

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 6312 of 2021**

- Shishir Manik S/o Sagar Das Manik Aged About 34 Years R/o Ward No. 4, Guru Govind Singh Ward, Kandra Para, Bemetara, District Bemetara Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Education Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District Raipur, Chhattisgarh
2. Director Directorate Of Chhattisgarh Public Instruction, Indravati Bhawan, Raipur, District Raipur, Chhattisgarh
3. District Education Officer Bemetara, District Bemetara, Chhattisgarh

---- Respondents

For Petitioner: Shri Ajay Shrivastava, Advocate
 For State/Respondents: Shri Amit Baxi, Panel Lawyer, on advance copy.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J**Order On Board****17/11/2021**

1. By way of this petition, the Petitioner is questioning the legality and propriety of the order/letter dated 23-09-2021 (Annexure P-1) passed by Respondent No.3-District Education Officer, Bemetara (CG), whereby the application filed by the Petitioner seeking appointment on compassionate ground owing to the sad demise of his mother, namely, Smt. Shanta Manik, has been rejected.
2. From perusal of the record, it appears that the mother of the Petitioner namely, Smt. Shanta Manik, who was the Head Mistress in Govt. Middle School, Kobiya, Block Bemetara, died in harness on 27-06-2021 and immediately after the sad demise of mother, the Petitioner being a son has moved an application seeking compassionate appointment. According to the

Petitioner, the brother of him namely- Saurabh Manik is in government job, but after his marriage in the year 2005, he has started living separately without giving any financial support to the family of the deceased. It is contended further that since the Petitioner was completely dependent upon his mother, therefore, he is entitled to be appointed on compassionate ground. However, the said application has been rejected by the concerned authority, while referring to Clause 6-A of the Circular dated 23-02-2019, whereby it has been provided that if one of the members of the deceased employee is in government job, then, in the said condition, the other family members would not be entitled to be appointed on compassionate ground and, since the Petitioner's brother namely- Saurabh Manik is in government job, therefore, the Petitioner is not entitled to be appointed as such and, the application of him has, thus, been rejected.

3. The aforesaid order has been questioned by the Petitioner mainly on the ground that it has been passed without considering his dependency upon the mother, and therefore, it is contended by the counsel for the Petitioner that the order impugned deserves to be set aside and, in support, has placed his reliance upon the decision rendered by this Court in the matter of ***Sanad Kumar Shyamale Vs. State of Chhattisgarh & Others*** decided on 09-02-2021 in **WPS No.407/2021**.

4. On the other hand, Shri Baxi, learned State counsel, while supporting the order impugned, submits that according to the aforesaid circular, particularly in view of Clause 6-A, the claim of the Petitioner has rightly been refused as the Petitioner's brother namely- Saurabh Manik has been found to be in government job, and therefore, the order impugned, does not require to be interfered.

5. I have heard, learned counsel for the parties and perused the entire papers annexed with this petition carefully.

6. From perusal of the record, it appears that the Petitioner's mother namely Smt. Shanta Manik, who was employed as Head Mistress in Government Middle School, Kobia, Block Bemetara, District Bemetara has died during the course of her employment on 27-06-2021. It appears further that immediately after the sad demise of mother, the Petitioner has moved an application seeking his appointment on compassionate ground, but the same has, however, been rejected while referring to the aforesaid clause of the Circular as the Petitioner's brother was found to be in government job. It is true that the Petitioner's brother, namely- Saurabh Manik is found to be in government job, but before passing such an order, no inquiry with regard to the dependency of the Petitioner as to whether he was dependent upon his mother or not, was held.

7. At this juncture, it would be relevant to take note of a recent judgment passed by this Court in **WPS No.1025/2020 (Smt. Nandini Pradhan and Others Vs. State of Chhattisgarh & Others)**, which was allowed by this Court on 18.02.2020, 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 (supra). In the said matter, 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 the Petitioner after due verification of dependency aspect. It is relevant to note paragraph 9 of the said judgment passed in Sulochana (supra) which reads 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. While relying upon the aforesaid principle laid down in the aforesaid judgment, this Court in the matter of “**Sanad Kumar Shyamale Vs. State of Chhattisgarh and others**” passed on 09.02.2021 in **WPS No. 407 of 2021** has observed at paragraph 10 in this regard which reads as under:-

“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.”

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 Benches 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. Consequently, the impugned order dated 23-09-2021 (Annexure P1), passed by the District Education Officer, Bemetara, deserves to be and is

hereby set aside. The said Respondent, i.e. District Education Officer, Bemetara is directed to 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 a copy of this order.

11. With the aforesaid observation, the writ petition is allowed and disposed of accordingly.

Sd/-
(Sanjay S. Agrawal)
JUDGE