

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 3920 of 2021

1. Sagar Chand S/o Late Shri Bachan Singh Thakur Aged About 35 Years Resident Of Village Sakroad, Post Office Rahud, Tahsil Gunderdehi, District Balod Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Education Department , Mantralaya , Mahanadi Bhawan, Atal Nagar, Naya Raipur , District Raipur Chhattisgarh.
2. District Education Officer Balod, District Balod Chhattisgarh.

----Respondents

For Petitioners	: Shri Ajay Shrivastava,, Advocate.
For State	: Ms. Binu Sharma, P.L..

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

29/07/2021

1. Aggrieved by the order Annexure P/1 dated 16.06.2021 passed by the respondent No. 2, the present writ petition has been filed.
2. Vide the impugned order, the respondents have rejected the application of the petitioner for grant of compassionate appointment. The rejection has been on the ground that the elder brother of the petitioner was found to be in government employment.
3. The brief facts relevant for the disposal of the present writ petition are that father of the petitioner was working on the post of Principal at Govt. Higher Secondary School, Bhatagaon and he died of Corona Virus on 05.05.2021. On the date of death of the deceased, It was the petitioner and the widow of the deceased who were solely dependent upon him.

4. On the date of death, the deceased was survived by his widow, two sons and three daughters. The three daughters and the eldest son are already married and are living separately from the family of the deceased and they are not providing any financial assistance to the dependence of the deceased. Therefore, the petitioner moved an application for compassionate appointment, which now stands rejected on the ground that the eldest son in the family is in government employment.
5. The contention of the petitioner is that the fact that the eldest son is already married and is in government employment even much before the death of the deceased, stands established from the fact that even in the ration card, his name and his family details is not disclosed and the brother of the petitioner is living separately at Korba.
6. It is the further contention of the petitioner is that since the three sisters of the petitioner all are married and are all residing at their respective matrimonial home, they too are no-longer dependants in the family and as such the only two dependants are the petitioner and the widow of the deceased.
7. According to the petitioner, since the elder brother of the petitioner was not a dependent in the family and are living at a separate place coupled with the fact that he was already married and he has his wife and children to take care of and other family responsibilities and he could no longer be a dependant in the family of the deceased. Therefore, the ground of his having a government employment

should not come in the way of considering the claim application of the petitioner. According to the petitioner to that extent, at-least the authorities ought to have conducted an enquiry ascertaining the dependency part thereafter should have taken a decision.

8. The State counsel on the other hand opposing the petition submits that since the elder 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 hypertechnical 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 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.

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 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 could 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.

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 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.

15. Thus, for all the aforesaid reasons, the impugned order, Annexure P-1 dated 16.06.2021 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.

16. Writ Petition is allowed and disposed of accordingly.

Sd/-

(P. Sam Koshy)
Judge

J-