

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4855 of 2021**

1. Prashant Patel S/o Late Rajendra Kumar Patel, aged about 30 years R/o Village Bagrel, Post Sapos, Tahsil and P.S. Dabhara, District Janjgir-Champa (C.G.)

---- **Petitioner****Versus**

1. State Of Chhattisgarh Through The Secretary, Panchayat and Rural Development Department, Mantralaya, Mahanadi Bhawan, Atal Nagar Nawa Raipur District Raipur Chhattisgarh.
2. Principal Secretary, General Administration Department, Mantralaya, Mahanadi Bhawan, Atal Nagar Nawa Raipur District Raipur Chhattisgarh.
3. Collector District Janjgir-Champa (C.G.)
4. Chief Executive Officer, Zila Panchayat, District Janjgir-Champa (C.G.)

---- **Respondents**

For Petitioner	:	Mr. Shushobit Singh and Mr. Basant Kaiwartya Advocates
For State	:	Ms. Sunita Jain, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****13.09.2021**

1. Aggrieved by the order Annexure P/1 dated 02/08/2021, the present writ petition has been filed.
2. Vide the said impugned order, the claim of the petitioner for compassionate appointment has been rejected. The ground of rejection has been that the eldest brother of the petitioner is found to be in government employment.

3. The relevant facts which has led to the filing of the present writ petition is that the father of the petitioner was working under the respondent No. 4 as Secretary of Gram Panchayat Dabhara, District Janjgir-Champa. The father of the petitioner died in harness on 17/03/2021. On the date of death, the deceased was survived by his widow and two sons i.e. the petitioner and his elder brother. The eldest brother of the petitioner is already in government employment and working in the police department. On the date of death of the deceased, it was the petitioner and the widow of the deceased who were totally dependent upon the income of the deceased.
4. The contention of the petitioner is that his elder brother was married long before the deceased was died and he was also in government employment which he got much before the death of the deceased and is presently posted at different place and therefore, he submits there was no financial assistance received by the elder brother for their sustaining and for this reason the petitioner had moved an application for compassionate appointment which has been rejected by the impugned order.
5. The contention of the petitioner is that since the elder brother is in employment and is already married and staying separately elsewhere, he was no longer dependent to the family and therefore his employment could not have been a ground for rejecting the claim of the petitioner. The brother 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 respondent No.4 ought to have conducted an enquiry and thereafter should have taken a decision.

6. 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.
7. 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.

8. 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.
9. 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.”

10. 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.
11. 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.

12. 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.
13. Thus, for all the aforesaid reasons, the impugned order (Annexure P/1) dated 02/08/2021 deserve to be and is accordingly set-aside. The respondent No.4 is 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.
14. Writ Petition is allowed and disposed of accordingly.

Sd/-
P. Sam Koshy
Judge