

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2842 of 2014**

- Shakuntala Sidar, D/o Shri Sita Ram Sidar, aged about 29 years, resident of village Kotmi, Police Station Dabhra, Civil and Revenue District Janjgir Champa (CG).

---- Petitioner**Versus**

1. State Govt. of Chhattisgarh Through The Secretary, Department of Panchayat & Rural Development, Mahanadi Bhawan, Mantralaya, Raipur C.G.
2. The Collector Distt. Janjgir Champa (C.G.)
3. Chief Executive Officer Janjgir, Jila Panchayat, District Janjgir Champa (CG).
4. Chief Executive Officer Janpad Panchayat Dabhra, Distt. Janjgir Champa (C.G.).

---- Respondents

For Petitioner	Shri Ajay Kumar Barik, Advocate.
For Respondent/State	Shri Ashok Swarnakar, Panel Lawyer.
For Respondent No.4	Shri N Naha Roy, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****15/01/2016**

1. The grievance of the petitioner in the instant petition is against the order dated 20.03.2014 (Annexure P/8) whereby her claim for compassionate appointment has been rejected.
2. According to the petitioner, she is sister of the deceased employee

who died while in service on 31.01.2013. She was solely dependent upon her brother and subsequent to the death of her brother she moved an application for grant of compassionate appointment which has been rejected.

3. Learned counsel appearing for the petitioner submits that the impugned order dated 20.03.2014 is bad in law to the extent that for rejection of her claim, circular dated 07.02.2014 has been invoked which was not part of the scheme for compassionate appointment on 31.01.2013 i.e. a date when the brother of the petitioner died. The scheme which was prevailing on 31.01.2013 would be applicable for considering the case of the petitioner and not the circular dated 07.02.2014 which came in force much after the death of the employee. It is further submitted that on the date of death of her brother circular dated 02.11.2011 was applicable and according to which she was entitled for compassionate appointment and by which she should have been granted three years time to obtain minimum requisite qualification, if she is not having the same.
4. Counsel for the respondents submitted that scheme of the State Govt. has subsequently been revised and as on date, minimum qualification has been prescribed and unless minimum qualification obtained by the petitioner, her case cannot be considered and it was for this reason, her claim was rejected.
5. 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 brought into force cannot 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.

6. Considering the total facts and circumstances of the case it is an admitted position that brother of the petitioner died on 31.01.2013 and the circular which has been invoked for rejecting the claim of the petitioner is dated 07.02.2014 which came into force subsequent to the death of the deceased. In the instant case admittedly the scheme that was applicable on the date of death of employee was 02.11.2011, according to which the petitioner should have granted compassionate appointment and thereafter three years time should have been granted to obtain minimum requisite qualification, if she was not possessing the same.
7. 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 07.02.2014 could not have been invoked by the respondent authorities in the present case.

8. For the foregoing reasons, the petition is allowed. The impugned order dated 20.03.2014 (Annexure P/1) 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. 31.01.2013.
9. 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 as per the scheme/circular then prevailing.
10. Accordingly, the writ petition is allowed to the above extent. No order as to costs.

Sd/-
(P. Sam Koshy)
JUDGE