

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 3106 of 2021

Vaibhav Kumar Bhagat S/o Shri Nansu Ram Bhagat, Aged About 21 Years, Resident Of Police Line Urdana, District Raigarh, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Home Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District Raipur, Chhattisgarh
2. Superintendent Of Police, District Raigarh, Chhattisgarh.

---Respondents

For Petitioner	:	Shri Ajay Shrivastava, Advocate.
For State	:	Mr. Amit Buxy, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

30.06.2021.

1. Aggrieved by the order dated 08.01.2021 passed by the respondent no.2 the present writ petition has been filed. Vide the said impugned order, the respondents have rejected the application of the petitioner for compassionate appointment. The reason for rejection is that the two brothers of the petitioner namely Mukesh Bhagat and Arun Beck are in government employment.
2. The facts of the case, in brief relevant for disposal of the present writ petition, are that the father of the petitioner late Nansu Ram Bhagat (deceased employee) was working as a Constable under the respondents. The said Nansu Ram Bhagat died in harness on

16.10.2020. On the date of death of employee Nansu Ram Bhagat the petitioner and his mother were dependent solely upon the income of the deceased employee.

3. It is necessary to mention at this juncture that the mother of the petitioner is the second wife of the deceased employee. The first wife had died sometime ago and it is after the death of the first wife the father of the petitioner entered into a second marriage from which the petitioner was born. From the said marriage, apart from the petitioner, there is one more son born and both of whom are totally unemployed and dependent upon the income of the deceased employee. The petitioner herein subsequently moved an application for compassionate appointment. However, the same has been rejected by the respondents on the ground that two of the brothers of the petitioner namely Mukesh Bhagat and Arun Beck are in government employment.
4. Contention of the petitioner is that both these persons Mukesh Bhagat and Arun Beck are born to the deceased employee from his first wife. That both were already in government employment and already got married much before the death of the deceased employee and both of them were living separately at a different place altogether and were not supporting the family of the petitioner in any manner. Since both these persons were already married and having their own family and children to take care of, they were no longer dependent upon the deceased employee nor were they part of the family at the time of death of the employee. Thus, the authorities concerned ought to have considered the claim of the petitioner after due verification of this fact as regards the dependency part and only

then they should have taken a decision. Thus, counsel for the petitioner prayed for quashment of the impugned order to that extent and for a direction to the respondents to consider the claim of the petitioner for compassionate appointment.

5. The State counsel on the other hand opposing the petition submits that since the brothers of the petitioner are 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 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 dis-entitling the Petitioner for claiming compassionate appointment in the event of family members of 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 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 dependant 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.
8. 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.”

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 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.

- 10.** Considering the fact that there are brothers in government employment, what needs to be verified is whether the said persons can be brought within the ambit of dependent. Whether the said persons can be compelled to take care of the petitioner and his widowed mother particularly when they have their own family and children to take care of and they have been living separately altogether. It would have been a different case if the government employees i.e. the brothers of the petitioner could have been unmarried and were living along with the petitioner which could have forced us to infer that they were there for sustenance of the family.
- 11.** In the absence of any such situation, the policy of the State Govt. to that extent so far as 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 is getting from his brothers. For the aforesaid reasons, the impugned order needs to be reconsidered and the rejection of the candidature of the petitioner by strict interpretation of the policy would not be sustainable.
- 12.** Thus, for all the aforesaid reasons, the impugned order, Annexure P-1 dated 08.01.2021 deserves to be and is accordingly set aside. The authorities are directed to re-consider the claim of the 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.

13. Writ Petition is allowed and disposed of accordingly.

Sd/-

(P. Sam Koshy)
Judge

Khatai