

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS NO. 407 OF 2021**

Sanad Kumar Shyamale, S/o Late Shri Gajadhar Prasad Shyamale, aged about 30 years, R/o Village and Post Nandaur Kala, Tahsil Sakti, District Janjgir-Champa (CG)

... Petitioner

versus

1. State of Chhattisgarh, through the Secretary, Education Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District Raipur (CG)
2. Collector, Janjgir Champa, District Janjgir Champa (CG)
3. District Education Officer, Janjgir Champa, District Janjgir Champa (CG)

... Respondents

For Petitioner	:	Mr. Ajay Shrivastava, Advocate.
For Respondents	:	Mr. Amit Buxy, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

09/02/2021

1. The defaults pointed out by the Registry of this Court in the instant case stand ignored as of now.
2. With the consent of learned Counsels appearing for the respective parties, heard the matter finally at admission stage itself.
3. Challenge in the present Writ Petition is to Annexure P-1, dated 2.9.2020, whereby the claim of Petitioner for grant of compassionate appointment has been rejected by Respondents.
4. The impugned order, Annexure P-1, reflects that the rejection of the application for compassionate appointment submitted by Petitioner has been only the ground of two of the brothers of Petitioner are in government employment and as per the policy of compassionate appointment the claim for compassionate appointment would not be considered if there is already somebody who is in government employment in the family of the claimant.
5. Facts relevant for the adjudication of the issue involved in the present Writ Petition are that the father of Petitioner, Late Gajadhar Prasad Shyamale, was working as Assistant Grade-II under Respondent No.3. He died in harness on 22.10.2019. Petitioner is a son of deceased employee and he resides with his mother who is the widow of deceased employee and he was totally dependant upon the earnings of deceased employee.

6. The categorical statement made by learned Counsel for Petitioner in his pleadings in the present Writ Petition as also in the submission is that the Petitioner has two more brothers and both of them are in government employment and they have their own family and are staying separately and not providing any sort of financial assistance to Petitioner for his survival. This aspect is supported by an enquiry, i.e., Annexure P-4, which was conducted on local level by the Principal of Government Higher Secondary School, Nagarda, Block Sakti, District Janjgir-Champa. However, the respondent authorities have vide the impugned order, Annexure P-1, rejected the claim of Petitioner only on the technical ground of two of his brothers being in government employment, ignoring the aforesaid findings given by the Principal.

7. It is pertinent to mention at this juncture that the present is a second round of litigation. The earlier litigation was in WPS No. 3481/2020 which was disposed of on 1.9.2020, wherein this Court had directed the Respondents to consider and decide the claim of Petitioner in accordance with law within a period of 90 days and the impugned order in the present Writ Petition has subsequently now been passed by Respondents.

8. It is also pertinent to mention at this juncture that at the time of disposal of the first Writ Petition itself, this Court had made an observation that there being a recommendation (Annexure P-4) of the Principal, Government Higher Secondary School, Nagarda, Block Sakti, District Janjgir-Champa, in favour of Petitioner recommending his claim for compassionate appointment.

9. 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 disentitling the Petitioner for claiming compassionate appointment in the event of family members of deceased employee being in government employment.

10. 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.

11. 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.”

12. 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.

13. Thus, for the aforesaid reasons, the impugned order, Annexure P-1, deserves to be and is accordingly set aside. The authorities are directed to consider the claim of 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.

14. Writ Petition is allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
JUDGE