

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 7032 of 2017**

- Rahul Kumar Jha S/o Late Ajay Kumar Jha, Aged About 19 Years R/o Village And Post Itar, Tahsil Khairagarh, District Rajnandgaon, Chhattisgarh

---- Petitioner**Versus**

1. The State Of Chhattisgarh Through The Principal Secretary Revenue Department, Mahanadi Bhawan Raipur, Chhattisgarh
2. The Collector Rajnandgaon, District Rajnandgaon, Chhattisgarh
3. The Deputy Collector Rajnandgaon, District Rajnandgaon, Chhattisgarh

---- Respondents

For Petitioner : Shri Abhishek Pandey, Advocate

For Respondents/State : Shri Avinash Singh, PL

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****14/11/2019**

1. The facts of the case are that the father of the petitioner namely Ajay Kumar Jha, died in harness on 27.05.2015 he was working as Assistant Grade II in Tahsil Office Khairagarh. The petitioner being his son applied for compassionate appointment, however, the said application was rejected on the ground that the mother of the petitioner is already in the government job. Consequently, as per the amended policy dated 29.08.2016 which is for the grant of compassionate appointment puts a bar on the ground that if someone is in the employment then compassionate appointment cannot be claimed.
2. Learned counsel for the petitioner would submit that this issue has already been set at rest by the authoritative judgment of this Court passed in WPS No.3306

of 2017 on 12.09.2017, which is further followed in WPS No.4383 of 2016 in judgment dated 06.10.2017.

3. In WPS No.4383 of 2016 the following order has been passed:-

"3. The only question arising for consideration is whether the circular dated 29.08.2016 would be applicable or the policy which was in force on the date of death of the employee would be applicable.

4. This issue is no longer res integra and decided by this Court in series of decisions. In one of such decision in 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appointment in case of death of a government servant within three years from the date of his retirement was superceded by issuance of circular dated 10-06-1994 (AnnexureA-13).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 circular which was in force on the date of death would be applicable. According to the disclosure made by the parties before this Court, the circular which was in force on the date of death of the employee was issued on 14.06.2013. A perusal of such circular shows that there was no such condition that in case there is any other member of the family in the Government employment, benefit of compassionate appointment would not be applicable. This was, in fact, subsequently added by circular dated 29.08.2016 i.e. prior to death of the Government employee. Therefore, the conclusion is obvious that it was circular of 2013 which would be applicable and not the circular of 2016.
6. In the result, the petition is allowed. The impugned order is quashed and the respondents are directed to consider petitioner's claim for compassionate appointment strictly in accordance with policy dated 14.06.2013."

4. In view of the aforesaid dictum laid down since the father of the petitioner died on 27.05.2015 on that date the circular dated 29.08.2016 was not in existence, consequently, the order of denial of compassionate appointment on the threshold by 11.04.2017 (Annexure P-1) is quashed. Accordingly the respondents are directed to consider the claim of the petitioner for compassionate appointment strictly in accordance with the policy dated 14.06.2013.

5. Accordingly, the petition stands allowed to the extent indicated above.

Sd/-

Goutam Bhaduri
Judge