

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 5628 of 2019**

Vinay Kumar S/o Late Shri Bhoj Raj Meshram Aged About 39 Years R/o Kosa Nagar, Post Office Nehru Nagar, Tehsil And District Durg Chhattisgarh., District : Durg, Chhattisgarh --- **Petitioners**

Versus

Municipal Corporation through the Commissioner, Bhilai ., District : Durg, Chhattisgarh --- **Respondent**

For the Petitioner : Mr. Abhishek Pandey, Advocate

For the State/Respondents : Mr. H.B. Agrawal, Sr. Advocate with Ms. Richa Dwivedi, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

13-02-2020

1. The grievance of the petitioner is that his father Bhoj Ram was working as Labour Class-IV in the Municipal Corporation, who died in harness on 05.08.2016. Subsequently the petitioner submitted an application for compassionate appointment on 22.08.2016. however, the same has been rejected on the ground that one of the members of the family of the petitioner is already in government job.
2. It is contended that the brother of the petitioner is not in the Government Service, however, he is in NMDC and resides separately and the petitioner was completely dependent on deceased. He further submits that the Municipal Corporation has rejected the application on the ground that as per

the existing policy on 29.08.2016 (Annexure R-1), the petitioner would not be entitled for compassionate appointment. He submits that the issue has already been set at rest by the authoritative judgment of this Court passed in WPS No. 3306 of 2017 on 12.09.2017, which is further reiterated in WPS No.4383 of 2016 by judgment dated 06.10.2017.

3. In WPS No.4383 of 2016, the following order has been passed :-

“3. The only question arising for consideration is whether the circular dated 29.08.2016 would be applicable or the policy which was in force on the date of death of the employee would be applicable.

4. This issue is no longer *res integra* and decided by this Court in series of decisions. In one of such decision in case of Lileshar Prasad Tiwary 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 superceded by issuance of circular dated 10-06-1994 (AnnexureA-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. 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 conclusion is obvious that it was circular of 2013 which would be applicable and not the circular of 2016.

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

4. In view of the aforesaid dictum laid down and since the father of petitioner died on 05.08.2016 and on that date the Circular dated 29.08.2016 Annexure R-1 was not in existence, consequently, the denial of compassionate appointment to the petitioner vide order/communication dated 22.10.2018 (Annexure P-4) as contended by the Municipal Corporation in their reply on the basis of Annexure R-1, cannot be sustained. In the result, Annexure P-4 dated 22.10.2018 is set aside.

5. The Respondent/Municipal Corporation is directed to consider the claim of the petitioner for compassionate appointment strictly in accordance with the

Policy dated 14.06.2013 which was existing on that date. The petitioner may file a fresh application for compassionate appointment along-with the copy of this order and copy of circular dated 14.06.2013 and on such an application being filed, the same shall be decided within a reasonable time.

6. Accordingly, this writ petition stands allowed to the extent indicated above.

Sd/-

**GOUTAM BHADURI
JUDGE**

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