

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 3750 of 2021**

1. Kevra Bai Markandey W/o Late Shri Garjan Ram Markandey Aged About 54 Years R/o Devarbood, Post Tahsil And P. S. Bilaigarh, District Baloda Bazar-Bhatapara Chhattisgarh
2. Devanand Markandey S/o Late Shri Garjan Ram Markandey Aged About 27 Years R/o Devarbood, Post Tahsil And P. S. Bilaigarh, District Baloda Bazar-Bhatapara Chhattisgarh

---- Petitioners**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Tribal Development Mahanadi Bhawan, Mantralaya, Police Station And Post Rakhi, Atal Nagar, Nawa Raipur District Raipur Chhattisgarh
2. Director Office Of Director, Department Of Tribal Development, Indravati Bhawan, Police Station And Post Rakhi, Atal Nagar, New Raipur District Raipur Chhattisgarh
3. Assistant Commissioner Department Of Tribal Development, Office Of Collector, Baloda Bazar District Baloda Bazar-Bhatapara Chhattisgarh

----Respondents

For Petitioners	:	Mr. Abhishek Pandey, Advocate along with Ms. Deepika Sannat, Advocate
For State	:	Mr. Neeraj Pradhan, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****22/07/2021**

1. Aggrieved by the orders (Annexure P/7 & P/8) dated 27.06.2019 & 11.02.2021, the present writ petition has been filed. Vide the said impugned orders, the respondents have rejected the claim of the petitioner No.2 for grant of compassionate appointment on the ground that elder brother of the petitioner No.2 is already in government employment.
2. Brief facts relevant for the adjudication of the present writ petition is that the father of the petitioner No.2 late Garjan Ram Markandey was

working as a Rasoiyya (Cook) under the respondents. He died in harness on 17.10.2018. On the date of death of the deceased employee was survived by wife and two sons. The elder son was already married and was in employment, posted elsewhere, living separately and not supporting the petitioners. On the date of death, the petitioners were the persons totally dependent upon the deceased.

3. On the death of the deceased namely Garjan Ram Markandey, the petitioner No.2 had moved an application for compassionate appointment, however, vide the impugned orders the application has been rejected on the sole ground that the elder brother of the petitioner No.2 is already in government employment.
4. It is the contention of the petitioners that since brother got his employment long back and he has already married and he has his own family and children and also living separately and not supporting financially, they do not fall within the definition of dependents of the deceased. Moreover, the brother who has already married and has his own family depending upon him, cannot be considered to be a permanent source of income for the petitioners and his widowed mother for sustaining themselves. To that extent the authorities ought to have conducted an enquiry and thereafter should have taken a decision.
5. The State counsel on the other hand opposing the petition submits that since the brother of the petitioner No.2 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.

6. 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 & another 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 brother of Petitioner who is in government employment is providing any assistance to Petitioner or not and also whether that brother has married and has his own family or not and whether he is 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 disentitling 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 No.2 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 elder brother is 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.
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 No.2 is getting from the brother. 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.

12. Thus, for all the aforesaid reasons, the impugned orders (Annexure P/7 & P/8) dated 27.06.2019 & 11.02.2021 deserve to be and is accordingly set-aside. The authorities are directed to re-consider the claim of the Petitioner No.2 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