

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.2511 of 2013**

- Animesh Michel, S/o Arun Kumar Michel, Aged About 36 Years, R/o Trikon Chowk, Bhatti Road, Kedarpur, Tahsil Ambikapur, Civil and Revenue District Surguja C.G. PS Ambikapur, Chhattisgarh

----- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Tribal Welfare Department, Mantralaya, Mahanadi Bhawan Raipur, Chhattisgarh
2. The Assistant Commissioner Tribal Welfare Department, Ambikapur, Distt. Surguja, Chhattisgarh
3. The Collector, (Tribal Development) Surguja, Ambikapur, Distt. Surguja, Chhattisgarh
4. The Block Education Officer, Ambikapur, District Surguja, Chhattisgarh

----- Respondents

For Petitioner	Mr. Shakti Raj Sinha, Adv.
For Respondent-State	Mr. Sunil Otvani, Addl. AG

Hon'ble Justice Shri Sanjay K. Agrawal**Order On Board****27/09/2021**

1. The petitioner's mother Anita Michel working as Headmistress at Sonpurkala, Block Ambikapur, District Sarguja died in harness on

09.12.2009. Thereafter, the petitioner applied for grant of compassionate appointment and vide order dated 06.01.2012 (Annexure-P/2) passed by the respondent No.3, he was granted compassionate appointment and as per eligibility criteria, he was appointed on the post of AG-III and since thereafter he was working in the Office of Block Education Officer, Ambikapur, District Surguja, but by the impugned order dated 03.07.2013 (Annexure-P/1) passed by the respondent No.3, the petitioner's appointment has been cancelled.

2. Mr. Shakti Raj Sinha, learned counsel for the petitioner, would submit that though the petitioner was granted compassionate appointment on the post of AG-III vide order dated 06.01.2012 (Annexure-P/2) passed by the respondent No.3, but subsequently vide impugned order dated 03.07.2013 (Annexure-P/1)) passed by the respondent No.3 itself, the petitioner's appointment has been cancelled on the ground that his father was already in government service on the date of appointment of the petitioner and no

opportunity of hearing has been afforded, which runs contrary to the decision rendered by this Court in the matter of Bharat Bhushan Sonwani vs State of Chhattisgarh and others¹, as such the impugned order deserves to be set aside and the matter be remitted to the respondent authorities for considering the case of the petitioner afresh for grant of compassionate appointment.

3. Mr. Sunil Otwani, learned State counsel, would support the impugned order and would submit that as per the policy of the State Government, the petitioner is not entitled to compassionate appointment.
4. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the record with utmost circumspection.
5. In the matter of Bharat Bhushan (supra), this Court has held that in order to follow the policy of the State Government, a fact finding inquiry has to be held about the dependency factor and it has been held in paras 6, 7, 8 &

¹ ILR 2021 Chhattisgarh 1533

9 as under:-

"6. 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."

7. 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.

8. Considering the fact that there is an elder brother in 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 the petitioner and his widowed mother particularly when he has his own family and children to take care of and he has been living separately altogether. It would have been a different case if the government employee i.e. the elder brother to the petitioner would 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.

9. 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 petitioners are getting from the elder brother. For the aforesaid reason, 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."

6. In that view of the matter, the impugned order dated 03.07.2013 (Annexure-P/1) is set aside and the matter is remitted to the respondent No.3 to reconsider the claim of the petitioner afresh for grant of compassionate appointment after making enquiry as to the dependency factor as held by this Court in the matter of **Bharat Bhushan** (supra) within a period of 3 months from the date of receipt of copy of this order.
7. The writ petition is allowed. No order as to cost (s).

Sd/-
Sanjay K. Agrawal
Judge