

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 5579 of 2017

Balram Singh Korche S/o Late Shri Balbir Singh Korche, Aged About 32 Years R/o Village Jilda, Post Office Kodgar, Tahsil Pendra, District Bilaspur Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Panchyat And Gramin Vikas Vibhag, Mantralaya Bhawan, Naya Raipur, Police Station Naya Raipur, District Raipur Chhattisgarh.
2. Director, Directorate Of Panchyat, Naya Raipur, District Raipur Chhattisgarh.
3. Deputy Director (Administration) Directorate Of Panchyat, Naya Raipur, District Raipur Chhattisgarh.
4. Deputy Director Panchyat And Social Welfare, District Bastar, Jagdalpur Chhattisgarh.
5. Deputy Director Panchyat, District Bastar, Jagdalpur Chhattisgarh.
6. Chief Executive Officer, Janpad Panchyat, Bakawand, District Bastar Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. A.K. Swarnkar, Advocate
For State	:	Ms. Sunita Jain, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

26.10.2017

Heard.

1. The order of rejection of petitioner's claim for compassionate appointment has been challenged on the ground that the petitioner's claim for grant of compassionate appointment has been rejected in view of a policy decision dated 14.06.2013 which was promulgated long after the death of petitioner's father who died on 15.05.2010.
2. The legal position in this regard is very well settled. In a catena of

decision of the Hon'ble Supreme Court and this Court have succinctly held that the claim of compassionate appointment will be required to be decided in accordance with the policy of compassionate appointment applicable in force on the date of death of the Government employee that would mean that petitioner's claim was required to be examined on the basis of policy which was in force on the date the employee died.

3. Though learned counsel for the State sought to justify the order by submitting that later on decision was taken by the Government not to grant employment in those cases which was became old and stale, in view of the decision of this Court which is being quoted herein below, the contention cannot be accepted.

4. In the case of **Lileshar Prasad Tiwary Vs. The State of Madhya Pradesh and others** passed by this Court on 18.03.2010 in WPS No.1695 of 2005, it was held thus :

“(7). It is not in dispute that the date on which the father of the petitioner died, the earlier circular dated 24-03- 1975 (Annexure A-12) was in force and in existence. The said policy of considering the case for grant of compassionate appointment in case of death of a government servant within three years from the date of his retirement was superceded by issuance of circular dated 10-06-1994 (Annexure A-13). It appears that initially when the petitioner was given appointment, he was found eligible in view of the policy contained in circular dated 24-03-1975, but later on, the Joint Director opined that the petitioner is not entitled to such appointment and his services were terminated. It is apparent that this decision to terminate the services of the petitioner was founded on application of policy contained in circular dated 10-06-1994 (Annexure A-13). This is reflected from averments contained in the return to the effect that the petitioner ought not to have been appointed as Lower Division Clerk on compassionate ground as the father of the petitioner had died after his retirement.

(8) In the case of Abhishek Kumar Versus State of Haryana and others, (2006) 12 Supreme Court Cases 44, while considering a case relating to compassionate appointment, where the government servant had expired on 10-02-2001, it was held that the case was required to be considered in terms of the Rules which were in existence in the year 2001. In that case, it was found that the subsequent notification dated 28-02-2003 was relied upon by the employer to resist the claim of compassionate appointment and on that basis, petition was dismissed by the High Court. In the aforesaid context, the Supreme Court observed as under:-

"The appellant herein had sought for appointment on compassionate grounds at a point of time when the 2003 Rules were not in existence. His case, therefore, was required to be

considered in terms of the Rules which were in existence in the year 2001."

5. Therefore, the impugned order cannot be sustained in law and only on the ground that claim was rejected on the basis of policy which was promulgated, after three years of the death of the employee, is liable to be set aside and is accordingly set aside. The matter is remitted to the respondent No.2/Director and respondent No.3/Deputy Director (Administration) to reexamine the petitioner's claim for compassionate appointment on the basis of that policy of compassionate appointment which was in force as on 15.05.2010.

6. The petition is accordingly allowed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Rekha