

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 4343 of 2021**

Yogesh Kumar Pandey S/o Late Shri Pardeshi Pandey Aged About 35 Years
R/o Ward No. 9, Near Saraswati Gyan Mandir , Bagbahra, Tahsil And Police
Station Bagbahra, District Mahasamund Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Its Secretary , Department Of Panchayat And Rural Development , Mahanadi Bhavan, Mantralaya , Police Station And Post Rakhi, Atal Nagar, New Raipur, District Raipur Chhattisgarh.
2. Upper Development Commissioner Office Of Development Commissioner, Vikash Bhawan, 4th Floor, Sector 19, North Block , Police Station And Post Rakhi, Atal Nagar, New Raipur, District Raipur Chhattisgarh.
3. Chief Executive Officer (CEO) Office Of Chief Executive Officer, Zila Panchayat Mahasamund, District Mahasamund Chhattisgarh.
4. Chief Executive Officer (CEO) Janpad Panchayat Bagbahra, District Mahasamund Chhattisgarh.

----Respondents

For Petitioner	:	Mr. Abhishek Pandey, Advocate
For State	:	Ms. Akanksha Jain, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****31/08/2021**

1. Aggrieved by the impugned order Annexure P/3 dated 08.03.2021 the present writ petition has been filed. Vide the impugned order the respondent No.2 has rejected the claim of the petitioner for compassionate appointment on the ground that his elder brother Yogendra Pandey is already in government employment.
2. The facts of the case in brief is that the father of the petitioner was working as a Development Extension Officer and who died in harness on 21.08.2019. The mother of the petitioner had already predeceased

the father in the year 2018 itself. According to the petitioner he was totally dependent upon the deceased and he did not have any other source of income. It was the further contention of the petitioner that the elder brother in the family Yogendra Pandey was already married and had got employment long before the deceased had died and he was living separately along with his own family and that he was not providing any financial assistance to the petitioner for their sustenance after the death of the deceased.

3. It was the further contention of the petitioner that the fact that the elder brother Yogendra Pandey was living separately would also get established from the fact that the ration card of his brother would establish that it contains only the name of the said elder brother Yogendra Pandey and his family members. According to the petitioner, since his elder brother was living separately and was in government employment elsewhere, he was not dependent upon the deceased and it was only the petitioner who was staying along with the deceased and taking care of him and was totally dependent to the income of the deceased. According to the petitioner, the Department before rejecting the claim of the petitioner ought to have at least conducted some preliminary enquiry ascertaining the dependency part and only thereafter could they have taken a decision on the claim of the petitioner for compassionate appointment.
4. The State counsel on the other hand submits that in the instant case from the pleadings of the petitioner itself it appears that all the children of the deceased were all married and had their own children well before the death of the deceased, and therefore there is all possibility that every one had their own source of income to maintain their own

respective families, therefore the impugned order keeping in view the policy of the State Government, so far as compassionate appointment is concerned, does not warrant interference and the same seems to have been rightly rejected, more particularly when there is no challenge to the policy as such.

5. 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 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 hyper technical ground specifically disentitling the Petitioner for claiming compassionate appointment in the event of family members of deceased employee being in government employment.

6. 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.
7. 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.”

8. 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.
9. Considering the fact that the elder brother of the petitioner namely Yogendra Pandey 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 he has his own family and children to take care of and he has been living separately altogether.
10. In the absence of any such situation, the policy of the State Government 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 his elder brother Yogendra Pandey. In view of the same the rejection of the impugned order only on the basis of

elder 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 the petitioner by strict interpretation of the policy would not be sustainable.

11. Thus, for all the aforesaid reasons, the impugned order, Annexure P/3 dated 08.03.2021 deserves to be and is accordingly set aside. The authorities are directed to reconsider 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.
12. Writ Petition is allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge

Ved