

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 3931 of 2021**

Digendra Patel S/o Late Ashok Kumar Patel Aged About 28 Years Caste Marar, R/o Budhwari Bazar, Narayanpur, Post And Tahsil Narayanpur, District Narayanpur Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Public Health Engineering Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, District Raipur Chhattisgarh.
2. Superintendent Engineer Public Health Engineering Department, Kondagaon Region, Kondagaon, District Kondagaon Chhattisgarh.
3. Executive Engineer Public Health Engineering Department, Narayanpur Chhattisgarh.

----Respondents

For Petitioner	:	Mr. D.N. Prajapati, Advocate
For State	:	Mr. Ayaz Naved, G.A.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****29/07/2021**

1. Aggrieved by the orders dated 02.12.2019 & 05.11.2019 collectively marked as Annexure P/1, the present writ petition has been filed. Vide the impugned orders the claim of the petitioner has been rejected on the ground that the elder brothers of the petitioner are found to be in government employment.
2. The facts of the case in brief is that the father of the petitioner was working on the post of Peon under the respondents and he died in harness on 05.08.2018. According to the petitioner, on the date of death it was the petitioner and his widowed mother, who were directly depending upon the deceased and they were the only

dependents to the deceased on the date of death. It is the further contention of the petitioner that the deceased was survived by his widow and three sons i.e. the petitioner and two of his elder brothers. It is the further contention of the petitioner that both his elder brothers are in government employment and both of them are also married. According to the petitioner, both the elder brothers got their employment and also got married much before the deceased had expired and they were living separately with their respective families. That the fact that they were not dependents to the deceased could be established from the fact that both the elder brothers had their own independent individual Ration Card depicting their names and their family members name, wherein the name of the petitioner has not been reflected. This according to the petitioner would also establish the fact that they are no longer the dependents and it was the petitioner alone who was the dependent. According to the petitioner, the respondents ought to have conducted some sort of an enquiry to ascertain the dependency part before rejecting the application.

3. It is the contention of the petitioner that since two brothers got their employment long back and they have already married and they have their 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 two brothers who have already married and have their own family depending upon them, 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 enquiry and

thereafter should have taken a decision.

4. The State counsel on the other hand opposing the petition submits that since the two brothers of the petitioner are 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.
5. 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.

6. 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.
7. 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.”

8. 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.
9. Considering the fact that two brothers in government employment, what needs to be verified is whether the said person 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 particularly when they have their own family and children to take care of and they have been living separately altogether.
10. 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 two brothers. 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.

11. Thus, for all the aforesaid reasons, the impugned orders, Annexure P-1 dated 02.12.2019 & 05.11.2019 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.
12. Writ Petition is allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge