

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 5994 of 2019

Suraj Balmiki S/o Late Pratap Balmiki Aged About 42 Years R/o House No.137, Janakpur Ward, Tikrapara, Kanker North Bastar District Kanker Chhattisgarh., District : Kanker, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Family And Health Welfare Department, Mahanadi Bhawan, New Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Chief Medical And Health Officer North Bastar Kanker Chhattisgarh., District : Kanker, Chhattisgarh

---Respondents

For Petitioner	:	Mr. Anup Majumdar, Advocate
For State	:	Mr. P. Acharya, Panel Lawyer

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

13/08/2019

1. Grievance of the petitioner in the present writ petition is the rejection of the candidature of the petitioner for grant of compassionate appointment on the ground that the brother of the petitioner is in government employment.
2. As per the contention of the petitioner, the mother of the petitioner died early on 29.09.2015 and subsequently the father of the petitioner also died on 08.02.2017. He submits that he was totally dependent upon his mother and father, who were both working as a Sweeper under the respondent No.2.
3. The object behind the framing of the scheme for grant of compassionate appointment is to ensure that the family members of the deceased employee are not put to unnecessary financial crisis or stage of penury on the death of bread-earner of the family. The respondent authorities were supposed to consider the dependency of the petitioner while deciding her

case. Merely because the brother of the petitioner is in government employment by itself would not deny the claim of the petitioner for compassionate appointment. It is the issue of dependency which is more important to be taken care of. It could have been a situation where the brother of the petitioner is having his own family and must be living separately and it is only under compulsion and under prevailing circumstances that both the parents of the petitioner having died, the petitioner must be residing with his brother.

4. The respondents in the instant case appears to have rejected the claim of the petitioner only on the technicalities of the brother of the petitioner being employed elsewhere, without verifying the dependency aspect.
5. In the considered opinion of this Court, in a case where claim of compassionate appointment is made on the ground that the other earning member of the family had started living separately and was not providing any financial help to the remaining dependent members of the family of the deceased and who are left in lurch, factual enquiry ought to be made by the competent authority to arrive at its own conclusion of facts as to whether this assertion of other earning member living separately is factually correct or no. If it is found, as a matter of fact, that the other earning member of the family at the time of death had already started living separately and not providing financial assistance to the remaining dependents of the family, compassionate appointment must flow to eligible dependent of the family. However, in the enquiry, if it is found that the claim is only to get employment without there being any need because other earning member of the family is not living separately and providing financial support, compassionate appointment may not follow. The aforesaid enquiry is required to be done

even though the policy does not categorically state so. The State should consider by incorporating amendments in the policy to death with this such contingency where it is found that on the date of death of government servant, the other earning member was living separately and not providing any financial help.

6. In **Smt. Sulochana Netam v. State of Chhattisgarh & Others, Writ Petition (S) No. 2728 of 2017**, decided on **23.11.2017**, this Court has examined scope of such a provision relating to consideration of cases of compassionate appointment to one of the dependent of the deceased government servant where any member of the family is in government service. It has been held that such a case would require proper enquiry on the claim that one member of the family who is employed in government service is actually living separately and not providing any financial aid and help to other dependents of the family.
7. In paragraph 9 of the case of **Smt. Sulochana Netam** (supra) this Court has made the following observations :-

“9. In the considered opinion of this Court, in a case where claim of compassionate appointment is made on the ground that the other earning member of the family had started living separately and was not providing any financial help to the remaining dependant members of the family of the deceased and who are left in lurch, factual enquiry ought to be made by the competent authority to arrive at its own conclusion of facts as to whether this assertion of other earning member living separately is factually correct or no. If it is found, as a matter of fact, that the other earning member of the family at the time of death had already started living separately and not providing financial assistance to the remaining dependants of the family, compassionate appointment must follow to eligible dependant of the family. However, in the enquiry, if it is found that the claim is only to get employment without there being any need because other earning member of the family is not living separately and providing financial support, compassionate appointment may not follow. The aforesaid enquiry is required to be done even though the policy does not categorically state so. The State should consider by incorporating amendments in the policy to death with this such contingency where it is found that on the date of death of

government servant, the other earning member was living separately and not providing any financial help.”

8. Similarly, this Court in the case of **Pramod Mishra v. State of Chhattisgarh & Others, W.P.S. No. 7039 of 2016**, decided on **24.11.2017**, referring to the case of **Smt. Sulochana Netam** (supra), in paragraph 3, has held as follows:

“3. This Court in the case of Smt. Sulochana Netam Vs. State of Chhattisgarh and Ors. (WPS No.2728 of 2017, decided on 23.11.2017), has examined scope of such a provision relating to consideration of cases of compassionate appointment to one of the dependent of the deceased government servant where any member of the family is in government service. It has been held that such a case would require proper enquiry on the claim that one member of the family who is employed in government service is actually living separately and not providing any financial aid and help to other dependents of the family.”

9. The rejection of the claim of the petitioner on the said ground therefore does not appear to be justified. Accordingly, the impugned order Annexure P/1 dated 06.10.2017 is not sustainable and is set-aside. The respondents are directed to consider the case of the petitioner for compassionate appointment afresh after due verification of the dependency part of the petitioner on her brother. Let this exercise be done within a period of 90 days from the date of receipt of certified copy of this order.
10. The writ petition stands allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge

Ved