

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 334 of 2021**

Neeraj Kumar Uke son of Late Shri Vijay Kumar Uke, aged about 27 years, R/o Block No. A, Ward No. 69, Near Kharun Palace, Raipura, District Raipur, Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh, Through: The Secretary, Education Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, District Raipur, Chhattisgarh.
2. Director, Public Education Directorate, Indrawati Bhawan, Atal Nagar, Nawa Raipur, District Raipur, Chhattisgarh.
3. District Education Officer, Rajnandgaon, District Rajnandgaon, Chhattisgarh.
4. Block Education Officer, Dongergaon, District Rajnandgaon, Chhattisgarh.

---- Respondents

(Cause Title taken from Case Information System)

For Appellant : Mr. Pramod Ramteke, Advocate.

For Respondents : Mr. H.S.Ahluwalia, Deputy Advocate General.

Date of hearing : 22.11.2021

Date of Judgment : 10.12.2021

Hon'ble Mr. Arup Kumar Goswami, Chief Justice

Hon'ble Mr. Goutam Bhaduri, Judge

C.A.V. Judgment

Per Arup Kumar Goswami, Chief Justice

Heard Mr. Pramod Ramteke, learned counsel for the appellant and Mr. H.S.Ahluwalia, learned Deputy Advocate General for the respondents.

2. This appeal is presented against an order dated 12.08.2021 passed by the learned Single Judge in Writ Petition (S) No. 4204 of 2021, whereby the writ petition filed by the appellant/petitioner was dismissed.

3. The father of the appellant, who was working as Head Master in Government Middle School, Diwanbhedi, died in harness on 01.01.2020. The appellant had filed an application for compassionate appointment on 04.05.2020 and the same came to be rejected by an order dated 01.07.2020 on the ground that the mother of the appellant was already in government service. The learned Single Judge, noting that the policy of the government does not envisage grant of compassionate appointment when a member of the family is already in government employment, dismissed the petition.

4. Clause 6(A) of the Consolidated Revised Instructions regarding compassionate appointment on the death of a government servant during his service, 2013 (for short, the 'Consolidated Revised Instructions, 2013'), as translated to English, reads as follows:

“6(A) In the family of the deceased married government employee, if any other member of the family is already in government service, then no other member of the family will be eligible for compassionate appointment.”

5. It is not disputed by Mr. Ramteke that the appellant's mother (wife of the deceased) is already in government employment. Mr. Ramteke submits that the respondents are obliged to ascertain as to

whether the family member of the deceased employee, who is in government service, is providing any financial assistance to the family of the deceased. He further submits that the appellant is living separately and that the appellant was dependent upon his father and therefore, the appellant is entitled to be considered for appointment on compassionate ground. In support of his contention, Mr. Ramteke has placed reliance on the judgment of a learned Single Judge of this Court in case of ***Smt. Sulochna Netam v. State of Chhattisgarh & Others***, WP(S) No. 2728 of 2017, decided on 23.11.2017.

6. Mr. H.S.Ahluwalia, learned Deputy Advocate General, appearing for the respondents, on the other hand, submits that no obligation is cast on the Government to find out as to whether a member of the family who is in government employment, is financially assisting the other members of the family. He submits that compassionate appointment can be claimed only on the basis of the scheme applicable for such appointment. He further submits that the order of the learned Single Judge does not call for any interference and accordingly, he prays for dismissal of the writ appeal.

7. We have heard the learned counsel for the parties and have perused the materials on record.

8. Perusal of the materials on record go to show that the appellant is a married person, his marriage having been solemnised on 02.07.2017 and a female child was also born on 08.05.2018.

9. In ***Umesh Kumar Nagpal v. State of Haryana***, reported in

(1994) 4 SCC 138, the Hon'ble Supreme Court, in paragraph 2, observed as follows:

"As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interest of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. *The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased.*" (emphasis added)."

10. In *State Bank of India & Another v. Somvir Singh*, reported in *(2007) 4 SCC 778*, the Hon'ble Supreme Court observed as under:

“7. Article 16(1) of the Constitution of India guarantees to all its citizens equality of opportunity in matters relating to employment or appointment to any office under the State. Article 16(2) protects citizens against discrimination in respect of any employment or office under the State on grounds only of religion, race, caste, sex, descent. It is so well settled and needs no restatement at our ends that appointment on compassionate grounds is an exception carved out to the general rule that recruitment to public services is to be made in a transparent and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process. Such appointments are required to be made on the basis of open invitation of applications and merit. Dependents of employees died in harness do not have any special or additional claim to public services other than the one conferred, if any, by the employer.”

11. In *State Bank of India v. Raj Kumar*, reported in *(2010) 11 SCC 661*, the Hon'ble Supreme Court observed that it is well settled that appointment on compassionate grounds is not a source of recruitment and that it is an exception to the general rule that recruitment to public services should be on the basis of merit by open invitation providing equal opportunity to all eligible persons to participate in the selection

process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the Rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme.

12. In *State of Himachal Pradesh & Another v. Parkash Chand*, reported in *(2019) 4 SCC 285*, the Hon'ble Supreme Court reiterated that compassionate appointment is not a matter of right, but must be governed by the terms on which the State lays down the policy of offering employment assistance to a member of the family of a deceased government employee.

13. In the case of *Smt. Sulochana Netam* (supra), the husband of the petitioner, who was working as a Constable, died in harness on 11.01.2017 leaving behind a 10 month old daughter and the petitioner. They were dependent on the deceased government employee. Claim of compassionate appointment of the petitioner was rejected on the ground that the father-in-law of the petitioner was in government service. It was in that background the learned Single Judge directed the authorities to verify as to whether the father-in-law was living separately and was providing financial help, and accordingly, remanded the matter for fresh consideration.

14. The factual matrix in the present case is not akin to the case in *Smt. Sulochana Netam* (supra).

15. In the context of clause 6(A) of the Consolidated Revised Instructions, 2013, a question also arises as to whether the father-in-law can be construed to be a member of the family for the purpose of depriving the widow from securing appointment on the ground that her father-in-law is in government service. This aspect was, however, not considered in ***Smt. Sulochana Netam*** (supra).

16. It is no longer *res integra* that compassionate appointment cannot be claimed as a matter of right, as it is not a vested right. Compassionate appointment can be claimed only on the basis of scheme applicable for such appointment. When the scheme itself provides that no appointment shall be granted on compassionate ground, if any of the family members is in government service, no appointment can be claimed on the ground that the family member in government service is not giving any financial assistance. No obligation is cast upon the government under the scheme to find out as to whether such employee is providing any financial assistance to the other members of the family.

17. In view of what is discussed above, we find no good ground to interfere with the order of learned Single Judge and accordingly, the writ appeal is dismissed. No cost.

Sd/-
(Arup Kumar Goswami)
CHIEF JUSTICE

Sd/-
(Goutam Bhaduri)
JUDGE