

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 3990 of 2021

1. Umesh Thakur S/o Late Shri Than Singh Thakur Aged About 21 Years R/o Gujarati Colony, Dhamtari Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Higher Education First Floor, Mahanadi Bhawan, Nava Raipur Atal Nagar, Chhattisgarh, 492002.
2. Directorate Of Higher Education Through Additional Director , Address Block 03, Second / Third Floor, Indravati Bhawan, Nava Raipur Atal Nagar Chhattisgarh 492002.
3. Principal Narayan Rao Meghawale Government Girls College, Dhamtari Rd, Dani Tola, Dhamtari , Chhattisgarh, 493773.

---Respondents

For Petitioner	: Shri Ashish Shrivastava along with Shri Aman Pandey, Advocate
For State	: Ms. Akanksha Jain, Dy. G.A.

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

05/08/2021

1. Aggrieved by the impugned order Annexure P/1 dated 02.03.2021, the present writ petition has been filed.
2. Vide the said impugned order, the respondents have rejected the claim application of the petitioner for grant of compassionate appointment. The reason for rejection as is reflected from the impugned order is that the sister of the petitioner was found to be in Government employment.
3. The facts relevant for adjudication of the present writ petition is that father of the petitioner working on the post of peon as a class -4

category at NRM Government Girls College, Dhamtari, died in harness on 02.07.2019. On the date of death, the deceased was survived by the widow, four daughters and one son i.e. the petitioner in the present case. Out of four daughters, two daughters i.e. Suman Thakur & Bharti Thakur were already married before the deceased had died and one daughter namely Bharti Thakur is already in government employment.

4. Thus on the date of death of the deceased, it was the widow, the petitioner and two unmarried daughters who were dependant upon the income of the deceased. Thereafter, the son of the deceased moved an application for compassionate appointment, which stands rejected only on the ground that in the family, it is found that one of the sisters of the petitioner is found to be in government employment. Counsel for the petitioner submits that the said sister was married in the year 2012 that is much before the deceased had died and was also in government employment even before the deceased had died. She therefore was no longer a dependant in the family of the deceased.
5. According to the petitioner, because the marriage of the said daughter ended up in a Divorce and after the divorce, the married daughter temporarily has been residing at the Parental Home i.e. the house of the deceased where the petitioner also is residing, by itself would not mean that she is the member in the family who is supporting them for their sustenance. She can never be treated as a dependant in the family, so as to deny the claim of the petitioner for

compassionate appointment under the policy of the compassionate appointment which disqualifies a person from claiming compassionate appointment, if some other member in the family is found to be in government employment. It was also the contention of the petitioner that the said so-called married daughter i.e. the elder sister of the petitioner has her own child only depending upon her who is being brought up by the said sister from her income, therefore she can not be burdened further by taking care of the petitioner and also other dependants of the deceased.

6. According to the petitioner, to this limited extent, the authorities ought to have conducted preliminarily enquiry so far as dependency part is concerned only then should have taken a decision on the claim for compassionate appointment.
7. The State Counsel on the other hand opposing the petition submits that perusal of the impugned order would show that the claim has been rejected was on ground that the married daughter was shown as the dependant to the deceased and that she is a divorcée and has also been residing at the same house, which is sufficient to infer that there is sufficient source of income available for the petitioner and other dependant to the deceased to sustain themselves.
8. The State Counsel referred to the affidavit in respect of the residential address of the petitioner to be the same that of the petitioner and subsequently filing another affidavit that the said contention in the affidavit was inadvertently mentioned.

9. All said and done undisputedly, the claim of the petitioner has been rejected on the ground of his married sister and who is in government employment. A married sister who has her child solely dependant upon her income. Except for the fact that she for sometime is sharing the same house the fact that she has her child, she therefore cannot under any circumstances be considered to be a dependant in the family of the deceased subsequent to her marriage.
10. In the instant case undoubtedly, both the marriage and the employment of the sister was much prior to the date of death of the deceased. Therefore, the rejection of the application only on this hypertechnical ground does not seem to be justified keeping in view the intention and the object behind framing of the policy for compassionate appointment. The primary object behind framing of the policy is to ensure that the family of the deceased is not put to penury nor do they face a state of financial crises. It does not mean that the authorities concerned should reject an application only if they find some members in the family of the deceased to be in govt. employment.
11. What is required to be taken note of is a minimum scrutiny of the application determining the dependency part and also ascertaining the relationship between the said person and the other dependants living in the family of the deceased. A married daughter immediately on her marriage would be left out of the list of the dependant in the parental family. The elder daughter again on the very fact that she gets an employment after her marriage would not bring her within the

ambit of a dependant only because the marriage has subsequently resulted in the divorce. Moreover, in the facts of the present case that the married daughter has also a child to take care of.

12. 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.

13. 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 who 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.

14. 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.”

15. 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.

16. Considering the fact that elder sister 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 she has his own child to take care of.

17. 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 elder sister. 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.

18. 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 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.

19. Writ Petition is allowed and disposed of accordingly.

Sd/-

(P. Sam Koshy)
Judge