

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 663 of 2011**

Jaipuran (Dead)

1(A) Vijeshwari Wd/o. Late Jaipuran, aged about 40 years,

1(B) Ramkeshwar S/o. Late Jaipuran, aged about 20 years,

Both R/o. Village Dumariy, Tehsil Baikunthpur, District Korea, Chhattisgarh

---- Petitioners**Versus**

1. State of Chhattisgarh, through: the Secretary, Public Works Department, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh
2. The Chief Engineer, Public Works Department, Bilaspur Area, District Bilaspur, Chhattisgarh
3. The Superintending Engineer, Public Works Department, Ambikapur Zone, District Surguja, Chhattisgarh
4. The Executive Engineer, Public Works Department, Koriya Division, Manendragarh, Chhattisgarh
5. The Sub-Divisional Officer, Public Works Department, Baikunthpur, District Koriya, Chhattisgarh

---- Respondents

For Petitioners	:	Mr. Ashok Kumar Shukla, Advocate
For State	:	Mr. Somkant Verma, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****03/02/2020**

1. The challenge in the present writ petition is to the order Annexure P/13 dated 21.09.2010, whereby the respondent No.3 has rejected the representation of the petitioner claiming for compassionate appointment.
2. The rejection of the representation was only on the ground that the deceased employee late Gulab Ram was not a regular employee of the State Government. The relevant facts for adjudication of the present writ petition is that the father of the original petitioner late

Gulab Ram was working as a permanent Gangman under the contingency establishment in the Public Works Department under the respondents. The said employee died in harness on 05.08.2003. Annexure P/1 is the death certificate of the said person. On the death of the said employee, his son Jaipuran filed a claim application for compassionate appointment, which was not decided for a very long time by the respondents. This led to the filing of the writ petition i.e. WPS No. 3581/2009. The said writ petition was disposed of on 20.07.2009, wherein this Court directed the petitioner to file a fresh representation before the authorities concerned and the authorities were directed to decide the same on its own merits within a period of 3 months. The petitioner thereafter approached the authorities concerned, who have since passed the order (Annexure P/13) on 21.09.2010. The rejection of the petitioner's claim was on the ground that the father of the petitioner was not in regular service of the respondents. It is this order, which has led to the filing of the present writ petition.

3. The counsel for the petitioner submits that since the date of death of the deceased employee was 05.08.2003 and by that time the new policy of the State Government for compassionate appointment had already come into force vide their order dated 10.06.2003. According to the said scheme for compassionate appointment, the terms **“Deceased Government Employee”** included the person working in the Contingency services/Work charged contingency establishment as a permanent employee.
4. According to the petitioner, the fact that the deceased employee was a permanent Gangman in the contingency establishment of the

respondents is not disputed as is evident from the correspondences made by the Department themselves. The counsel for the petitioner refers to the document (Annexure P/9) issued by the Executive Engineer dated 01.12.2006, wherein he has referred the deceased employee as a permanent labourer and who died in harness on 05.08.2003. He further refers to the letter dated 25.10.2005 issued by the Sub-Divisional Officer under whom the deceased employee was working, who has also mentioned the status of the deceased employee to be that of a permanent labourer. The Sub-Divisional Officer had forwarded the application for grant of compassionate appointment of the petitioner.

5. The counsel for the petitioner submits that pending the writ petition, the son of the deceased employee i.e. the original petitioner- Jaipuran has also died on 27.03.2014 and thereafter his wife and his son had been substituted and who have been prosecuting the case thereafter. According to the petitioner, on account of the death of Jaipuran-the original petitioner, the claim for compassionate appointment may now be considered for the petitioner No.1(B) namely Ramkeshwar, who would be the grandson of the deceased employee. The petitioner also refers to a document issued by the authorities concerned, whereby in the past a compassionate appointment has been given to a grandson as is evident from Annexure P/15 dated 07.01.1999.
6. So far as the claim of the petitioner being rejected on the ground of the deceased employee not being a regular employee is concerned, this Court has already in a writ petition i.e. **WPS No. 5754/2019**

(Shivan Lal Netam v. State of Chhattisgarh & Others) settled this issue, wherein again in a case for compassionate appointment, this Court allowing the writ petition had relying upon the earlier decision of this Court in the case of **“Taman Lal v. State of Chhattisgarh & Anr.” WPS No. 3685/2011**, decided on 30.07.2018 and had in paragraph Nos. 9 & 10 held as under:-

“9. This Court had an occasion of recently dealing with an identical set of facts in WPS No. 3685/2011 (Taman Lal v. State of Chhattisgarh & Anr.) decided on 30.07.2018, whereby dealing with the facts and circumstances of the case, in paragraphs No.12, 13 & 17 had held as under:

“12. So far as the definition of permanent employee is concerned, it would be relevant to take note of the provision of Rule 2(b) and 2(c) of the Chhattisgarh (Work Charge and Contingency Paid Employees) Pension Rules, 1979.

“(b) “Work-charged employees means” a person employed upon the actual execution, as distinct from general supervision of a specified work or upon subordinate supervision of the departmental labour, store, running and repairs of electrical equipment and machinery in connection with such work, excluding the daily paid labour and muster-role employee employed on the work.

(c) “Permanent employee” means a contingency paid employee or a work-charged employee who has completed fifteen years of service or more on or after the 1st January, 1974:”

13. As per the definition of permanent employee as referred herein above it clearly reflect that, the requirement to become a permanent employee was not an order of regularization but it the length of service which matters. The moment an employee has put in more than 15 years of service, he attains the status of a permanent employee.

17. It would be trite at this juncture to refer to the order of this Court in the earlier Writ Petition WPS No. 180/2008 which was disposed off on 09/09/2009 relying upon the judgment of this Court in the case of Govind & Ors. v. State of C.G. & Ors. [2007 2 CGLJ 29] wherein in paragraph 7 it has been held as under:-

“7. The question with regard to definition of permanent Gangman came into consideration before this Court in Govind (supra). This Court, after having considered all the aspects observed as under:-

15. Thereafter, in the Madhya Pradesh “Workcharged and Contingency Paid Employees Revision of Pay Rules, 1977, framed under the proviso to Article 309 of the Constitution of India, the post of gangman was shown at serial No. (xxvii) in Annexure-I, (under Rule 3), under the column “name of the post held by a

workcharged or contingency paid employee". The definition of the contingency paid employee" and "workcharged employee" are the same under the provisions of the Rules, 1976 and that of the Rules, 1979. In Rules, 1979, the 'permanent employee' was defined in Rule 2(c) as a workcharged employee who has completed 15 years of service on or after 1.1.1974. Reading the circulars dated 14.6.1974 and 29.9.1975, Rule 2(h) of the Rules, 8 of the Rules, 1976 Annexure 1 to Rules 1977 and the definition enshrined in Rule 2(b) and in Rule 2(c) i.e. 'permanent employees' under Rules, 1979 together, it clearly follows that the permanent gangmen are governed by the same policy for superannuation, as is applicable to the Class IV government employees, It is not in dispute that the amendment to F.R. 56 under the Act, 1967, as amended by the Madhya Pradesh Shashkiya Sevak (Adhivarshiki-Ayu) Sanshodhan Adhiniyam, 1999 (M.P. Act No.13 of 1999), published in the Gazette (Extraordinary) on 29th April, 1999, provides for age of retirement to the Class IV government servants on attaining the age of 62 years."

10. Given the aforesaid factual positions and the legal positions as has been laid down by this Court in the case of "Taman Lal" (supra) and also taking note of the observations of the Sub-Divisional Officer, so far as the status of the father of the petitioner is concerned vide Annexure P/5, this Court has no hesitation in reaching to the conclusion that undisputedly the father of the petitioner was working in the contingency establishment and was working as a permanent gang man. The scheme for compassionate appointment is also made applicable for the contingency establishment, who are working on permanent basis."

7. Applying the same analogy in the instant case also, this Court is of the opinion that the impugned order Annexure P/13, which has been passed only on the ground of treating the deceased employee not being a regular employee of the State Government to be bad in law. The impugned order, therefore, deserves to be and is accordingly set-aside/quashed and the matter stands remitted back to the respondents No.3 & 4 for fresh consideration of the case of the petitioner No.1(B)-Ramkeshwar, son of late Jaipuram for the purpose of compassionate appointment.
8. It is made clear that while considering the case of Ramkeshwar the authorities would be at liberty to consider whether compassionate

appointment can be granted to the grandson of the deceased employee or not. Considering the fact that the petition is of the year 2011, it is expected that the respondents No.3 & 4 shall take a decision on the claim of the petitioner at the earliest preferably within a period of 90 days from the date of receipt of the copy of this order.

9. With the aforesaid observations, the present writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved