

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 2482 of 2015**

Smt. Hirmat Bai D/o Late Shri Jailal Kurre, Aged about 32 years, R/o Ward No. 15, Old Civil Line, Mahasamund, District Mahasamund, Chhattisgarh.

--- Appellant**Versus**

1. State of Chhattisgarh, Through the Secretary, Department of Revenue, Mahanadi Bhawan, New Raipur, District Raipur, Chhattisgarh.
2. Collector, Mahasamund, District Mahasamund, Chhattisgarh.
3. Additional Collector, District Mahasamund, Chhattisgarh.
4. Tehsildar Mahasamund, District Mahasamund, Chhattisgarh.

---Respondents

For Appellant	:	Shri Sushobhit Singh, Advocate.
For Respondents/State	:	Shri B. Gopa Kumar, Deputy Advocate General.

Hon'ble Shri Navin Sinha, Chief Justice**Hon'ble Shri P. Sam Koshy, J.****Order on Board****Per Navin Sinha, Chief Justice****25/01/2016**

1. Heard Learned Counsel for the Petitioner and the Respondents.
2. Learned Counsel for the Petitioner submits that she is the married daughter of the deceased-Jailal Kurre who died in harness on 16.2.2015. Her mother had given an affidavit that she was dependent on the Petitioner who was looking after. The husband of the Petitioner was unemployed. Rejection of the application for grant of compassionate appointment only on the ground that the policy for compassionate appointment did not include a married daughter is unjustified and arbitrary. Reliance was placed on a Bench decision of this Court in Writ Petition (S) No. 296 of 2014 (Smt. Sarojni Bhoi v. State of Chhattisgarh), a Division Bench decision of the High Court of Judicature at Madras in Writ Appeal No. 804 of 2015 (The State of Tamil Nadu v. J. Arulmozhi), a Bench decision of the High Court of

Judicature at Madras in Writ Petition No. 22171 of 2013 (Jayalakshmi v. Tamil Nadu Generation and Distribution Corporation Ltd.) and a Division Bench decision of the High Court of Judicature at Bombay in Writ Petition No. 5592 of 2009 (Smt. Ranjana Murlidhar Anerao v. The State of Maharashtra).

3. Learned Counsel for the Respondents/State opposing the writ petition submitted that compassionate appointment being an exception to the normal mode of appointment in accordance with Article 14 of the Constitution, any consideration has to be done strictly in accordance with the policy only. The pleadings are completely wanting with regard to the status of the husband of the Petitioner including the nature and kind of retiral benefits received by the widow of the deceased and whether she had other sources of income. The affidavit by the widow of the deceased is silent with regard to whether her son-in-law was employed or unemployed. The deceased had only one year left before his superannuation in February, 2016 and therefore, the loss of income in the very near future was a foregone conclusion and not a sudden eventuality faced by the family. The extension of the age of superannuation from 60 to 62 years was given only recently pursuant to a fresh policy decision otherwise the deceased would have superannuated in February, 2014.

4. We have considered the submissions on behalf of the parties and are satisfied that the writ petition can be disposed on a single point. It is therefore not necessary for us to decide whether mandamus can be issued contrary to a government policy for compassionate appointment or a mandamus can be issued only to reconsider the policy. Furthermore, we purposefully refrain from further discussion with regard to under what circumstances a married daughter may be entitled or may not be entitled as it is not considered necessary in the facts of the present case and it is left open for consideration in an appropriate case.

5. None of the precedents relied upon by the Petitioner related to a case of death in harness barely one year before superannuation. Compassionate

appointment has always been considered an exception to the normal mode of appointment by advertisement and open competitive merit selection with eligibility for all to participate in the selection process. Compassionate appointment is not a matter of right. Each compassionate appointment defeats the right of another eligible to be considered for appointment only because he did not have the benefit of his relative being in government service and died in harness. The necessity for a job may be more in such person who is completely deprived of the opportunity for consideration and it may end up being given to a person who may not be in such dire straits but becomes eligible only because he/she was the descendant of a person who may have died in government service. Such a person shut out from consideration may even be more meritorious and may be of more use to the Government in public interest but would be stone walled only because he did not have the right descent, contrary to Article 15 of the Constitution.

6. If the deceased was going to superannuate barely within one year, it is difficult to hold that the family was suddenly faced with destitute and penury due to loss of income. The fact that there would be loss of income in the extremely near future was but an accepted fact and surely the family must have made arrangements and started preparations for the same. The age of retirement of the deceased is not in dispute.

7. In (1999) 7 SCC 672 (W.B. State Electricity Board v. Samir K. Sarkar), the Supreme Court declined to interfere with denial of compassionate appointment in case of death of employee within two years from the scheduled date of superannuation. The time period in the present case is even lesser.

8. We find no merit in the writ petition. It is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE