

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 2443 of 2019

Ramawati Devi D/o Late Smt. Kamla Devi Aged About 35 Years R/o
Shantipara Ekta Nagar, Camp-1, Bhilai, District Durg Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary Department Of Urban Administration And Development, Mahanadi Bhawan, Capital Complex, Mantralaya, Atal Nagar District Raipur Chhattisgarh
2. Directorate Urban Administration And Development Indrawati Bhawan Capital Complex Mantralaya, Atal Nagar, District Raipur Chhattisgarh
3. Municipal Corporation Bhilai Through Its Commissioner, Municipal Corporation, Bhilai District Durg Chhattisgarh

---Respondents

For Petitioners	:	Mr. Sourabh Sharma, Advocate
For State	:	Ms. Sunita Jain, G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

04/04/2019

1. The challenge in the present writ petition is to the order Annexure P/1 dated 22.10.2018, whereby the claim of the petitioner for compassionate appointment has been rejected on the ground that the petitioner does not have the minimum educational qualification required under the Rules.
2. The facts of the case is that the mother of the petitioner late Smt. Kamla Devi was working with the respondent No.3 in a class-IV category job. The said employee died in harness on 02.12.2013. The present petitioner, the married daughter of the deceased employee applied for compassionate appointment vide application dated 28.02.2014. The said application now stands rejected vide Annexure P/1 dated 22.10.2018. The rejection of the claim of the petitioner was only on the ground that the petitioner does not fulfill the minimum educational qualification prescribed by the Department.

3. The contention of the petitioner is that the date of death in the instant case is 02.12.2013 and the date of application for compassionate appointment is 28.02.2014. According to the petitioner, both on the date of death as well as on the date of application, the minimum qualification required for appointment to the class-IV category was class-5th. The petitioner is a class-5th pass candidate.
4. According to the petitioner, the Rules in the Department has been changed/amended only in the year 2018 i.e. w.e.f. 16.01.2018. According to the petitioner, the subsequently amended Rules or the subsequently amended minimum educational qualification cannot be a basis for rejecting the claim of the petitioner. According to the petitioner, it is settled position of law that so far as consideration of compassionate appointment is concerned, it is the scheme that is applicable on the date of death of deceased employee that would be relevant for consideration and not the subsequently amended Rules.
5. The contention of the petitioner does have force for the reason that it has been well settled by the Hon'ble Supreme Court as well as by this Court in a catena of decisions, where it has been specifically held that as far as consideration of compassionate appointment is concerned, it shall be the scheme for compassionate appointment that is applicable on the date of death, which is relevant and not the scheme on the date of deciding the application.
6. The view of this Court stands fortified from the decision of the Hon'ble Supreme Court in the case of **“Canara Bank & Anr. v. M. Mahesh Kumar” (2015) 7 SCC 412**. In view of the same, the impugned order Annexure P/1 dated 22.10.2018 rejecting the claim of the petitioner, therefore was not justified and is not sustainable and the same deserves to be set-aside and is

accordingly set-aside/quashed. The matter is remitted back to the respondent No.3 to decide the claim of the petitioner altogether afresh.

7. It is further made clear that while deciding the claim of the petitioner afresh, the respondents would be free to decide the entire claim on merit including the entitlement of the petitioner in the capacity of married daughter. The respondents would also ascertain, whether the petitioner was in fact solely dependent on the deceased employee on the date of death of the deceased employee, etc. and other eligibility criteria also. The respondent No.3 is expected of deciding the claim of the petitioner afresh within a further period of 4 months from the date of receipt of the copy of this order.
8. With the aforesaid observations, the writ petition stands disposed off.

Sd/-
(P. Sam Koshy)
Judge