



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 5140/2017

Dinesh Kuldeep S/o Late Shri Ramchandra, By Caste Regar, R/o
Annasagar Gali No. 1, Magra Punjla Road, Kirti Nagar, Jodhpur.

-----Petitioner

Versus

1. State Of Rajasthan, Through The Director, Medical And
Health Services, Government Of Rajasthan, Jaipur.
2. Chief Medical And Health Officer, Jodhpur.

-----Respondents

For Petitioner(s)	:	Mr Rakesh Arora
For Respondent(s)	:	Mr Gaurav Ranka for Ms Vandana Bhansali

HON'BLE MR. JUSTICE ARUN MONGA

Judgment / Order (oral)

05/12/2023

This petition was filed in the year 2017 seeking issuance of an appropriate writ, order or direction to quash the impugned order dated 26.8.2014 (Annx.6) and direct the respondents to give appointment to the petitioner on compassionate ground commensurate to the qualification of the petitioner with all consequential benefits.

2. Facts of the case stated in the writ petition, are succinctly narrated as follows. Petitioner's father Ram Chandra was appointed on the post of Class-IV employee vide order dated 2.11.1985 and he was working as Ward Boy in the respondent department. He lost his mental balance while he was posted at Community Health Center, Mathania (District Jodhpur). On 03.03.2005 he left the house for attending duty but never



returned home. The efforts to search him were made by the family members and ultimately, a missing person report No.24/2014 was lodged at Police Station Mandore (Jodhpur) on 21.9.2014.

3. On 07.07.2014 respondent No.2 published a notice in daily newspaper, under rule 86 of the Rajasthan Service Rules 1951. When the petitioner came to know about aforesaid notice, he submitted a reply to the notice on 7.8.2014 and stated that his father is missing for more than 7 years i.e. since 03.03.2005, therefore, he may be treated dead. On 22.8.2014, petitioner was informed that since there is no valid death certificate about Shri Ramchandra, it can not be said that he is dead and hence, proceedings under Sec.86(4) of the Rules of 1951 will have to be initiated.

4. The respondent No.2 vide order dated 26.8.2014 held that in view of fact that Shri Ramchandra was absent since 03.03.2005 without any information and without sanction of any leave, therefore, he was guilty of remaining absent and under rule 86(4) of the Rules of 1951. His voluntary absence from 03.03.2005 was treated as resignation from service and accordingly, he was discharged from service.

5. Confronted with aforesaid, the petitioner filed a suit for declaration of death of his father, but vide an order dated 27.09.2016 the suit was dismissed on ground of limitation. The petitioner filed appeal, which was allowed vide judgment dated 10.03.2017. Consequently, the court granted the declaration. The petitioner was also issued Death Certificate of his father on 26.04.2017.



6. The petitioner filed an application to the respondents, requesting that since Shri Ramchandra, father of the petitioner has been declared dead by the competent court, the petitioner may be given appointment on compassionate ground. The petitioner also submitted a legal notice dated 01.04.2017 but to no avail. Hence the instant petition.

6. Heard.

7. Consistently it is own case of the petitioner that his father left the house on 03.03.2005 and all efforts to search him have been unfruitful. Yet, what is most intriguing is that no steps, whatsoever, were taken to ever register FIR of any kind with Police authorities until as late in the year 2014, when on 21.09.2014, for the first time, a missing person report was lodged with the Police Station. An inordinate gap of 9 years thus does not explain the delay or justification to arrive at presumption of death of petitioner's father.

8. Even the civil suit, which ought to have been filed after 7 years of father of petitioner having gone missing on 03.03.2005, was filed belatedly in the year 2015 instead of year 2012. Further, there is nothing on record to show why the family had to wait for 9 years even to lodge a missing person report as the Police was informed about the same only on 21.09.2014.

9. Be that as it may, it turns out that only when the petitioner approached the respondent-Department seeking compassionate appointment and he was told that in absence of Death Certificate there can not be any presumption of death, unless an appropriate court grants declaration for the same. It is then for the first time the petitioner swung into action and he filed missing person report



in the year 2014, only to seek the benefit of compassionate appointment. Said report was made basis for filing the civil suit, which led to the same being decreed by way of granting a declaration for presumption of death.

10. As already noted herein above, long inaction/acquiescence of petitioner in taking any steps after his father had gone missing appears to be mere a ruse to get over lapses for securing benevolence of the State to provide him compassionate appointment.

10. Furthermore, there is another aspect of the matter i.e. nobility of the compassionate employment is to provide immediate succor to the family of sole bread earner owing to his sudden death. It is but natural that on his death in harness the family is reduced to live in penury since a certain financial calamity is visited by the death of the only bread earner. The father of the petitioner left home some time in the year 2005 and it is only after lapse of almost 9 years that the Department was for the first time approached, which is reflective of the fact that the family had or could manage alternative means of surviving, that may not be as secure as a Government job and in order to secure the same, subsequent steps of filing missing person report and filing suit for declaration were taken by the petitioner.

10. The writ petition lacks merit and is accordingly dismissed.

(ARUN MONGA),J

95-MMA/-

Whether reportable: Yes