

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 3580 of 2021

Nilesh Sahu, S/o Late Shri Kumar Ram Sahu, Aged About 28 Years R/o Village Jangalpur, Vikas Block, Dongargaon District Rajnandgaon Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, School Education Department, Mahanadi Bhawan, Nawa Raipur, District - Raipur Chhattisgarh
2. Director, Directorate Of Public Education, Indravati Bhavan, Atal Nagar, Nawa Raipur, Raipur Chhattisgarh
3. District Education Officer, Rajnandgaon, District - Rajnandgaon Chhattisgarh

---- Respondents

For Petitioner	:	Ms. Khushboo Dua, Advocate.
For State	:	Ms. Abhyunnati Singh, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

14/07/2021

1. Aggrieved by the order dated 17.06.2021, the present writ petition has been filed. Vide the impugned order respondents have rejected the claim of the petitioner for grant of compassionate appointment. The rejection of the candidature of the petitioner is on the ground that elder brother to the petitioner is already in government employment and therefore under the policy for compassionate appointment the petitioner cannot be granted appointment.
2. The brief facts relevant for disposal of the present writ petition is that the father of the petitioner was working under the respondents as Lecturer,

Government Higher Secondary School and was posted at the School At Karamtara Block Dongargaon District Rajnandgaon. The father of the petitioner died in harness on 07.04.2020. ON the date of death of deceased employee i.e. the father of the petitioner, he was survived by his widow and two sons, the petitioner and one other elder son. On the date of death of the deceased the widow and the petitioner who were totally dependent upon the income of the deceased and that other son of the deceased employee was already married long back during the lifetime of the deceased employee itself and he has his own family and children to take care of and the said son that is the elder brother of the petitioner was also living separately as he was posted elsewhere.

3. According to the petitioner, since the elder son as his own family responsibility and liabilities, he was not in a position to financially sustain the petitioner and his mother after the death of the deceased employee and that they were exclusively dependent upon the income of the deceased alone.
4. Given the said facts, the petitioner 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 being in government employment. According to the petitioner, 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

preliminary enquiry at least in this regard so far as ascertaining the dependency part and only thereafter should authorities 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 stringencies 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.

5. 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.
6. The State counsel on the other hand opposing the petition submits that since the two 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 respondent cannot be said to be bad.

7. 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.
8. 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.

9. 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.”

10. 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.
11. Considering the fact that two brothers in government employment, what needs to be verified is whether the said person 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.
12. 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 two brothers. 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 by strict interpretation of the policy would not be sustainable.

13. Thus, for all the aforesaid reasons, the impugned order, Annexure P-1 dated 17.06.2021 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.

14. Writ Petition is allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge

Rohit