

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 409 of 2021**

Vikas S/o Late Heera Lal Netam, Aged About 22 Years R/o Village Rampur (Thathapur), Post Dharamgarh, Tahsil Sahaspur Lohara, District - Kabirdham Chhattisgarh

---- Appellant**Versus**

1. State of Chhattisgarh, Through, The Secretary, School Education Department, Mantralaya Mahanadi Bhavan, 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, Kabirdham, District Kabhirdham Chhattisgarh
4. Principal, Government Higher Secondary School, Bazar Charbhata, District - Kabirdham Chhattisgarh.
5. Principal, Government Higher Secondary School, Gaindpur, Block Sahaspur Lohara, District - Kabirdham Chhattisgarh

---- Respondents

(Cause-title taken from Case Information System)

For Appellant	: Mr. G.V. Kutumba Rao, Advocate
For State/Respondents	: Mr. Gagan Tiwari, Deputy Government Advocate

Hon'ble Shri Arup Kumar Goswami, Chief Justice**Hon'ble Shri N. K. Chandravanshi, Judge****Judgment on Board****Per Arup Kumar Goswami, Chief Justice****02.12.2021**

Heard Mr. G.V. Kutumba Rao, learned counsel for the appellant.

Also heard Mr. Gagan Tiwari, learned Deputy Government Advocate appearing for the respondents.

2. This appeal is directed against an order dated 27.09.2021 passed by the learned Single Judge in WP(S) No. 5206 of 2021, dismissing the writ petition.

3. The father of the appellant who was working as a Lecturer (Economics) in Government Higher Secondary School, Bazar Charbhata, died-in-harness on 02.05.2021, leaving behind the mother of the appellant, the appellant and three daughters. The appellant had filed an application for compassionate appointment, which came to be rejected by an order passed on 26.06.2021 on the ground that he was not eligible for such appointment, as the elder sister of the appellant was already in government employment.

4. Clause 6(A) of the Consolidated Revised Instructions regarding compassionate appointment on the death of a government servant during 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. Rao that the appellant's elder sister, Ku. Jyoti Netam is working as a Lecturer (English) and posted at Government High School, Ratga, Block Marwahi since 19.03.2021.

6. In view of the aforesaid factual position, having regard to Clause 6(A) of the Consolidated Revised Instructions, 2013, the learned Single Judge held that rejection of the case of the appellant for compassionate appointment cannot be held to be arbitrary or bad in law and accordingly, had dismissed the writ petition.

7. Mr. Rao submits that the respondents were obliged to consider as to whether family member of the deceased employee, who is in government service, is providing any financial assistance to the family of the deceased. According to him, his sister, who is in government employment, is not providing

any financial assistance and therefore, the appellant is entitled to be considered for appointment on compassionate ground.

8. We are unable to accept this submission.

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. 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 appointment, 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.

12. 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/-
(N.K. Chandravanshi)
Judge

Chandra