

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 1426 of 2021**

Yogendra Vishwakarma S/o Late Mr. Rajkumar Vishwakarma Aged About
27 Years R/o Village Dhabapara, Choriya, Post Sarona, Tahsil Narharpur,
Distt. Uttar Baster Kanker (Chhattisgarh)

---- Petitioner**Versus**

1. The State Of Chhattisgarh Through Its Secretary, School Education Department, Mahanadi Bhawan, Naya Raipur, Distt. Raipur (Chhattisgarh)
2. District Education Officer Distt. Uttar Baster Kanker Chhattisgarh
3. Block Education Officer Narharpur, Distt. Uttar Baster Kanker Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Parag Kotecha, Advocate
For State	:	Mr. S. S. Thakur, PL

Hon'ble Shri Justice P. Sam Koshy**Order on Board****25/03/2021**

1. Aggrieved by the order Annexure P-2 dated 30.07.2020 passed by the respondents the present writ petition has been filed. Vide the said impugned order the respondents authorities have rejected the claim of the petitioner for compassionate appointment on the ground of brother of the petitioner being already in Government employment.
2. The contention of the petitioner in the present writ petition is that the father of the petitioner Late Rajkumar Vishwakarma working on the post of Head Master died in harness on 16.10.2019 immediately after death of the father the sole bread earner of the family. The petitioner who was solely dependent upon the deceased and on the income of the deceased, moved an application before the respondents for grant of compassionate

appointment vide application dated 07.12.2019. However the respondents have vide the impugned order rejected the same on the ground that elder brother of the petitioner being in government employment hence under the policy of the State Government the petitioner would become disentitled for the compassionate appointment.

3. The ground of challenge of the petitioner is that, true it is, that father of the petitioner died in harness on 16.10.2019 and deceased employee left behind the petitioner and his elder brother as the sole surviving members in the family. According to the petitioner his elder brother Chadraprakash Vishwakarma is already married and his working on the post of Constable under the respondents and is presently posted at District Kondagaon. According to the petitioner his brother being already a married person and has his own family and responsibilities to take care of, he was not supporting the petitioner even before the death of the deceased employee or subsequently. The petitioner in fact was totally dependent upon the earnings of the deceased employee, therefore respondent authorities at least should have conducted a sort of preliminary enquiry so far as dependency part is concerned and thereafter should have taken an appropriate decision.
4. Counsel for the petitioner relied upon the decision of this Court in the case of **Smt. Sarvari Baghel & Anr. Vs. State of Chhattisgarh & Others, passed in WPS 544/2021**, wherein this Court on identical set of facts had set aside the order of rejection and had remitted matter back to the authorities concerned for a fresh consideration on the claim of the petitioner after determining the enquiry on the dependency aspect. The petitioner also relied upon the judgment of this Court in **WPS No. 2728 of 2017** in the case of **Smt. Sulochana Netam vs. State of Chhattisgarh and others**, decided on **23-11-2017** and also in **WPS No. 5848 of 2018**

(Kumari Lavli Thakur vs. State of Chhattisgarh and others) which was disposed of on 6-9-2018.

5. State counsel on the other hand opposing the petition submits that it is a case where rejection has been purely on the basis of policy for compassionate appointment governing the field. Therefore it cannot be said in contravention to the policy for compassionate appointment.
6. Having heard the contentions put forth on either side and on perusal of records, it would be relevant at this juncture to consider the decision of this Court on the subject issue.
7. In **Smt. Sulochana Netam v. State of Chhattisgarh & Others, Writ Petition (S) No. 2728 of 2017, decided on 23.11.2017**, this Court has examined scope of such a provision relating to consideration of cases of compassionate appointment to one of the dependent of the deceased government servant where any member of the family is in government service. It has been held that such a case would require proper enquiry on the claim that one member of the family who is employed in government service is actually living separately and not providing any financial aid and help to other dependents in the family.
8. It would be relevant, at this juncture, to quote para 9 of the case of **Smt. Sulochana Netam** (supra) and it was the basis for all subsequent decisions of this court in similar nature of dispute.

“9. In the considered opinion of this Court, in a case where claim of compassionate appointment is made on the ground that the other earning member of the family had started living separately and was not providing any financial help to the remaining dependent members of the family of the deceased and who are left in 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 no. 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 death 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”.

9. Given the aforesaid decisions rendered by this court, it is necessary, at this juncture, to consider the fact of the present case also wherein from the contention of the petitioner, it appears that there is this brother of the petitioner is in government employment, but it is being categorically contended that he was already married and he has got his own family and children to take care of and that he was not providing any financial assistance to the petitioner. What is more required to be considered is as soon as one family member gets married and he has his own family and children to care of, will the said person thereafter fall within the definition of a family of the deceased employee. What is all more necessary to be considered is whether on the date of death of the deceased the petitioner herein were dependent upon the said employee or upon the earning of the deceased employee. These are facts which all had to be subjected to an inquiry by the respondent authority before reaching to the conclusion so far as grant of employment is concerned.
10. A bare reading of the impugned order dated 30-07-2020(Annexure P/2) would reveal that no such enquiry as such has been conducted or

considered by the authority concerned before rejecting the claim of the petitioners. Under these circumstances, the impugned order dated 30-07-2020(Annexure P/2) would not be sustainable and the matter needs to be reconsidered at the level of the respondents

11. In view of the aforesaid judicial pronouncement passed by this Court and also in the light of the many other decisions of this Court of similar nature when facts of the present case is taken note of it would clearly reveal that before passing the impugned order dated 30.07.2020 there does not seem to be any preliminary enquiry conducted so far as dependency aspect is concerned and from the admitted factual matrix it appears that brother of the petitioner who is said to be in government employment is already a married person and is living at a far away place with his own family and other responsibilities to take care of.
12. Accordingly, the case of the petitioners stands remitted back to the authorities concerned for reconsidering the claim of the petitioners, subject to an enquiry so far as the dependency part is concerned and a fresh order be taken on merit at the earliest, preferably within a period of 90 days from the date of receipt of copy of this order.
13. With the aforesaid observation, the present writ petition stands allowed disposed of.

Sd/-
(P. Sam Koshy)
Judge

Rohit