

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 4711 of 2021

Santoshi Bai Netam D/o Late Shri Bhanu Ram Markam Aged About 38 Years
R/o Bazarpara Gangrel, District Dhamtari Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Jal Sansadhan Vibhag, Head Office Raipur, District Raipur Chhattisgarh
2. Sub Divisional Officer M. J. P. Dam Sub Divisional No. 1, Gangrel, District Dhamtari Chhattisgarh
3. Chief Executive Engineer Water Resources Department, Rudri Code No. 38, District Dhamtari Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Awadh Tripathi, Advocate
For State	:	Mr. Ayaz Naved, G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

07/09/2021

1. Aggrieved by the impugned order Annexure P/1 dated 06.08.2021, the present writ petition has been filed. Vide the impugned order the claim of the petitioner for grant of compassionate appointment has been rejected. The rejection of the claim has been on the ground that the elder brother is found to be in government employment.
2. The facts of the case are that the mother of the petitioner was in employment under the respondents and she died in harness on 31.03.2020. On the date of death of the mother, it was the petitioner and one of her elder brother who survived the deceased. The father of the petitioner had already predeceased the mother. On the date of

death, it was the petitioner who was staying along with the mother and who was totally dependent upon the income of the deceased. It is the contention of the petitioner that the elder brother of the petitioner was already in government employment and was also already married long before the death of the deceased mother. Further that he has his own wife and three children to take care of and they are also living separately in a separate house and was not therefore providing any financial sustenance to the petitioner. It is for this reason that the petitioner had moved an application for compassionate appointment which now stands rejected.

3. The State counsel on the other hand opposing the petition submits that since the elder brother of the petitioner is in government employment, in terms of the policy for compassionate appointment the candidature of the petitioner has been rejected and in the absence of any challenge to the policy, the decision of the respondents cannot be said to be bad.
4. 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.

5. 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.

6. 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.”

7. 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.

8. Considering the fact that the elder brother of the petitioner 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 he has his own family and children to take care of and he has been living separately altogether.
9. 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 her elder brother. 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.
10. Thus, for all the aforesaid reasons, the impugned order, Annexure P/1 dated 06.08.2021 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.

11. Writ Petition is allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge

Ved