

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 4453 of 2021

1. Rachana Darwade D/o Suresh Darwade Aged About 36 Years Caste Mahar, R/o Cinema Line, Ward No. 07, Dongargaon, Tahsil Dongargaon, District Rajnandgaon Chhattisgarh.

---Petitioner(s)

Versus

1. State of Chhattisgarh Through The Secretary, Department of Higher Education, Mantralaya, Mahanadi Bhawan, Atal Nagar, Post Office and Police Station Naya Raipur District Raipur Chhattisgarh
2. Commissioner Directorate Of Higher Education, Block 2nd And 3rd Floor, Indrawati Bhawan, Atal Nagar, Post Office And Police Station Naya Raipur District Raipur Chhattisgarh.
3. District Education Officer Rajnandgaon District Rajnandgaon Chhattisgarh
4. Block Education Officer Dongargaon, District Rajnandgaon Chhattisgarh
5. Principal Govt. Girls Higher Secondary School, Dongargaon District Rajnandgaon Chhattisgarh.

---Respondents

For Petitioner	:	Shri Shalin Singh Baghel, Advocate.
For State	:	Shri Ayaz Naved, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

25.08.2021

1. Aggrieved by the impugned order dated 30.06.2021 the present writ petition has been filed. Vide the impugned order the respondents have rejected the application of the petitioner for grant of compassionate appointment. The reason for rejecting the application was on the ground that wife of the petitioner's brother was found to be in government employment.
2. Brief facts relevant for disposal of the writ petition is that the mother of the petitioner namely Sevanta Darwade was working under the respondents as Lecturer and who died in harness on 20.05.2021. The petitioner is a divorced daughter of the deceased. She applied for compassionate

appointment vide application dated 02.06.2021 and which stood rejected vide order dated 30.06.2021. The rejection has been only on the ground that wife of the petitioner's brother was found to be in government employment and therefore in terms of the policy of the State Govt. the same has been rejected.

3. The contention of the petitioner is that on the date of death it was petitioner and her father, the two persons, who were totally dependent upon the the income of the deceased. It is further contention of the petitioner that on the date of death the brother of the petitioner who was already married long before the date of death was staying separately with his own family and children and that they were no longer dependents in the family of the petitioner or the family of the deceased. According to the petitioner, in the instant case the brother of the petitioner also who is staying separately was not in a government employment, but it was his wife who was in government employment and only because the wife of the petitioner's brother was in government employment cannot be a solitary ground for rejecting the claim of the petitioner for appointment on compassionate ground if she is otherwise entitled under the rules.
4. According to the petitioner, her brother and his family i.e. the sister in law of the petitioner all are staying separately and they are no longer dependents in the family of the deceased. Therefore, before rejecting the claim application for compassionate appointment on that ground the respondents should have conducted some sort of enquiry ascertaining the dependency part.
5. The State counsel on the other hand opposing the petition submits that since the petitioners brother's wife 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.

6. 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 hypertechnical ground specifically dis-entitling the Petitioner for claiming compassionate appointment in the event of family members of deceased employee being in government employment.
7. 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 or the so called person who is in government employment from among the family members of deceased employee having their own family liabilities and in some cases are also staying along with their own family, far away from the place the deceased employee was staying. The rejection of the claim for compassionate appointment of 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.

8. 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.”

- 9.** 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.
- 10.** Considering the fact that wife of the petitioner's 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 particularly when she has her own family and children to take care of and she has been living separately altogether since long.
- 11.** 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 wife of the petitioner's 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.

12. Thus, for all the aforesaid reasons, the impugned order dated 30.06.2021 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.

13. Writ Petition is allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge

inder