

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 5060 of 2019

1. Deepak Kumar Tirkey, S/o Late Bhanjan Ram, Aged About 25 Years,
R/o Village Kanchantoli, Post Katima, Tahsil- Samri, District-
Balrampur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, School Education
Department, Mahanadi Bhawan, Atal Nagar, New Raipur, District-
Raipur, Chhattisgarh
2. The Director, Directorate Of Public Instructions, Raipur, Chhattisgarh
3. The Collector, Ambikapur, District- Surguja, Chhattisgarh
4. The District Education Officer, Ambikapur, District- Surguja,
Chhattisgarh

---Respondents

For Petitioner	:	Mr. J.K. Saxena, Advocate.
For State	:	Mr. Jitendra Pali, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

02.08.2019

1. The challenge in the present Writ Petition is to order dated
04.08.2018 (Annexure P/1). Vide the impugned order, the
respondents have rejected the claim of the petitioner invoking the
provisions of the amended scheme of his compassionate
appointment, the scheme which was brought into the claim on
29.08.2016.
2. The relevant facts of the case for adjudication of the present dispute
is that, the father of the petitioner was working as a Head Master

under the Respondent No. 01. He died in harness on 16.05.2014. The present petitioner being the son of the deceased employee moved an application for compassionate appointment on 26.03.2015, the application was finally rejected by the Respondent No. 04 on 04.08.2018, the impugned order which is under challenge in the present Writ Petition.

3. The rejection has been made in the light of the Circular dated 29.08.2016, whereby the scheme for compassionate appointment applicable for government employee in the State of Chhattisgarh was amended and it was decided by the State Government that those claimants would not be entitled for compassionate appointment in whose family there is already a member in government service.
4. In the instant case, it is stated that, the elder brother of the petitioner is in government service. The petitioner challenging the impugned order submits that the elder brother of the petitioner is already a married person and having his own family, wife and children. After his marriage, he had already shifted and settled separately with his family.
5. According to the Counsel for the Petitioner, the present petitioner was totally dependent upon the deceased employee and that the elder brother was not contributing to the sustenance of the present petitioner.
6. It is further contention of the petitioner that, the State Government could have rejected the claim of the petitioner invoking the policy

decision of the State Government which was enacted much after the death of the petitioner's father and even much after the petitioner had applied for compassionate appointment.

7. According to the counsel for the petitioner, his claim or candidature should have been considered in the light of the policy prevailing on the date of death or at least on the date of application. In the scheme/claim for compassionate appointment that was applicable on the date of death of the deceased employee, there was no such clause of the claimants being not entitled for compassionate appointment in the event of a member in the family being in government service and thus, prayed for the quashment of the impugned order.
8. The State Counsel, however, opposing the petition submits that, on the date when the State Government was taking a decision on the claimants' application the scheme of compassionate appointment already stood modified and it was the modified scheme which has been invoked while rejecting his claim and, therefore, the order cannot be said to be bad-in-law.
9. The State Counsel also submitted that, the claim for compassionate appointment should not be treated as another source of recruitment. The intention for granting of compassionate appointment is only to ensure the family members of the deceased are not put to such penury or starvation.
10. According to the State Counsel, since the brother of the petitioner is already in government employment which would mean that there is

sufficient means in the family for sustenance and, therefore, the claim of the petitioner has been rightly rejected.

11. Having heard the contentions put-forth on either side, the issue that crops for consideration is as to whether the State Government was justified in deciding the claim of the petitioner for compassionate appointment in the light of the Circular dated 29.08.2016. The Supreme Court has settled this issue by catena of decision. The latest being **(2015) 7 SCC 412 in the case of Canara Bank & Another Vs. M. Mahesh Kumar and other connected cases**, wherein it has been very categorically enunciated by the Supreme Court that, the claim for compassionate appointment can not be decided on the basis of a scheme/claim or circular which came into force much after the date of death or much after the date on which the claim was made. This High Court also in the case of **Lilleshwar Prasad Tiwary vs. State of Madhya Pradesh & Ors.** passed in WPS No. 1695 of 2005, decided on 18.03.2008. While deciding the similar issue held as under:

“(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 superseded 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."

12. A similar matter again came up for hearing before this Court in WPS No. 4383 of 2016, wherein again this High Court while deciding the said issue vide Judgment dated 06.10.2017 relying upon the Judgment passed in the case of Lileshwar Prasad Tiwary (supra) in paragraph 5 held as under:

"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 obvious that it was circular of 2013 which would be applicable and not the circular of 2016 "

13. Given the aforesaid authoritative decision of the Supreme Court as well by this High Court, this Court is of the firm view that the impugned order is, therefore, not sustainable and the same deserves to be and is accordingly rejected. The matter stands remitted back to the respondents State to decide the claim of the petitioner concerned in the light of the scheme for compassionate appointment that was applicable on the date of the death of the petitioner's father.

14. The writ petition stands allowed and the respondents are directed to take a decision at the earliest, preferably within a period of 4 months from the date of receipt of certified copy of this Order.
15. Accordingly, the present Writ Petition stands disposed-off.

**Sd/-
(P. Sam Koshy)
Judge**