

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 1174 of 2021**

Gopal Prasad Jagat S/o Late Shri Jamun Singh, Aged About 31 Years R/o
Village Kirari, Police Station And Tahsil Akaltara, District Janjgir Champa
Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Public Works Department,
Secretariat, Mahanadi Bhawan, Nava Raipur, Atal Nagar, District Raipur
Chhattisgarh
2. Superintendent Engineer, Public Works Department, Bilaspur Division
District Bilaspur Chhattisgarh
3. Executive Engineer, Public Works Department, Champa Division District
Janjgir Champa Chhattisgarh
4. Sub Divisional Officer, Public Works Department, (B/r), Sub Division Sakti,
Sakti, Janjgir Champa (Chhattisgarh)

---- Respondents

For Petitioner	:	Mr. Anumeh Shrivastava, Advocate
For State	:	Ms. Hamida Siddiqui, Dy. AG

Hon'ble Shri Justice P. Sam Koshy**Order on Board****23/03/2021**

1. The challenge in the present writ petition is to the impugned order
Annexure P-1 dated 23.04.2020 whereby the claim of the petitioner for
compassionate appointment has been rejected by the respondents.
2. The ground of rejection is that one of the family members is already in
government employment and under the policy they have been declared
ineligible for compassionate appointment.

3. Facts of the case in brief is that the father of the petitioner late Jamun Singh was working as a Driver under the Public Works Department who died in harness on 11.12.2019. The deceased employee left behind his widow namely Smt. Raj Bai and the petitioner the younger son and three more sisters who were directly dependent upon the earnings of the deceased employee. There was yet another son of the deceased employee namely Shanti Kumar who is working as a Peon at District Court Establishment, Raigarh and he has his own separate family wife and children staying separately at a different place altogether and who was not supporting the present applicant or other legal heirs of the deceased employee. However, on the technical ground of the policy of the State Government for declaring a person ineligible for compassionate appointment on there being another member in the family in Government employment, the claim of the petitioner also has been rejected.
4. Contention of the petitioner is that while rejecting the claim of the claim of the petitioner it was the bounded duty of the respondents to first got the dependency part verified and reach to a conclusion whether the petitioner and other legal heirs were being supported financially or otherwise by the said brother of the petitioner who is working as Peon in District Court Establishment, Raigarh and only then the authorities should have rejected the claim of the petitioner.
5. There is specific averment made by the petitioner that elder brother of the petitioner is already married and he has his own family, wife and children to take care of and he is not able to support the petitioner in any manner given the limited source of income that he has to sustain himself.
6. Learned counsel for the petitioner referred to the judgment of this Court passed in the case of **Smt. Sulochana Netam Vs. State of Chhattisgarh & Others** passed in **WPS 2728/2017** decided on 23.11.2017 and other

similarly placed persons where this Court has allowed the writ petition of similar nature.

7. State counsel on the other hand opposing the petition submits that it is a case where as a policy decision the State has decided to declare all those persons ineligible for compassionate appointment where there is already another member in the family who is in Government employment. According to the State counsel in the instant case the elder brother of the petitioner is in government employment and is working as Peon in District Court Establishment, Raigarh. Therefore, under the scheme the respondents having rejected the claim of the petitioner, it cannot be said to be arbitrary or malafide in any manner and there is hardly any scope left for this Court to make interference at this juncture.
8. Having heard the contentions put forth on either side and on perusal of record, recently this Court had an occasion of dealing with the similar issue in the case of **Sanat Kumar Shyamale Vs. State of Chhattisgarh & Others** passed in **WPS 407/2021** which was decided on 09.02.2021. In the said writ petition this Court dealing with the judgment of this High Court rendered in the past on identical issue in Paragraph 9 to 13 have held as under :-

“9. At this juncture, it would be relevant to take note of a recent judgement passed by this Court in WPS No. 1025/2020 (Nandini Pradhan Vs. State of Chhattisgarh & Others). The said Writ Petition was allowed on 18.2.2020 wherein the Court has relied upon the judgment passed on an earlier occasion in the case of Smt. Sulochana Netam Vs. State of Chhattisgarh & Others in WPS No.2728/2017 decided on 23.11.2017 wherein this Court had allowed the said Writ Petition and set aside the earlier order passed by the authorities and had remitted the matter back for a fresh consideration of the claim of Petitioner after due verification of dependency aspect, firstly upon the deceased employee and

secondly whether the brothers of Petitioner who are in government employment are providing any assistance to Petitioner or not and also whether those brothers have married and have their own family or not and whether they are staying along with Petitioner or not. These are the facts which ought to have been verified while rejecting the claim of Petitioner in the present Writ Petition and which does not seem to have been considered by the authorities and they simply passed an order on hypertechnical ground specifically disentitling the Petitioner for claiming compassionate appointment in the event of family members of deceased employee being in government employment.

10. This Court is of the firm view that the intention by which the said clause inserted by the State Government in the policy of compassionate appointment was to ensure that the compassionate appointment can be given to a person whose is more needy. It never meant that in the event of there being somebody in the government employment in the family of deceased employee, the claim for compassionate appointment would stand rejected only on that ground. Moreover, in the opinion of this Court the possibility cannot be ruled out of the so called earning members and the so called persons who are in government employment from among the family members of deceased employee having their own family liabilities and in some cases are far away from the place of deceased employee and staying along with their own family. The rejection of the claim for compassionate appointment to a person who was directly dependent upon the earnings of deceased employee would be arbitrary and would also be in contravention of the intentions of framing the scheme for compassionate appointment.

11. In the case of Sulochana (supra), in paragraph 9, this Court dealing with the said issue has held as under:-“9. In the considered opinion of this Court, in a case, where claim of compassionate appointment is made on the ground that the other member of the

family had started living separately and not providing any financial help to the remaining dependent members of the family, who are at 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 not. 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 follow 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 deal 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.”

12. The aforesaid principles of law laid down in the case of Sulochana (supra) have been followed by this Court in a large number of cases and that is the consistent stand of the various branches of this Court in the past many years now. This Court is also in the given circumstances inclined to hold that the rejection of the application of Petitioner for compassionate appointment by a single line order only on the basis of the clause mentioned in the scheme or policy of compassionate appointment of the State Government would not be sustainable. There ought to have been some sort of preliminary enquiry so far as dependency part is concerned conducted by the Respondents prior to reaching to a conclusion.

13. Thus, for the aforesaid reasons, the impugned order, Annexure P-1, deserves to be and is accordingly set aside. The authorities are directed to consider the claim of Petitioner afresh taking into consideration the observations made by this Court in the preceding paragraphs and take a fresh decision at the earliest within an outer limit of 90 days from the date of receipt of copy of this order.”

9. Given the aforesaid judicial pronouncement of this Court, this Court is of the opinion that present case is also is one which is squarely covered under the judgments enunciated in those judgments and therefore the impugned order in the present case also needs to be reconsidered by the authorities concerned before rejecting the same.
10. In view of the same the impugned order Annexure P-1 dated 23.4.2020 is set aside/ quashed and matter stands remitted back to the respondent no.3 for a fresh consideration on the claim of the petitioner, particularly in the light of the various judgments of this Court rendered on the issue in the recent past and subject to the conducting of a preliminary enquiry so far as dependency part is concerned, the authorities shall take a fresh decision at the earliest preferably within a period of 4 months from the date of receipt of copy of this order.
11. With the aforesaid observation, the writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Rohit