AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 4058 of 2021

1. Smt. Kanti Yadav W/o Late Shri Dhanu Lal Yadav, Aged About 57 Years, R/o Ward No. 1, Veer Savarkar Nagar, Atari, Raipur, Police Station Kabir Nagar, Tahsil And District Raipur, Chhattisgarh
2. Jaikishan Yadav S/o Late Shri Dhannu Lal Yadav, Aged About 35 Years, R/o Ward No. 1, Veer Savarkar Nagar, Atari, Raipur, Police Station Kabir Nagar, Tahsil And District Raipur, Chhattisgarh.

---- Petitioners

Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Home / Police, Mahanadi Bhavan, Mantralaya, Police Station And Post Rakhi, Atal Nagar, New Raipur, District Raipur, Chhattisgarh
2. Inspector General Of Police (IGP), Office Of Inspector General Of Police, Shankar Nagar, Raipur, District Raipur, Chhattisgarh.
3. Superintendent Of Police (S.P.), Office Of Superintendent Of Police (SP), Mahasamund, District Mahasamund, Chhattisgarh.

---- Respondents

For Petitioners : Shri Abhishek Pandey, along with Ms. Deepika Sanat, Advocate.
For State : Ms. Akanksha Jain, Dy. Govt. Advocate

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

06/08/2021

1. Aggrieved by the order dated 17.02.2021 refusing to grant compassionate appointment to petitioner no.2, the present writ petition has been filed. The reason assigned for refusing compassionate appointment is that the younger son in the family of the deceased is already in Government employment.

2. The facts in brief necessary for disposal of the present writ petition are that the father of petitioner No. 2 and husband of petitioner No. 1 namely late Dhannu Lal Yadav was working as a Head Constable under the respondents when he died in harness on 13.10.2020. On the date of death of the deceased employee, he was survived by his wife i.e. petitioner no.1, elder son i.e. petitioner no.2 and younger son Yugal Kishore Yadav. The younger son Yugal Kishore Yadav was employed with BSF and posted in Punjab and was staying separately along with his wife and children.

3. On the date of death of the employee, it was only the two petitioners herein who were directly dependent upon the income of the deceased and there was no other source of income. Petitioner no.2 had moved an application for compassionate appointment which was finally rejected vide impugned order dated 17.02.2021 on the ground that the younger brother of petitioner no.2 and younger son of petitioner no.1 namely Yugal Kishore Yadav was found to be in government employment.

4. The contention of the counsel for petitioners is that the said Yugal Kishore Yadav had already got married much before the date of death of the employee i.e. on 26.11.2014 whereas the employee died in harness on 13.10.2020. According to the counsel for petitioners, the younger son of the deceased employee was employed with BSF and posted in Punjab and was staying separately along with his wife and children.

5. According to the Counsel for petitioners, the younger son in the family was already married and he has his wife and children to take care of and he was not providing any financial assistance to the

petitioners for their sustenance. It was in the said circumstances that petitioner No. 2 had applied for compassionate appointment which has since been refused vide the impugned order Annexure P/3 dated 17.02.2021.

6. According to the counsel for petitioners, once when the younger son already got married and had got the employment much before the employee died in harness and was posted elsewhere, he was no longer dependent upon the deceased and he has his own family set up to take care of. That only because the younger son in the family was in employment cannot be a ground for rejecting the claim of the petitioners from being considered for compassionate appointment. According to the petitioners, the authorities ought to have conducted some preliminary enquiry at least in this regard so far as ascertaining the dependency part and only thereafter authorities should have taken a decision on the claim of the petitioner for compassionate appointment. According to the petitioners, the rejection of the claim application of petitioner no.2 on the technical ground of someone in the family being in employment is bad and is also arbitrary and would also defeat the very purpose for which the policy for compassionate appointment is framed and enacted. According to the petitioners, the very purpose for which the State has enacted the policy of compassionate appointment is to ensure that the family of the deceased employee is not put to the stage of penury or financial stringency, because of the death of the sole bread earner in the family. If somebody in the family is already in employment what needs to be ascertained is to whether there is any dependency upon

them and whether the said person is in a capacity to sustain the widow and other dependents to the deceased.

7. All these, according to the petitioners, need to be verified ascertaining after due scrutiny and only thereafter should a decision have been taken by the respondents. Thus, the impugned order to that extent deserves to be set aside/quashed and matter needs to be remitted back to the authorities for a fresh consideration after due scrutiny and ascertainment of the aforesaid facts.

8. The State counsel, on the other hand, opposing the petition submits that since the younger brother of 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 respondents 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 Petitioners 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 member 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 member and the so called persons who are in government employment 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.

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 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.

13. Considering the fact that the brother of petitioner No. 2 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 petitioners particularly when he has his own family and children to take care of and he has been living separately altogether.

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 younger brother/son.

15. In view of the same, the rejection of the impugned order only on the basis of younger son in the family being in government employment in terms of the policy of the State Government would not be sustainable. For the aforesaid reason, the impugned order needs to be reconsidered and the rejection of the candidature of petitioner No. 2 by strict interpretation of the policy would not be sustainable.

16. Thus, for all the aforesaid reasons, the impugned order, Annexure P-3 dated 17.02.2021 deserves to be and is accordingly set aside. The authorities are directed to re-consider the claim of the Petitioners 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

Khatai