

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 3665 of 2021**

Narendra Sahu, S/o Late Jagdish Chandra Sahu, Aged About 30 Years
R/o Village Jhariyapali, Post Office Devgarh, Tehsil Gharghoda, District
Raigarh, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, General Administration Department, Mantralaya, Mahanadi Bhavan, Nava Raipur, Atal Nagar, District Raipur Chhattisgarh.
2. District Education Officer, District Raigarh Chhattisgarh
3. Block Education Officer, Tamnar, District Raigarh, Chhattisgarh

----Respondents

For Petitioner	:	Mr. Anadi Sharma, Advocate
For State	:	Ms. Sunita Jain, G.A.

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

16/07/2021

1. Aggrieved by the order dated 02.03.2021 (Annexure P/1) the present writ petition has been filed. Vide the said order the claim for compassionate appointment of the petitioner has been rejected. The rejection has been on account of the elder brother of the petitioner found to be in government employment.
2. The facts in brief for disposal of the present writ petition are that the father of the petitioner was working under the respondents as a Headmaster, Middle School. On account of getting infected with the Corona Virus, father of the petitioner died in harness on 20.12.2012. The petitioner immediately thereafter moved an application for compassionate appointment, which now vide the

impugned order has been rejected leading to the filing of the present writ petition.

3. According to the petitioner, on the date of the death of the deceased, he was survived with his father aged around 82 years, his wife the widow, two sons and a daughter. Of the three children, the eldest son was already in government employment, married and living separately with his own family and responsibility. Though also the sister of the petitioner i.e. the daughter of the deceased also was married and staying at her matrimonial home, married much before the deceased had expired in the year 2012 itself. Thus, on the date of the death, it was the petitioner and his mother i.e. the widow of the deceased employee and the grandfather of the petitioner i.e. the father of the deceased, who were living together and were totally dependent upon the income of the deceased. According to the petitioner, the Rashan card which the petitioner had also does not reflect the name of his elder brother as a member of the family and it was only the grandfather, the widow and the petitioner and his wife, who were reflected to be the family members of the deceased late Jagdish Chandra Sahu. The petitioner has also produced a document which shows that the eldest son staying separately and he has his own Rashan card, which does not bear the name of the petitioner, and his mother and grandfather in the said in support of his contention that they were living separately and were not supporting the petitioner in any manner.
4. 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.

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 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.

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 dis-entitling 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 the elder brother of the petitioner is in government employment and sister of the petitioner was married and staying at her matrimonial home, 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 and grandfather, particularly when they have their own family to take care of and they have been living separately altogether.
12. In the absence of any such situation, the policy of the State Government 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 two sisters of the petitioner 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 02.03.2021 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.
14. Writ Petition is allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge

Ved