

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 1261 of 2017

1. Rajendra Jagat S/o Late Shri Ramesh Kumar Jagat, Aged About 37 Years
R/o Hospital Road Haradi Bazar, Police Out Post Haradi Bazar, Tahsil
Katghora, District Korba, ., Chhattisgarh
2. Smt. Beena Jagat Wd/o Late Shri Ramesh Kumar Jagat, Aged About 53
Years Caste Gond R/o Hospital Road Haradi Bazar, Police Out Post Haradi
Bazar, Tahsil Katghora, District Korba Chhattisgarh.
--- **Petitioners**

Versus

1. State of Chhattisgarh through the Secretary, Department of Home and
Police Mantralaya, Mahanadi Bhawan, Raipur Chhattisgarh.
2. The Director General of Police, Raipur , District : Raipur, Chhattisgarh
3. The Inspector General of Police, Korba, District : Korba, Chhattisgarh
4. The Superintendant of Police, District Korba Chhattisgarh. --- **Respondents**

For the Petitioners : Mr. Alok Kumar Pandey, Advocate

For the State : Mr. Neeraj Pradhan, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

30-01-2020

1. The challenge made in this writ petition is to the order dated
29.12.2016 (Annexure P-1) whereby the application of the
petitioner for compassionate appointment was rejected on the
ground that some family member of the deceased is already in
Government Job.
2. The instant petition is preferred by the son of deceased Rajendra
Jagat and the mother is also made a petitioner. It is pleaded that
the father of the petitioner No.1 namely Ramesh Kumar Jagat died
in harness on 28.07.2016 while he was serving in Police

Department as Assistant Sub-Inspector. The petitioners contended that they were dependants of deceased and daughter Smt. Devki Sidar has already been married and is residing with her husband and one brother Rakesh Kumar Jagat got employment of State Government in Sept. 2016. It is further contended that petitioner No.1 Rajendra Kumar Jagat and mother resided separately. The claim for compassionate appointment of the petitioner was dismissed on the ground that one of the brothers is already in service.

3. As per the return filed by the State , initially a circular was issued on 10.06.2003 for compassionate appointment which was amended on 29.08.2016. The application for compassionate appointment was rejected by order dated 28.12.2016 (Annexure P-1) on the ground that the brother of petitioner no.1 is in Government Service which is in accordance with Policy filed by the State dated 29.08.2016.
4. The only question arising for consideration is as to whether the circular dated 29.08.2016 would be applicable or the policy which was in force at the time of death of employee would be applicable.
5. The issue is no longer *res integra* and decided by this Court in series of decisions. In one of such decision in case of ***Lilleshwar Prasad Tiwari Vs. The State of Madhya Pradesh*** and others passed by this Court on 18.03.2010 in WPS No.1695 of 2005, it was held thus :

“(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. ”

6. 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., after the death of the Government employee which was on 28.07.2016. Therefore, the conclusion is obvious that it was Circular of 2013 which would be applicable and not the Circular of 2016.

7. In the result, the petition is allowed. The impugned order is quashed and the respondents are directed to consider petitioners' claim for compassionate appointment strictly in accordance with the policy dated 14.06.2013.

**Sd/-
GOUTAM BHADURI
JUDGE**