

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(S) No. 3592 of 2020**

- Kush Kumar Lashkar Son Of Late Shri Balram Prasad Lashkar Aged About 27 Years Caste - Suryawanshi, Resident Of Village - Madanpur, Post- Singhri, Tahsil And District - Bilaspur (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Higher Education Department, Mahanadi Bhawan, Mantralaya, Nawa Raipur (Chhattisgarh),
2. The Director Directorate Of Higher Education Department, Block-3-C Second And Third Floor, Indravati Bhawan, Atal Nagar, Raipur (Chhattisgarh),
3. The Joint Director, Directorate Of Higher Education Department, Block-3-C Second And Third Floor, Indravati Bhawan, Atal Nagar, Raipur (Chhattisgarh),
4. The Principal, Government Gajanan Madhav Muktibodh College, Shasapur-Lohara, District - Kabirdham (Chhattisgarh),

---- Respondents

For Petitioner:	Shri Sanjeev Kumar Sahu, Advocate appears along with Shri Prabhakar Tiwari, Advocate
For State/Respondents:	Shri Raghvendra Verma, Govt. Advocate.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J**Order On Board****28.10.2021**

1. By way of this petition, the petitioner is questioning the legality and propriety of the order dated 06.07.2019 (Annexure P-1) passed by Respondent No.3-The Joint Director, Directorate of Higher Education Department, whereby the application filed by the petitioner seeking appointment on compassionate ground owing to the sad demise of his father, namely, Balram Prasad Lashkar, has been rejected.
2. From perusal of the record, it appears that the father of the petitioner namely, Balram Prasad Lashkar, was working as Peon in Government

Gajanan Madhav Muktibodh College, Sahaspur-Lohara, District Kabirdham and died during his service on 24.04.2019. Said Balram Prasad Lashkar had two sons namely, Love Kumar Lashkar and the present Petitioner Kush Kumar Lashkar. It appears further that the elder brother of the Petitioner is admittedly in government job and according to the Petitioner, he (Love Kumar Lashkar) is living separately after his marriage without assisting any kind of livelihood to the Petitioner and his mother. It appears further that the Petitioner was living with his father and after the death of father, the mother of the Petitioner is living along with him. Owing to the sad demise of his father, the Petitioner submitted an application on 03.06.2019 seeking appointment on compassionate ground and, while filing an application, the Petitioner has submitted the relevant documents including affidavit of other family members as well as Love Kumar Lashkar, who has specifically stated in his affidavit that he is living separately along with his wife and children and is not concerned with the Petitioner and his mother. It appears further that the application so made by the Petitioner was, however, rejected by the concerned authority on the ground that the brother of the Petitioner, namely, Love Kumar Lashkar is already in government job and as per the policy of compassionate appointment, the claim for compassionate appointment would not be considered if one of the members is already in government employment in the family of the claimants. While observing as such, the petitioner's application seeking his appointment on compassionate ground has been refused which has been questioned herein mainly on the ground that the order impugned has been passed without considering his dependency upon his father, therefore, it is contended by Shri Sahu, learned counsel appearing for the Petitioner that the order impugned deserves to be set aside. In support, he placed his

reliance upon the decision rendered by this Court in the matter of **Smt. Sulochana Netam Vs. State of Chhattisgarh & Others** decided on 23.11.2017 in **WPS No. 2728/2017**.

3. On the other hand, Shri Verma, while supporting the order impugned submits that since one of the members, namely, Love Kumar Lashkar is already in government job, the order impugned, therefore, does not require to be interfered with, as per the Government Policy.

4. I have heard, learned counsel for the parties and perused the entire papers annexed with this petition carefully.

5. It is true that the brother of the Petitioner, namely, Love Kumar Lashkar is in government job. It, however, appears from the averments made in the petition that the Petitioner's brother is living separately after his marriage along with his wife and children and not providing any financial help to the Petitioner and his mother. It, thus, appears that the petitioner is living along with his mother, namely, Tijiya Bai and the application so made by him was found to be rejected merely on the ground that one of the family members is in government job. However, no inquiry with regard to the dependency of the petitioner as to whether he was dependant upon his father was held prior to passing of the said order impugned dated 06.07.2019 (Annexure P1).

6. At this juncture, it would be relevant to take note of a recent judgment passed by this Court in **WPS No. 1025/2020 (Smt. Nandini Pradhan and Others Vs. State of Chhattisgarh & Others)**, which was allowed by this Court on 18.02.2020, 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 (supra). In the said matter, 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 the Petitioner after due verification of dependency aspect. It is relevant to note paragraph 9 of the said judgment Sulochana (supra) which reads 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.”

7. While relying upon the aforesaid principle laid down in the aforesaid

judgment, this Court in the matter of “**Sanad Kumar Shyamale Vs. State of Chhattisgarh and others**” passed on 09.02.2021 in **WPS No. 407 of 2021** has observed at paragraph 10 in this regard which reads as under:-

“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 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.”

8. The aforesaid principles of law laid 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 Benches 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. Consequently, the impugned order dated 06.07.2019 (Annexure P1) deserves to be and is hereby set aside. The Respondent No.3-The Joint Director, Directorate of Higher Education Department and/or concerned authority is directed to 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.

10. With the aforesaid observation, the writ petition is allowed and disposed of accordingly.

Sd/-
(Sanjay S. Agrawal)
JUDGE