

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 3883 of 2021

1. Pushpendra S/o Late Shri Vijay Kumar Joshi Aged About 26 Years R/o Hardi Bajar Korba District Korba Chhattisgarh.

---- Petitioner

Versus

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

----Respondents

For Petitioners	: Shri Ajay Shrivastava,, Advocate.
For State	: Shri Ayaz Naved, G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

28/07/2021

1. Aggrieved by the order Annexure P/1 dated 01.06.2021, the present writ petition has been filed.
2. Vide the impugned order, the claim for compassionate appointment has been rejected. The rejection has been on the ground that the elder brother of the petitioner was found to be in government employment.
3. The facts in brief which has led to filing of present writ petition are that father of the petitioner was working under the respondents as a peon and who died in harness on 01.10.2020. On the date of death, of deceased, it was the petitioner and the widowed mother along with his unmarried sister, the three persons who were dependant upon the deceased employee and his income.

4. On the date of death of deceased, he was survived by the widowed, two sons and a daughter. The widowed mother, the present petitioner and unmarried sister are staying together. The eldest son in the family has already got an employment way back in the year 2014 and he has also married much before the death of the deceased employee and he has his wife and children to take care of and also lives separately, thus they are not providing any financial assistance for the sustenance of the petitioner and other family members.
5. According to the petitioner even the ration card of the family of the deceased would show that the details of the eldest son is not reflected in it to show that he was no longer a dependent in the family and it was the petitioner, his sister and the widow who were dependent to the deceased.
6. Given the fact that the petitioner was dependent to the deceased, he had moved an application for grant of compassionate appointment after taking all due permission from other family members. However, vide the impugned order, the application has been rejected on the sole ground that the elder brother of the petitioner is in government employment therefore, in terms of the policy of the compassionate appointment applicable in the State of Chhattisgarh, the claim has been rejected.
7. It is the contention of the petitioner that since the elder brother got his employment long back and he has already married and he has his own wife and children and also lives separately, he does not fall

within the definition of dependent of the deceased. Moreover, the elder brother who is already married and has his own family dependent upon him, cannot be considered to be a permanent source of income for the petitioner and his widowed mother for sustaining themselves. To that extent the authorities ought to have conducted an inquiry and 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 judgement 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.

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 therefore 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.

14. 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.

15. 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.

16. Thus, for all the aforesaid reasons, the impugned order, Annexure P-1, deserves to be and is accordingly set aside. The authorities are directed to re-consider the claim of 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.

17. Writ Petition is allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge

J-