

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 4269 of 2021

Manoj Kumar Sahu S/o Late Balram Sahu Aged About 31 Years R/o Village And Post Godhna, Tahsil Nawagarh District Janjgir Champa Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Water Resource Department, Mahanadi Bhawan Mantralay, Atal Nagar Nawa Raipur, District Raipur Chhattisgarh
2. The Engineer In Chief Water Resource Department Raipur, District Raipur Chhattisgarh
3. Superintending Engineer Hasdeo Project Division Korba District Korba Chhattisgarh
4. The Chief Engineer Minimata (Hasdeo) Bango Project Bilaspur District Bilaspur Chhattisgarh
5. The Executive Engineer Hasdeo Nahar Water Managing Division Janjgir District Janjgir Champa Chhattisgarh

---- Respondents

For Petitioner	:	Mr. V. K. Pandey, Advocate.
For State	:	Mr. Neeraj Pradhan, PL

Hon'ble Shri Justice P. Sam Koshy

Order on Board

18/08/2021

1. Aggrieved by the impugned order Annexure P-1 dated 26.07.2021 the present writ petition is filed.
2. Vide the impugned order the claim of the petitioner for compassionate appointment has been rejected. The ground of rejection has been that the elder brother of the petitioner is found to be in government employment.
3. The relevant facts of the case is that the father of the was working on the post of Assistant Mechanic under the respondent no.5 who died in harness on 22.04.2021. On the date of death of the deceased he was survived by his widow and three children, two sons and one daughter. The eldest son in the family was already married long back and is in government

employment and living separately with his own family consisting of his wife and children.

4. According to the petitioner on the date of death of the deceased only the widow along with petitioner herein and his sister who were totally dependent upon the income of the deceased. It is further contention of the petitioner that the eldest brother had already got married long before the death of the deceased and have been staying separately with his own family. They were not dependents to the deceased and it was the petitioner and his mother along with his sister who were dependents. This aspect ought to have been verified and enquired into by the respondent authorities before taking a decision of rejecting the claim of the petitioner.
5. It is the further contention of the petitioner that the eldest brother has got married long before the death of the deceased and he and his family are already staying at a different place. Since the petitioner was totally dependent upon the deceased, he moved an application for compassionate appointment, which has since been rejected vide the impugned order dated 26.07.2021 on the ground that the eldest brother in the family was found to be in government employment.
6. It is the contention of the petitioner that since his brother got employment long back and he has already married and he has his 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 brother who has already married and has his own family depending 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 enquiry and thereafter should have taken a decision.

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

9. 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.

10. 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.”

11. 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.
12. Considering the fact that elder brother 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 he has his own family and children to take care of and he has been living separately altogether.

13. 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 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.

14. Thus, for all the aforesaid reasons, the impugned order (Annexure P/1) dated 26.07.2021 deserve 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.

15. Writ Petition is allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge

Rohit