

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 4795 of 2021

Prena Jain D/o Jayanti Lal Jain, Aged About 25 Years, R/o Awaspara, Ward No. 5, Jaitakarra, Charama, District Kanker (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Education Department, Mantralaya, Mahanadi Bhawan, Nava Raipur, Atal Nagar, District Raipur (Chhattisgarh)
2. Director, Public Instructions, Indravati Bhawan, Nava Raipur, Atal Nagar, District Raipur (Chhattisgarh)
3. District Education Officer, Kanker, District Kanker (Chhattisgarh)
4. Block Education Officer, Block Charama, District Kanker (Chhattisgarh)

---- Respondents

For Petitioner	:	Mr. C. Jayant K. Rao, Advocate.
For State	:	Ms. Akanksha Jain, Dy. Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

06/09/2021

1. Aggrieved by the order dated 06.08.2021 Annexure P-1 the present writ petition has been filed. Vide the impugned order, the claim of petitioner for grant of compassionate appointment has been rejected. The rejection is on the ground that the elder brother of petitioner has been found in government employment.
2. The facts of the case in brief are that the father of petitioner namely Jayanti Lal Jain was working as a Head Master in Govt. Primary School who died in harness on 06.04.2021. On the date of death of

the employee, he was survived by his widow, the petitioner and one elder son.

3. The contention of the counsel for petitioner is that on the date of death of the employee on 06.04.2021 it was the widow and the petitioner who were directly dependent upon the income of the deceased. As regards the elder brother of petitioner, he was married long before the death of employee and had also received employment much before the death of the employee and as such, he was not dependent upon the income of the deceased employee. Further contention of petitioner is that since the elder brother was already married long before the death of employee and was staying at a different place altogether, the said elder brother was no longer dependent upon the deceased neither was he providing any financial assistance to the widow and the petitioner for their sustenance. The elder brother and his family were a separate unit altogether and on account of the employment of the elder brother, the claim for compassionate appointment to the petitioner cannot be refused or rejected. The contention of the petitioner is that the respondent authorities ought to have conducted an inquiry for ascertaining the dependency part and only thereafter they should have rejected the claim of petitioner. Thus, the impugned order to that extent deserves to be set aside/quashed and matter needs to be remitted back to the authorities for a fresh consideration after due scrutiny and ascertainment of the aforesaid facts.
4. The State counsel, on the other hand, opposing the petition submits that since the elder brother of 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 respondents cannot be said to be bad.

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 dis-entitling the Petitioner for claiming compassionate appointment in the event of family member 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 member and the so called persons who are in government employment 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 brother of 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.
10. 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 elder brother.

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

12. 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 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 preferably within an outer limit of 90 days from the date of receipt of a copy of this order.

13. Writ Petition is allowed and disposed of accordingly.

**Sd/-
(P. Sam Koshy)
Judge**