

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 5920 of 2021**

Harish Kumar Dixena Late Shri Ram Khilawan Dixena Aged About 28 Years
R/o Qr. No. M-407, Pump House Colony, Korba (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Higher Education, Mahanadi Mantralaya, Nawa Raipur, Post Office And Police Station - Naya Raipur, Atal Nagar, District : Raipur, Chhattisgarh
2. Commissioner Directorate Of Higher Education, Block 2nd And 3rd Floor, Indrawati Bhawan Naya Raipur, Post Office And Police Station, Naya Raipur, Atal Nagar, District : Raipur, Chhattisgarh
3. Additional Director, Directorate Of Higher Education, Block 2nd And 3rd Floor, Indrawati Bhawan Naya Raipur, Post Office And Police Station, Naya Raipur, Atal Nagar, District : Raipur, Chhattisgarh
4. Principal, Govt. E. Vishveshwariya Post Graduate College, Korba, District Korba, Chhattisgarh

----Respondents

For Petitioner	:	Mr. Vinod Deshmukh, Advocate with Mr. Suresh Tandan, Advocate
For State	:	Mr. Anshuman Shrivastava, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****28/10/2021**

1. Aggrieved by the impugned order Annexure P/1 dated 10.08.2021 the present writ petition has been filed.
2. Vide the impugned order the claim of the petitioner for compassionate appointment has been rejected. The claim has been rejected on the sole ground that other members in the family of the deceased was found to be in government employment.
3. The facts of the case in brief is that the father of the petitioner in the

present case was working as a Lab Technician in the Govt. P.G. College at Korba. He died in harness on 08.05.2020. On the date of death the deceased was survived by his wife Geeta Bai and three children Deepak, Sandeep and Harish. Deepak is the eldest son in the family, who is already married and is in government employment. He is living separately and is not supporting the family financially. On the date of death, it was the widow Geeta Bai and the present petitioner, who were solely dependent upon the income of the deceased. The other brother also is said to be in some private employment, whereas it was the petitioner, who was totally unemployed on the date of death. Under the circumstances he has moved an application for compassionate appointment, which has since been rejected vide the impugned order.

4. It was the further contention of the petitioner that the elder brother of the petitioner Deepak is already married and is in government employment. He is living separately and is not supporting the family financially. At least to this extent respondent authorities ought to have conducted an enquiry and thereafter ought to have reached to a decision.
5. The State counsel on the other hand opposing the petition submits that since the elder 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.
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 brother of Petitioner who is in government employment is 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 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.

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 there is an elder brother 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. It would had been a different case if the government employee i.e. the elder brother to the petitioner could have been unmarried and was living along with the petitioner which could have forced us to infer that he was there 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 elder 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.

12. Thus, for all the aforesaid reasons, the impugned order dated 10.08.2021 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 afresh 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

Ved