

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 658 of 2013**

- Smt. Pramila Bai Paikra W/o Late Shri Chedi Lal Paikra, Caste-Paikra (Scheduled Tribe), aged about 37 years, R/o village Laata, Post Aamadand, PS & Tehsil Pendra, District Bilaspur (CG).

---- Petitioner**Versus**

1. State of Chhattisgarh Through Secretary, Panchayat & Rural Development Department, DKS Building Raipur Distt. Raipur C.G.
2. Collector Bilaspur Distt. Bilaspur C.G.
3. Chief Executive Officer Zila Panchayat Bilaspur, Distt. Bilaspur C.G.
4. Chief Executive Officer Janpad Panchayat Pendra Distt. Bilaspur C.G.
5. Assistant Commissioner, Tribal Welfare Bilaspur, Distt. Bilaspur C.G.
6. Block Education Officer Block-Pendra, Distt. Bilaspur CG
7. Smt. Rekha Vasudev W/o Late Shri Gaya Prasad Vasudev, Occupation-Service (Peon), R/o Village -Basantpur, PS & Tehsil - Pendra, Distt. Bilaspur C.G.

---- Respondents

For Petitioner	Shri Sarfaraz Khan, Advocate.
For Respondent/State	Shri Arvind Dubey, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****23/12/2015**

1. The grievance of the petitioner in the instant petition is against the order dated 22.02.2011 (Annexure P/8) whereby her claim for

compassionate appointment has been rejected on the ground that the petitioner does not fulfill the minimum requisite qualification and that inspite of three years time granted, she could not attain the requisite qualification.

2. Learned counsel appearing for the petitioner submits that the impugned order dated 22.02.2011 is bad in law to the extent that for rejection of her claim, circular dated 02.05.2006 has been invoked which was not part of the scheme for compassionate appointment on 03.10.2005 i.e. a date when the husband of the petitioner died, and therefore, the scheme which was prevailing on 03.10.2005 would be applicable for considering the case of the petitioner for compassionate appointment and not the circular dated 02.05.2006 which came in force much after the death of the employee.
3. It is by now well settled position of law that, so far as grant of compassionate appointment is concerned, the scheme on the date of death of the employee would be the prevailing rules/scheme of the employer that would be applied while considering the case for compassionate appointment and that, the subsequent changes in the scheme or new scheme being in force can not be applied in respect of a person who died prior to coming into force of the new scheme or new circular of the employer. The subsequent circular, guidelines or scheme will not have retrospective effect.
4. In addition, referring to order dated 10.08.2009 (Annexure P/10)

whereby the identically placed person i.e. respondent No.7 has been granted compassionate appointment, counsel for the petitioner submits that claim of the petitioner be also considered sympathetically as has been considered in case of respondent No.7.

5. Counsel for the State opposing the petition submits that the petitioner cannot claim negative parity with the respondent No.7 and that if the respondent No.7 has wrongly been granted compassionate appointment, the state cannot be forced to perpetuate the wrong committed earlier. He further submits that if there is a policy of the State Government for compassionate appointment, the respondent authorities are bound to abide by the said policy. It is further submitted that since circular dated 02.05.2006 specifically holds that the Shiksha Karmis who die in harness, compassionate appointment to the dependent of the said Shiksha Karmi can only be considered against the post of Shiksha Karmi subject to fulfillment of minimum eligibility criteria, but in the instant case, the petitioner do not fall within the ambit of eligibility criteria fixed in circular dated 02.05.2006, therefore, her claim has rightly been rejected and the action on the part of the respondent cannot be said to be bad in law. Learned counsel for the State submits that the petitioner is qualified only to be appointed on the post of Peon and not Shiksha Karmi.
6. In the given facts of the case only because in the past the government has given appointment on compassionate basis dehorse the rules, will not give any right to the petitioner unless he or she

fulfills all the eligibility criteria under the scheme of compassionate appointment.

7. At this stage, counsel for the petitioner submits that she is ready to even accept compassionate appointment on the post of Peon and she would not claim for Shiksha Karmi as she is not qualified and eligible for the said post of Shiksha Karmi.
8. Considering the total facts and circumstances of the case it is an admitted position that husband of the petitioner died on 03.10.2005 and the circular which has been invoked for rejecting the claim of the petitioner is dated 02.05.2006 which came subsequent to the death of the deceased. The Supreme Court in a catena of decisions have held that the relevant scheme which would be applicable for considering the cases for compassionate appointment would be the scheme which was in force on the date of death of the employee. Latest judgments in this regard is 2007 (9) SCC 571 (State Bank of India & Others Vs. Jaspal Kaur) and 2015(7)SCC-412 (Canara Bank and Another Vs. M. Mahesh Kumar). Therefore, the circular dated 02.05.2006 could not have been invoked by the respondent authorities in the present case.
9. The petition is allowed. The impugned order dated 22.02.2011 (Annexure P/8) is set aside/quashed and the matter is sent back to the respondent authorities for considering the case of the petitioner afresh for grant of compassionate appointment in accordance with

the scheme which was in force on the date of death of the employee
i.e. on 03.10.2005.

10. This court has not expressed any opinion so far as the eligibility of the petitioner for compassionate appointment is concerned. The respondents would be at liberty to consider her case afresh in accordance with the scheme and the eligibility criteria prevailing at the time of death of the employee.
11. Accordingly, the writ petition stands allowed and disposed of. No order as to costs.

Sd/-
(P. Sam Koshy)
JUDGE