

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 3620 of 2021

1. Smt. Savita Gajbhiye W/o Late Shri Amrit Rao Gajbhiye Aged About 51 Years R/o Village Kanyadabari, Post Nahanda, Tahsil Doundilohara, Police Station Deori, District Balod Chhattisgarh
2. Ku. Priyanka Gajbhiye D/o Late Shri Amrit Rao Gajbhiye Aged About 28 Years R/o Village Kanyadabari, Post Nahanda, Tahsil Doundilohara, Police Station Deori, District Balod Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Education, Mahanadi Bhavan, Mantralaya, Police Station And Post Rakhi, Atal Nagar, New Raipur District Raipur Chhattisgarh
2. Director Office Of Director Lok Shikshan Sanchanalay, Indrawati Bhavan, Police Station And Post Rakhi, Atal Nagar, New Raipur District Raipur Chhattisgarh
3. District Education Officer (D E O) Office Of District Education Officer, Balod, District Balod Chhattisgarh

---- Respondents

For Petitioner	: Shri Abhishek Pandey, along with Ms. Laxmeen Kashyap, Advocate.
For State	: Ms. Abhyunnati Singh, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

15/07/2021

1. Aggrieved by the order dated 16.06.2021 refusing to grant compassionate appointment to the petitioners, the present writ petition has been filed. The reason assigned for refusing compassionate appointment is that the eldest son in the family of the deceased is already in Government employment.
2. The facts in brief necessary for disposal of the present writ petition are that the father of the petitioner No. 2 and husband of the petitioner No. 1 namely Lt. Amrit Rao Gajbhiye was working as a Head Master under the respondents when he died in harness on 06.02.2021. On the date of death of the deceased, he was survived by his wife, one son and two daughters.

The eldest son and the elder daughter both are already married and has been living separately much before the death of the deceased.

3. On the date of death, it was only the two petitioners herein who were dependent upon the income of the deceased directly and there was no other source of income. According to the Counsel for the petitioners, even in the ration card that the petitioners have the name of other children who are already married and are living separately, their names were not reflected and the ration card reflected the name of only the deceased employee and two petitioners herein i.e. the widow and remaining daughter.
4. According to the Counsel for the petitioners, since the eldest son in the family was already married as early as in the year 2015 and he has his wife and children to take care of and he was not providing any financial assistance to the petitioners for their sustenance. It was in the said circumstances that the petitioner No. 2 had applied for compassionate appointment which since has been refused vide the impugned order Annexure P/3 dated 16.06.2021.
5. According to the petitioners, since the elder son as his own family responsibility and liabilities, he was not in a position to financially sustain the petitioners after the death of the deceased employee and that they were exclusively dependent upon the income of the deceased alone.
6. Given the said facts, the petitioner No. 2 had moved an application for compassionate appointment which now stands rejected vide impugned order only on the technical ground of elder brother to the petitioner No. 2 being in government employment. According to the counsel for the petitioners, once when the elder son already got married during the lifetime of the deceased employee himself and he also got the

employment and was posted elsewhere, he was no longer dependent upon the deceased and he had his own family set up to take care of. That only because the elder son in the family was in employment cannot be a ground for rejecting the claim of the petitioner from being considered for compassionate appointment. According to the petitioner the authorities ought to have conducted some preliminary enquiry at least in this regard so far as ascertaining the dependency part and only thereafter authorities should have taken a decision on the claim of the petitioner for compassionate appointment. According to the petitioner the rejection of the claim application of the petitioner on the technical ground of someone in the family being in employment is bad and is also arbitrary and would also defeat the very purpose for which the policy for compassionate appointment is framed and enacted. According to the petitioner the very purpose for which the State has enacted the policy of compassionate appointment is to ensure that the family of the deceased employee is not put to the stage of penury or financial stringency, because of the death of sole bread earner of the family. If somebody in the family is already in employment what needs to be ascertained is to whether there is any dependent upon them of the dependents and whether the said person is in a capacity to sustain the widow and other dependents to the deceased.

7. All these need to be verified ascertaining after due scrutiny and only thereafter should a decision have been taken by the respondents. Thus, the impugned order to that extent deserves to be set aside/quashed and matter needs to be remitted back to the authorities for a fresh consideration after due scrutiny and ascertainment of the aforesaid facts.
8. The State counsel on the other hand opposing the petition submits that since the one brother of the petitioner 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 respondent cannot be said to be bad.

9. 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 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 hyper technical 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. Considering the fact that the brother of the petitioner No. 2 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.

14. 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 the brother. In view of the same the rejection of the impugned order only on the basis of elder son in the family being in government employment in terms of the policy of the State Government would not be sustainable. For the aforesaid reason, the impugned order needs to be reconsidered and the rejection of the candidature of the petitioner No. 2 by strict interpretation of the policy would not be sustainable.

15. Thus, for all the aforesaid reasons, the impugned order, Annexure P-3 dated 16.06.2021 deserves to be and is accordingly set aside. The authorities are directed to re-consider the claim of the Petitioners 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.

16. Writ Petition is allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge