

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 5119 of 2021

1. Chandrakant Shriwas S/o Rajkumar Shriwas Aged About 38 Years R/o Village Nevra Tahsil Takhatpur, District Bilaspur, Chhattisgarh.

---Petitioner(s)

Versus

1. State of Chhattisgarh Through the Secretary, Education Department Mahanadi Bhawan, Atal Nagar, Naya Raipur, District Raipur, Chhattisgarh.
2. District Education Officer, Korba, District Korba, Chhattisgarh.

---Respondents

For Petitioner	:	Shri BK Chakrabarty, Advocate.
For State	:	Shri Jitendra Pali, Deputy Advocate General.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

22.09.2021

1. Aggrieved by the impugned order dated 02.08.2021, the present writ petition has been filed. Vide the impugned order, the claim of the petitioner for grant of compassionate appointment has been rejected on the ground that two brothers of the applicant are in government employment and therefore under the policy he is not entitled for compassionate appointment.
2. The facts of the case is that the father of the petitioner was working under the respondents who died in harness on 21.11.2018. The petitioner had moved an application for grant of compassionate appointment after obtaining necessary No Objection Certificates from the other family members.
3. The contention of the petitioner is that on the date of death, the deceased was survived by his widow and three sons. Two sons were already married and in a government employment much before the deceased had died. They were also staying separately elsewhere and therefore they were not dependent upon the deceased nor were they supporting the family in any

manner as they have their own wife and children to take care of. It is the further contentions of the petitioner that on the date of death it was the widow and the petitioner who were solely depending upon the income of the deceased and who are now facing financial crisis after the death of deceased. Therefore the petitioner had moved an application for grant of compassionate appointment which stood rejected on the hypertechnical ground that since two brothers of the petitioner are found to be in government employment, the policy does not permit under such circumstances to grant compassionate appointment to the petitioner.

4. According to the petitioner since the elder brothers were already married long back and they had their own family and also live separately and not supporting financially, they do not fall within the definition of dependent of the deceased. Moreover, the elder brothers who are already married and had their own family dependent upon them, cannot be considered to be a permanent source of income for the petitioner-applicant and his widowed mother for sustaining themselves. To that extent the authorities ought to have conducted an enquiry and thereafter should have taken a decision.
5. The State counsel on the other hand opposing the petition submits that it is a case where the petitioner is aged around 39 years and in all probability he has sufficient source of income to sustain himself, coupled with the fact that two other brothers are already in government employment, and therefore it is not a case where the petitioner was put to state of penury on the death of deceased. The writ petition therefore to that extent is not maintainable.
6. At this juncture, it would be relevant to take note of a recent judgement 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 hypertechnical ground specifically dis-entitling the Petitioner for claiming compassionate appointment in the event of family members of deceased employee being in government employment.

7. 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.

8. 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.”

9. 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.

- 10.** Considering the fact that two elder brothers are in government employment, what needs to be verified is whether the said persons can be brought within the ambit of dependent. Whether the said persons can be compelled to take care of the petitioner and his widowed mother particularly when they have their own family and children to take care of and they have been living separately altogether. It would have been a different case if the government employee i.e. the elder brothers to the petitioner could have been unmarried and were living along with the petitioner which could have forced us to infer that they were here for sustenance of the family.
- 11.** 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 two brothers. 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.
- 12.** Thus, for all the aforesaid reasons, the impugned order dated 02.08.2021 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 within an outer limit of 90 days from the date of receipt of copy of this order.

13. Writ Petition is allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge

inder