 SCC 475].
 - b) Compassionate appointment cannot be made in the absence of rules or instructions [see **Haryana State Electricity Board v. Krishna Devi** (2002)10 SCC 246].
 - c) Compassionate appointment is ordinarily offered in two contingencies carved out as exceptions to the general rule, viz. to meet the sudden crisis occurring in a family either on account of death or of medical invalidation of the breadwinner while in service [see **V. Sivamurthy v. Union of India** (2008)13 SCC 730].
 - d) The whole object of granting compassionate employment by an employer being intended to enable the family members of a deceased or an incapacitated employee to tide over the sudden financial crisis, appointments on compassionate ground should be made immediately to redeem the family in distress [see **Sushma Gosain v. Union of India** (1989)4 SCC 468].



- e) Since rules relating to compassionate appointment permit a sidedoor entry, the same have to be given strict interpretation [see *Uttaranchal Jal Sansthan v. Laxmi Devi* (2009)11 SCC 453].
- f) Compassionate appointment is a concession and not a right and the criteria laid down in the Rules must be satisfied by all aspirants [see *SAIL v. Madhusudan Das* (2008)15 SCC 560].
- g) None can claim compassionate appointment by way of inheritance [see *State of Chattisgarh v. Dhirjo Kumar Sengar* (2009)13 SCC 600].
- h) Appointment based solely on descent is inimical to our constitutional scheme, and being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve [see *Bhawani Prasad Sonkar v. Union of India* (2011)4 SCC 209].
- i) None can claim compassionate appointment, on the occurrence of death/medical incapacitation of the concerned employee (the sole bread earner of the family), as if it were a vested right, and any appointment without considering the financial condition of the family of the deceased is legally impermissible [see *Union of India v. Amrita Sinha* (2021)20 SCC 695)].
- j) An application for compassionate appointment has to be made immediately upon death/incapacitation and in any case within a reasonable period thereof or else a presumption could be drawn that the family of the deceased/incapacitated employee is not in immediate need of financial assistance. Such appointment not being a vested right, the right to apply cannot be exercised at any time in future and it cannot be offered whatever the lapse of time and after the crisis is over [see *Eastern Coalfields Ltd. v. Anil Badyakar* (2009)13 SCC 112)].
- k) The object of compassionate employment is not to give a member of a family of the deceased employee a post much less a post for post held by the deceased. Offering compassionate employment as a matter of course irrespective of the financial condition of the family of the deceased and making compassionate appointments in posts above Class III and IV is legally



impermissible [see *Umesh Kumar Nagpal v. State of Haryana* (1994)4 SCC 138].

l) Indigence of the dependents of the deceased employee is the first precondition to bring the case under the scheme of compassionate appointment. If the element of indigence and the need to provide immediate assistance for relief from financial destitution is taken away from compassionate appointment, it would turn out to be a reservation in favour of the dependents of the employee who died while in service which would directly be in conflict with the ideal of equality guaranteed under Articles 14 and 16 of the Constitution [see *Union of India v. B. Kishore* (2011)13 SCC 131].

m) The idea of compassionate appointment is not to provide for endless compassion [see *I.G. (Karmik) v. Prahalad Mani Tripathi* (2007)6 SCC 162].

n) Satisfaction that the family members have been facing financial distress and that an appointment on compassionate ground may assist them to tide over such distress is not enough; the dependent must fulfil the eligibility criteria for such appointment [see *State of Gujarat v. Arvindkumar T. Tiwari* (2012)9 SCC 545].

o) There cannot be reservation of a vacancy till such time as the applicant becomes a major after a number of years, unless there are some specific provisions [see *Sanjay Kumar v. State of Bihar* (2000)7 SCC 192].

p) Grant of family pension or payment of terminal benefits cannot be treated as substitute for providing employment assistance. Also, it is only in rare cases and that too if provided by the scheme for compassionate appointment and not otherwise, that a dependent who was a minor on the date of death/incapacitation, can be considered for appointment upon attaining majority [see *Canara Bank* (supra)].

q) An appointment on compassionate ground made many years after the death/incapacitation of the employee or without due consideration of the financial resources available to the dependent of the deceased/incapacitated employee would be directly in conflict with Articles 14 and 16 of the Constitution [see *National Institute of Technology v. Niraj Kumar Singh* (2007)2 SCC 481].



- r) Dependents if gainfully employed cannot be considered [see ***Haryana Public Service Commission v. Harinder Singh (1998)5 SCC 452***].
- s) The retiral benefits received by the heirs of the deceased employee are to be taken into consideration to determine if the family of the deceased is left in penury. The court cannot dilute the criterion of penury to one of “not very well-to-do”. [see ***General Manager (D and PB) v. Kunti Tiwary (2004)7 SCC 271***].
- t) Financial condition of the family of the deceased employee, allegedly in distress or penury, has to be evaluated or else the object of the scheme would stand defeated inasmuch as in such an eventuality, any and every dependent of an employee dying-inharness would claim employment as if public employment is heritable [see ***Union of India v. Shashank Goswami (2012)11 SCC 307*** , ***Union Bank of India v. M. T. Latheesh (2006)7 SCC 350*** , ***National Hydroelectric Power Corporation v. Nank Chand (2004)12 SCC 487*** and ***Punjab National Bank v. Ashwini Kumar Taneja (2004)7 SCC 265***].
- u) The terminal benefits, investments, monthly family income including the family pension and income of family from other sources, viz. agricultural land were rightly taken into consideration by the authority to decide whether the family is living in penury. [see Somvir Singh (supra)].
- v) The benefits received by widow of deceased employee under Family Benefit Scheme assuring monthly payment cannot stand in her way for compassionate appointment. Family Benefit Scheme cannot be equated with benefits of compassionate appointment. [see ***Balbir Kaur v. SAIL (2000)6 SCC 493***]
- w) The fixation of an income slab is, in fact, a measure which dilutes the element of arbitrariness. While, undoubtedly, the facts of each individual case have to be borne in mind in taking a decision, the fixation of an income slab subserves the purpose of bringing objectivity and uniformity in the process of decision making. [see ***State of H.P. v. Shashi Kumar (2019)3 SCC 653***].



- x) Courts cannot confer benediction impelled by sympathetic consideration [see ***Life Insurance Corporation of India v. Asha Ramchandra Ambekar* (1994)2 SCC 718**].
- y) Courts cannot allow compassionate appointment dehors the statutory regulations/instructions. Hardship of the candidate does not entitle him to appointment dehors such regulations/instructions [see ***SBI v. Jaspal Kaur (2007)9 SCC 571***].
- z) An employer cannot be compelled to make an appointment on compassionate ground contrary to its policy [see ***Kendriya Vidyalaya Sangathan v. Dharmendra Sharma (2007)8 SCC 148***].

It would be of some relevance to mention here that all the decisions referred to above are by coordinate benches of two Judges.

29. The second sub-issue pertains to the real objective sought to be achieved by offering compassionate appointment. We have noticed the objectives of the scheme of 1993 and construe such objectives as salutary for deciding any claim for compassionate appointment. The underlying idea behind compassionate appointment in death-in-harness cases appears to be that the premature and unexpected passing away of the employee, who was the only bread earner for the family, leaves the family members in such penurious condition that but for an appointment on compassionate ground, they may not survive. There cannot be a straitjacket formula applicable uniformly to all cases of employees dying-in-harness which would warrant appointment on compassionate grounds. Each case has its own peculiar features and is required to be dealt with bearing in mind the financial condition of the family. It is only in “hand-to-mouth” cases that a claim for compassionate appointment ought to be considered and granted, if at all other conditions are satisfied. Such “hand-to-mouth” cases would include cases where the family of the deceased is ‘below poverty line’ and struggling to pay basic expenses such as food, rent, utilities, etc., arising out of lack of any steady source of sustenance. This has to be distinguished from a mere fall in standard of life arising out of the death of the bread earner.

30. The observation in ***Kunti Tiwary* (supra)** noted above seems to assume significance and we draw inspiration therefrom in making the observation that no appointment on compassionate



ground ought to be made as if it is a matter of course or right, being blissfully oblivious of the laudable object of any policy/scheme in this behalf.

31. Thus, examination of the financial condition to ascertain whether the respondent and his mother were left in utter financial distress because of the death of the bread earner is not something that can be loosely brushed aside.”

9. Thus, it is clear that where the dependents of the deceased employee have successfully survived for a considerably long time, then that by itself would frustrate the appointment on compassionate grounds. Admittedly, father of the petitioner had died on 25.10.2007. Petitioner had attained majority on 06.12.2016, whereas application for appointment on compassionate ground was filed on 17.10.2019 i.e. approximately 3 years after attaining majority. However, as per the policy for appointment on compassionate grounds, the application should have been filed within a period of 1 year from the date of attaining majority. Not only the fact that appellant had applied for appointment on compassionate ground for the first time on 17.10.2019 is mentioned in the impugned order, but even in the return it was specifically stated by the respondents that application for appointment on compassionate ground was filed on 17.10.2019. No rejoinder was filed by the appellant/petitioner to dispute the said fact. Even otherwise, now 17 long years have passed from the date of death of the father of the petitioner, and this by itself is sufficient to refuse the benefit of appointment on compassionate ground.

10. Considering the totality of facts and circumstances of the case, this Court is of considered opinion that the learned Single Judge did not commit any mistake by dismissing the writ petition.



11. Accordingly, writ appeal fails and is, hereby, dismissed.

(G.S. Ahluwalia)
Judge

(and)

(Ashish Shrotri)
Judge