

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (SERVICE) NO. 2349 OF 2021**

1. Sudhir Kumar, S/o Late Shri Mahendra Kumar Toppo, age 19 years, R/o Village Bodsara, Tahsil Janjgir, District Janjgir-Champa (CG)
2. Smt. Kanchan Bai Toppo, W/o Late Shri Mahendra Kumar Toppo, age 45 years, R/o Village Bodsara, Tahsil Janjgir, District Janjgir-Champa (CG)

... Petitioners**versus**

1. State of Chhattisgarh, through Secretary, Department of Health & Family Welfare, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District Raipur (CG)
2. Director, Department of Health, Mantralaya, Indrawati Bhawan, 3rd Floor, Atal Nagar, Naya Raipur, District Raipur (CG)
3. Chief Medical & Health Officer, District Raigarh (CG)
4. Block Medical Officer, Community Health Centre, Chaple, Tahsil Kharsia, District Raigarh CG)

... Respondents

For Petitioners	:	Mr. Sangharsh Pandey, Advocate.
For Respondents	:	Mr. Rahul Jha, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****01/07/2021**

1. Aggrieved by the decision of the Respondents in rejecting the claim for grant of compassionate appointment, vide Annexure P-1, dated 24.8.2020, the present Writ Petition has been filed by Petitioners.
2. Vide the impugned Order dated 24.8.2020, the claim of Petitioner No.1 for grant of compassionate appointment has been rejected. The reason shown for the rejection of the claim was on the ground that the elder brother to Petitioner No.1 is already in government employment and therefore as per the policy, the Petitioner No.1 is not entitled for compassionate appointment.
3. Contention of learned Counsel for Petitioners is that on the date of death of the deceased employee, Late Mahendra Kumar Toppo, i.e., 30.7.2019, he was survived by his widow, two sons and two daughters. The eldest son in the family was already in the government employment since long even

before the death of the deceased employee and he was also married prior to the death of the deceased employee and he has his own wife and children to take care of and as such he was not dependent upon the income of the deceased employee, therefore, the Respondents ought to have first conducted an enquiry so far as the dependency part is concerned and only then should the Respondents have taken a decision.

4. Further contention of learned Counsel for Petitioners is that there are two more sisters of Petitioner No.1 and daughters of Petitioner No.2 who were also dependent upon the deceased employee and all of whom are finding it difficult to sustain after the death of the bread earner of the family, i.e., the father of Petitioner No.1 and husband of Petitioner No.2.
5. Learned State Counsel opposing the Writ Petition submits that since the elder brother of Petitioner No.1 is already in government employment, in terms of the policy for compassionate appointment the candidature of the Applicant has been rejected and in the absence of any challenge to the policy, the decision of the Respondents cannot be said to be bad.
6. At this juncture, it would be relevant to take note of a recent judgment 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 this 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 the Applicant after due verification of dependency aspect, firstly upon the deceased employee and secondly whether the brothers of Applicant who are in government employment are providing any assistance to him or not and also whether those brothers have married and have their own family or not and whether they are staying along with Applicant or not. These are

the facts which ought to have been verified while rejecting the claim of Petitioner No.1 in the present Writ Petition and which does not seem to have been considered by the Authorities and they simply passed an order on hyper technical ground specifically disentitling the Petitioner No.1 for claiming compassionate appointment in the event of family members of the deceased employee being in government employment.

7. 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 who 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 the 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 the deceased employee would be arbitrary and would also be in contravention of the intentions of framing the scheme for compassionate appointment.
8. In the case of "Sulochana" (supra), in paragraph 9, this Court dealing with the 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.”

9. 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 High 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 No.1 for compassionate appointment by a single line order only on the basis of the clause mentioned in the scheme or policy of the Compassionate Appointment of the State Government would not be sustainable. There ought to have been some sort of preliminary enquiry so far as the dependency part is concerned conducted by the Respondents prior to reaching to a conclusion.

10. Considering the fact that there is an elder brother in the government employment, what needs to be verified is whether the said person can be brought within the ambit of dependent. Whether the said person can be compelled to take care of Petitioner No.1 and his widowed mother and sisters particularly when he has his own family and children to take care of and he has been living separately altogether. It would had been a different case if the government employee i.e. the elder brother to Petitioner No.1 could have been unmarried and was living along with the Petitioners which could have forced us to infer that he was there for sustenance of the family.

11. In the absence of any such situation, the policy of the State Government to that extent so far as the compassionate appointment is concerned, has to be read down to be decided only after an enquiry which needs to be conducted by the Respondents, ascertaining the dependency part and also in respect of any support which the Petitioner No.1 is getting from the elder brother. For the aforesaid reasons, the impugned order needs to be reconsidered and the rejection of the candidature of Petitioner No.1 by strict interpretation of the policy would not be sustainable.

12. Thus, for all the aforesaid reasons, the impugned Order, Annexure P-1 dated 24.8.2020 deserves to be and is accordingly set aside. The authorities are directed to reconsider the claim of the Petitioner No.1 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.

13. Writ Petition is allowed and disposed of accordingly.

**Sd/-
(P. Sam Koshy)
JUDGE**

sharad