

2 (2)

0A-543/96

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0A.543/96

Serial No. of Order	Date of Order	Order with Signature
	7.11.2001	<p>Learned counsels have abstained themselves from attending Court work protesting against the law and order incident at Puri involving Lawyers and Constables. In view of this, learned counsels of both sides are absent. Petitioners are also not present on call. As this is a matter of 1996 involving compassionate appointments where pleadings have been completed long ago, it is not possible to adjourn the matter indefinitely. Moreover, the Hon'ble Supreme Court in the case of Raymen Services (P) Ltd. vs. Subhash Kappor reported in JT 2000 (Supp.II) SC 546 have strongly deprecated the practice of Courts in adjourning cases on the ground of Lawyers' strike. In the concluding portion of the judgment their Lordships have been pleased to observe as follows :</p> <p>"The defaulting Courts may also be contributory to the contempt of this Court".</p> <p>From the above it is clear that the Hon'ble Supreme Court have held that by adjourning cases on the ground of Lawyers' strike, the Courts will be contributing to the contempt of the Apex Court. In view of this the matter cannot be adjourned. I have, therefore, gone through the pleadings of the parties.</p> <p>In this Original Application the two applicants, who are the widow and son of Dambarudhar Nayak have prayed for quashing the order dated 17.8.1995 (Annexure-2) rejecting the prayer of petitioner No.2 for compassionate appointment. The second prayer is for direction to respondents to appoint petitioner No.2 on compassionate ground.</p>

Order no 2 dt. 19.8.96

Notice may be sent to all O.P. by Regd Post/A.R.

18/96

22.8.96

Notice issued.

A. Dis not setnd.

No body appears for resdts.

counter not filed for orders

16.9.96

Regd.

Order dt. 4.10.96

None appears. Servicing of notice is held sufficient. Counter be filed by 8 weeks.

4.10.96 Regd.

Counter filed.

Fixing a date of hearing.

Bench

21/11/96

For Hearing

28/11/96 Bench

Serial  
No. of  
OrderDate of  
Order

Order with Signature

The case of the applicants is that they belong to Scheduled Tribe community. The husband of applicant No.1 and father of applicant No.2 one Dambarudhar Nayak was working as E.D.M.M. in Tana Branch Office. He passed away on 13.6.1994 in harness, leaving behind the widow, and applicant No. 1 and his son, applicant No.2. After the death of the father the family was in indigent condition and therefore, the applicant No.2 applied for compassionate appointment. The prayer of the applicant No.2 for compassionate appointment was rejected vide impugned order dated 17.8.1995 (Annexure-2) on the ground that applicant No.2 does not have the minimum educational qualification. Applicants have stated that for the post of E.D.M.C. the minimum qualification required is Class VIII pass and the applicant No.2 has passed Class IX and therefore, he has the educational qualification for being appointed to the post of E.D.M.E. Applicants have stated that after getting the impugned order they filed a series of representations to the C.P.M.G., who deputed Assistant Superintendent of Post Offices, Keonjhar Division to verify the certificate of applicant No.2 showing that he has passed Class IX. Vide Annexure-5 the applicants have enclosed a certificate issued by the Head Master, Maa Tarini High School, Salaikena stating that Transfer Certificate of applicant No.2 has been verified by the postal authority on 10.11.1995. In the context of the above fact the applicants have come up in this petition with the prayers referred to earlier.

Respondents in their counter have stated that after the death of the father

~~Adm. No. 1~~

Adm. to 209  
Week of January  
for hearing.

Ar.  
13/1/97

Benot.

Keep in pending  
until further orders  
as per direction of  
Cm. dt. 7.1.97

Bs.  
15/1/97

For hearing.

Fik  
6/1/97

Bench

J. J. J.

Serial No. of Order	Date of Order	Order with Signature
		<p>of applicant No.2 he applied for compassionate appointment. The application of petitioner No.2 has been enclosed as Annexure-R/2. In this application the petitioner No.2 has mentioned that he has passed Class VII. Respondents have stated that <sup>for</sup> appointment to the post of E.D. Agents, other than E.D.B.P.M. the minimum qualification prescribed is Class VIII pass and as the applicant did not have the minimum educational qualification his prayer for compassionate appointment was rejected. It is further stated by the respondents that subsequently the applicant filed representations stating that he has passed Class IX. He had also enclosed a Transfer Certificate showing that he has passed Class IX. But this Transfer Certificate has been held to be not genuine after verification from the School authorities. Respondents have made various averments with regard to verification of the Transfer Certificate showing that applicant No.2 has <sup>not</sup> passed Class - IX. which will be referred to while considering the prayers of the applicants. On the above grounds respondents have opposed the prayers of the applicants.</p> <p>Applicants have not filed any rejoinder.</p> <p>The Head Master of Maa Tarini High School, Salaikena one Bijaya Kumar Pradhan has filed a verified Memo stating that after verification of the Transfer Certificates record it was found that the T.C. showing that the applicant has passed Class IX is not a genuine one. Copy of this verified memo has not been <sup>produced</sup> served on the respondents or the applicants. The Headmaster is also not a party in this case. Therefore, this verified memo cannot be taken into consideration.</p> <p>I have considered the averments made by the parties carefully. Admittedly after the death of the E.D. employee case of applicant No.2 was considered for compassionate appointment. His prayer was rejected</p>

## NOTES OF THE REGISTRY

## ORDERS OF THE TRIBUNAL

on the ground that he does not have the minimum educational qualification of Class VIII pass. The sole controversy in this case is whether ~~the~~ <sup>the</sup> applicant No.2 has ~~the~~ minimum educational qualification. Before examining that it is necessary to note that the Departmental instructions do provide for relaxation of educational qualification <sup>but</sup> only in case of spouse of the deceased E.D. employee and not in respect of wards of the deceased. In case of the spouse also it is provided that it should be verified if spouse ~~is~~ has the necessary knowledge of carrying on the work of E.D. Agent. As the departmental instructions do not provide for relaxation of educational qualification in case of wards of the deceased employee and as the compassionate appointment ~~cannot~~ be given only in terms of the scheme which is in force in that Department, the applicant No.2 could not have been appointed by way of compassionate appointment by relaxing his educational qualification. Action taken by the respondents in this regard cannot therefore, be faulted with. So far as 2nd certificate is concerned, respondents have stated that this certificate which is at Annexure-R/6 was verified from the Office of the Head Master, Maa Tarini High School, Salaikena and the Headmaster after verifying his documents gave an endorsement dated 1.8.1996 on the back of the certificate which is at Annexure-R/6 stating that the T.C. is a forged one as per the testimonial produced by the candidate at the time of admission and other records. Respondents have stated that the Transfer Certificate has not been found genuine on verification. As a matter of fact the Headmaster was approached on several occasions on 17.8.1995, 19.10.1995 and 23.2.96 for getting the certificate verified. But the Headmaster did not verify the certificate on some ground or the other. He took the plea on all occasions that the Clerk had gone away to

P. J. M.

Free copy of  
the order  
dt. 7.11.01 given  
to the 50th  
Counsel.

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Inspector of Schools office locking all the record boxes. Again on 19.10.1995 the Headmaster gave a statement stating that he could not check up the admission and attendance register for verifying the correctness of T.C. as the Clerk had been to Inspector's office. These statements are at Annexures-R/7 and R/8.

From the above it is clear that earlier the Headmaster had specifically certified that the transfer certificate showing that the applicant No.2 has passed Class VIII is a forged one. But subsequently the Headmaster declined on several occasions to produce the documents for the purpose of verification of the certificate. This has to be seen with the fact that the applicant himself has mentioned in his application praying for compassionate appointment that he has read upto Class VII. From this an inescapable conclusion can be drawn that the applicant No.2 has not <sup>at all</sup> passed Class VIII and has obtained another certificate from the private school showing that he has passed Class-VIII. This latter certificate on verification has been found to be a forged one. In view of this it must be held that the applicant does not have the minimum educational qualification for the post of E.D.M.C.

In view of the discussions held above, I hold that the applicants are not entitled to any of the reliefs prayed for. The O.A. is held to be without any merit and the same is therefore, rejected, but without any order as to costs.

S. Venkatesh  
VICE-CHAIRMAN  
7.11.2001