

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4349 of 2021**

1. Smt. Ramila Bai, Wd/o Late Manohar Lal Salam, Aged About 44 Years R/o. Madwapathara, Post - Balodgahan, District - Balod Chhattisgarh.
2. Ku. Sadhana Salam D/o Late Manohar Lal Salam, Aged About 24 Years R/o. Madwapathara, Post - Balodgahan, District - Balod Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Veterinary Services, Mahanadi Bhawan, Capital Complex, Mantralaya, New Raipur Chhattisgarh
2. Director, Veterinary Services, Indrawati Bhawan, Block Nava Raipur, Atal Nagar, District Raipur Chhattisgarh.,
3. Deputy Director, Veterinary Services, Office Of Dy. Director, Veterinary Services, Balod, District Balod Chhattisgarh.

----Respondents

For Petitioner	:	Shri Vinod Deshmukh, Advocate
For State	:	Shri Neeraj Pradhan, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****19.08.2021**

1. Aggrieved by the order Annexure P/1 dated 05.07.2021 passed by the Respondent No. 3, the present writ petition has been filed.
2. Vide the impugned order, the claim of the petitioner No. 2 for grant of compassionate appointment has been rejected. The rejection has been on the ground that the elder brother of the petitioner No. 2 and son of the Petitioner No. 1 is found to be in government employment.

3. The relevant facts for the disposal of the present writ petition is that the husband of the petitioner No. 1 was working under the respondents as an Assistant Veterinary Field Officer and who died in harness on 03.11.2019. On the date of death of the deceased, he was survived by his wife and two children i.e. the petitioner No. 2 and a son namely Balkishan Salam.
4. According to the petitioner, on the date of death, it was only the two petitioners herein who were totally dependant on the deceased and upon his income and that they don't have any other source of income.
5. It is also further contention of the petitioner that brother of the petitioner No. 2 and son of the petitioner No. 1 was not living with the petitioners since his childhood and was being brought up at the house of his maternal uncle. That even after getting an employment, he has been living separately totally unassociated with the petitioners herein. Neither is the son of the petitioner No. 01 nor the brother of the petitioner No. 2 namely Balkishan Salam providing any financial assistance to the petitioners for their sustenance. Counsel for the petitioner submits that the authorities concerned ought to have conducted a minimum enquiry so far as the dependency part is concerned and only thereafter should have taken an appropriate decision before rejecting the claim of the petitioner.
6. The contention of the petitioner is that since the brother of the petitioner No. 2 is in government employment and is living separately. He is no longer a dependant to the family and the dependants were only the two petitioners herein i.e. the widow and the daughter of the deceased. It is

this aspect which ought to have been verified and enquired upon by the respondents.

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 whether he is staying along with petitioners 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 Petitioners 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 who 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 staying far away from the place of deceased employee. The rejection of the claim for compassionate appointment of 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 petitioners particularly since 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 petitioners are getting from the brother. For the aforesaid reason, the impugned order needs to be reconsidered and the rejection of the candidature of the petitioner No. 2 by strict interpretation of the policy would not be sustainable.

14. Thus, for all the aforesaid reasons, the impugned order (Annexure P/1) dated 05.07.2021 deserve to be and is accordingly set aside. The authorities are directed to re-consider the claim of the Petitioner No. 2 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**

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