

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 90 of 2018**

Ku. Minakshi Maurya, D/o. Late Shankar Lal Maurya, Aged About 25 Years, Resident Of Ward No. 12, Sheorinarayan Tahsil Navagarh, District Janjgir- Champa, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through Its Secretary, Revenue And Administration Department, Mahanadi Bhawan, New Raipur, Chhattisgarh.
2. The Inspector General, Registration And Stamp Superintendent, In Front Of State Election Commission Office- Old Ministerial, Near D.K. Bhawan, Raipur, District Raipur, Chhattisgarh.
3. The District Registrar, Land Registration Branch Dhamtari, District Dhamtari, Chhattisgarh.
4. The Collector, District Dhamtari, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Ravi Maheshwari, Advocate
For State/Respondents	:	Mr. Neeraj Pradhan, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****27.01.2020**

1. Challenge in this petition is to the order dated 28.06.2017 (Annexure P-5) wherein the application of petitioner for compassionate appointment was rejected on the ground that the brother of the petitioner namely Laxminarayan is already working with State in the Health Department as Multi Purpose Worker (M.P.W.).
2. The facts of this case are that the father of the petitioner Late Shankar Lal Maurya was working on the post of Clerk in the

Revenue Department of the State i.e. Registration & Stamp. He died on 27.04.2016 in harness. He left behind five children namely Mandakani, Anuradha, Laxminarayan, Rajani & Minakshi (the Petitioner). The other three sisters Mandakani, Anuradha & Rajani are married and it is pleaded that the brother Laxminarayan also got married who is working and living separately along with his wife. It is contended on behalf of the petitioner and supported by an affidavit by mother/ wife of the deceased Purnima Maurya that they were completely dependent on the deceased. The affidavit also contends the fact that the son is living separately at Kharod with his wife, he does not support the economic demand of family of petitioner. It is further contended that the rejection of the application of the petitioner for compassionate appointment is on the basis of circular / direction subsequently issued on 29.08.2016 i.e. subsequent to death of Shankar Lal Maurya who died on 27.04.2016. Therefore, the said direction dated 29.08.2016 (Annexure R-2) is not applicable to the prayer of petitioner as the petitioner had already made an application for compassionate appointment prior to issuance of direction.

3. State counsel would submit that as per the policy, the order is well merited as one of the son of the deceased is already working in the Government Department and as per the policy, if someone is working in Government Department then in such case the compassionate appointment cannot be claimed as a matter of right.

4. After perusal of the facts, it shows that the issue raised is covered by the judgment rendered in case of ***Canara Bank & Another v. M. Mahesh Kumar and other connected cases*** reported in ***(2015) 7 SCC 412*** wherein it is 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 ***Lileshwar Prasad Tiwary v. State of Madhya Pradesh & Ors.***, passed in WPS No.1695 of 2005, decided on 18.03.2008, while deciding the similar issued 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."

5. 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 *Lilleshwar 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”

6. By application of the aforesaid principle and the circular, which appears that as on the date of death on 27.04.2016, the circular dated 14.06.2013 was in operation, which is filed as Annexure R-1. The subsequent circular on which the State placed its reliance is dated 29.08.2016 (Annexure R-2). Therefore, the ratio as laid down by the Supreme Court and this Court would show that the order of rejection of the application for compassionate appointment by order dated 28.06.2017 (Annexure P-5) is based on the subsequent circular and therefore cannot be sustained. Accordingly, the same is set aside. The case is remitted back to the respondent State to decide the claim of the petitioner in the light of the circular dated 14.06.2013, which was existing on the date of death of the deceased on 27.04.2016.
7. 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 a copy of this order.

Sd/-
(Goutam Bhaduri)
Judge