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HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3746 of 2023**

- Sanad Kumar Shyamle S/o Late Gajadhar Prasad Shyamale
Aged About 33 Years R/o Village And Post Nandaur Kala, Tahsil
Sakti, District Sakti Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh The Secretary, Ministry of School
Education, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nawa
Raipur, District Raipur Chhattisgarh
2. The Director, Directorate Of School Education Indravati
Bhawan, Atal Nagar, Nawa Raipur, District Raipur Chhattisgarh
3. Collector, Sakti, District Sakti Chhattisgarh
4. District Education Officer, Sakti District- Sakti Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Ranbir Singh Marhas, Advocate
For Respondents	:	Ms. Sunita Jain, Govt. Advocate

Hon'ble Mr. Justice Parth Prateem Sahu**Order On Board****20/06/2023**

1. Challenge in this writ petition is to the order dated 01.10.2021
by which respondent No.4 rejected petitioner's application for
grant of compassionate appointment.
2. Learned counsel for petitioner would submit that father of
petitioner, namely Gajadhar Prasad Shyamale, who was
working as Assistant Grade-III in the School Education
Department, died in harness on 22.10.2019. On 1.10.2020
petitioner submitted application for grant of compassionate
appointment. The Principal, Government Higher Secondary



School Nagarda conducted an enquiry and submitted report that two elder brothers of petitioner are in government service but both are residing separately with their respective family. Based on said report, respondent No.3 vide order dated 2.9.2020 (Annexure P-4) rejected petitioner's application for compassionate appointment referring to Clause 6A of the Circular dated 23.2.2019, according to which, if any family member of deceased employee is in government service, other members of family are not entitled to compassionate appointment. Aggrieved therewith, petitioner preferred writ petition bearing WPS No.407/2021. Learned Single Judge recording that no enquiry as to dependency of petitioner was conducted, allowed writ petition, set aside order dated 2.9.2020 and directed respondents to consider claim of petitioner afresh. Failure to comply with the Court's direction led the petitioner to file contempt petition also impleading respondent No.4 herein. However, during pendency of contempt petition, respondent No.4 rejected claim of petitioner for compassionate appointment on the ground that his elder brothers are already working in government service and therefore, as per policy of compassionate appointment, he is not eligible to be considered for compassionate appointment.

He submits that petitioner was fully dependent on deceased employee. Elder brothers of petitioner have stated on affidavit, which are filed along with petition, that they are residing separately with their family and they are not maintaining petitioner. Respondent No.4 ignoring aforesaid



aspect of the matter, erroneously rejected application of petitioner for grant of compassionate appointment.

3. Learned State Counsel opposing submissions of learned counsel for petitioner, would submit that as per enquiry report submitted on petitioner's application, two elder brothers of petitioners are already in government service. Clause 6A of Circular dated 23.2.2019 dis-entitles an applicant from securing compassionate appointment, if any other member of family is in government service. He submits that no obligation is cast upon the government under the relevant compassionate appointment scheme to find out as to whether the family member of deceased, who is in government service, is providing any financial assistance to other members of family of deceased employee. Hence, the order impugned passed by respondent No.4 does not suffer from any illegality warranting interference in exercise of extraordinary writ jurisdiction by this Court.

4. Heard learned counsel for parties and perused the documents filed along with writ petition.
5. Perusal of documents filed along with writ petition would show that father of petitioner died in harness on 22.10.2019 while working as Assistant Grade III in School Education Department. Petitioner submitted application seeking compassionate appointment. On the date of death of deceased employee i.e. father of petitioner, as also on the date of submission of application for grant of compassionate appointment, Consolidated Guidelines / Circulars on Compassionate



Appointment issued by the State Government was in force. Claim of petitioner was rejected by respondent No.4 in terms of Clause 6A of the Circular, relevant portion of which reads thus:-

“परन्तु मृतक शासकीय सेवक के परिवार में यदि पूर्व से ही परिवार का कोई अन्य सदस्य शासकीय सेवा में है, तो परिवार के अन्य किसी भी सदस्य को अनुकम्पा नियुक्ति की पात्रता नहीं होगी। ”

6. In the impugned order, the reason assigned for rejection of petitioner's application for grant of compassionate appointment is that two elder brothers of petitioner are already in government service. Petitioner does not dispute the fact that his brothers are in government service. Only submission of learned counsel for petitioner is that both the brothers are living separately with their respective families and not maintaining petitioner, his mother and younger brother.

7. The Instructions issued by the State Government provides for grant of compassionate appointment to one family member of deceased government employee so as to enable them to meet out crises occurred in the family of government employee, who died in harness while working with State Government. Compassionate appointment cannot be claimed as a matter of right and family member of deceased employee is entitled for the same to meet out immediate succour if comes within the criteria as fixed by the State Government in the Instructions issued in this regard.

8. Hon'ble Supreme Court in case of **Umesh Kumar Nagpal v. State of Haryana**, reported in (1994) 4 SCC 138, Hon'ble



Supreme Court observed thus:

“2.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).”

9. In case of **Director of Education (Secondary) v. Pushpendra Kumar**, reported in (1998) 5 SCC 192, Hon'ble Supreme Court while discussing object of compassionate appointment has held as under:-

“8. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden



crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to 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 for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment."

10. In case of **SAIL v. Madhusudan Das**, reported in **(2008) 15**

SCC 560, Hon'ble Supreme Court held that compassionate appointment is a concession and not a right and the criteria laid down in the rules must be satisfied by all aspirants.

11. In case of **V. Sivamurth v. State of A.P.**, reported in **(2008) 13**

SCC 730, Hon'ble Supreme Court summarized the principles relating to compassionate appointment as follows:-

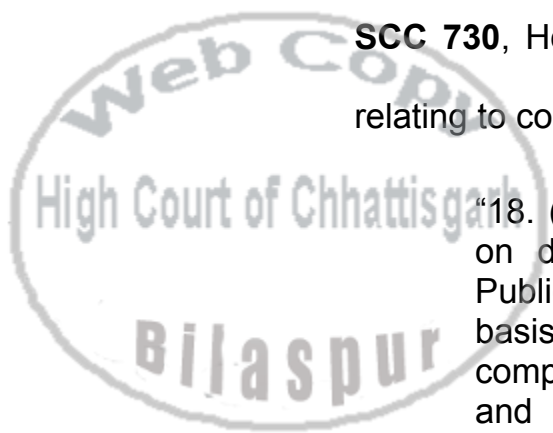
"18. (a) Compassionate appointment based only on descent is impermissible. Appointments in Public Service should be made strictly on the basis of open invitation of applications and comparative merit, having regard to Articles 14 and 16 of the Constitution of India. Though no other mode of appointment is permissible, appointments on compassionate grounds are a well- recognised exception to the said general rule, carved out in the interest of justice to meet certain contingencies.

(b) Two well recognized contingencies which are carved out as exceptions to the general rule are :

(i) appointment on compassionate grounds to meet the sudden crisis occurring in a family on account of the death of the bread-winner while in service.

(ii) appointment on compassionate ground to meet the crisis in a family on account of medical invalidation of the bread winner.

Another contingency, though less recognized, is where land holders lose their entire land for a public project, the scheme provides for compassionate appointment to members of the families of project affected persons. (Particularly where the law under which the acquisition is made does not





provide for market value and solatium, as compensation).

(c). Compassionate appointment can neither be claimed, nor be granted, unless the rules governing the service permit such appointments. Such appointments shall be strictly in accordance with the scheme governing such appointments and against existing vacancies.

(d) Compassionate appointments are permissible only in the case of a dependant member of the family of the employee concerned, that is spouse, son or daughter and not other relatives. Such appointments should be only to posts in the lower category, that is, Classes III and IV posts and the crises cannot be permitted to be converted into a boon by seeking employment in Class I or II posts."

(emphasis supplied)

12. In **State of Himachal Pradesh & another V. Prakash Chand**, reported in **(2019) 4 SCC 285**, Hon'ble Supreme Court has held that direction to consider application for compassionate appointment of dependents of deceased employee *de hors* policy is impermissible and observed thus:-

"9. The High Court has observed that the State should consider cases for appointment on compassionate basis by dealing with the applications submitted by sons, or as the case may be, daughters of deceased government employees, even though, one member of the family is engaged in the service of the Government or an autonomous Board or Corporation. This direction of the judgment of the High Court virtually amounts to a mandamus to the State Government to disregard the terms which have been stipulated in Para 5 (c) of its Policy dated 18-1-1990. The Policy contains a limited exception which is available only to a widow of a deceased employee who seeks



compassionate appointment even though one of the children of the deceased employee is gainfully employed with the State. The basis for this exception is to deal with cases where the widow is not being supported financially by her children.

10. In the exercise of judicial review under [Article 226](#) of the Constitution, it was not open to the High Court to rewrite the terms of the Policy. It is well settled 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. [Umesh Kumar Nagpal v. State of Haryana](#), (1994) 4 SCC 138; [SBI v. Kunti Tiwary](#), (2004) 7 SCC 271; [Punjab National Bank v. Ashwini Kumar Teneja](#), (2004) 7 SCC 265; [SBI v. Somvir Singh](#), (2007) 4 SCC 778; [Mumtaz Yunus Mulani v. State of Maharashtra](#), (2008) 11 SCC 384; [Union of India v. Shashank Goswami](#), (2012) 11 SCC 307; [SBI v. Surya Narain Tripathi](#), (2014) 15 SCC 739; and [Canara Bank v. M. Mahesh Kumar](#), (2015) 7 SCC 412.

11. For the above reasons, we are of the view that the judgment of the High Court is unsustainable. The High Court has virtually rewritten the terms of the Policy and has issued a direction to the State to consider applications which do not fulfil the terms of the Policy. This is impermissible."

13. The Division Bench of this Court in **WPS No.223/2022** considered identical issue and held as under:-

"48. Admittedly, brother of the petitioner in WPS No.223/2022 is in government service. In the return filed by the State respondents, it is stated that in the application submitted by him for compassionate



appointment the aforesaid fact was concealed. Subsequently, complaint being received with regard to his appointment being contrary to the Policy in question, after issuing show-cause and complying with principles of natural justice, his appointment was cancelled. It cannot be countenanced that compassionate appointment cannot be cancelled as is sought to be argued by the learned counsel for the petitioner even if such appointment is obtained on concealment of material facts. In that view of the matter WPS No.223/2022 is dismissed.

49. Clause 6A rendered an applicant ineligible to be appointed on compassionate grounds if any member of the family of the deceased government employee is in government employment. Compassionate appointment has to be made strictly in accordance with the policy. Therefore, we are of the opinion that in absence of any stipulation in Clause 6A that any member of the family of the deceased government servant being in government service or in employment of autonomous bodies/ bodies/ Boards / Corporations, etc. of the State/Central Government or regular employment in any other service, rejection of the case of the appellant in WA No.110/2020 on the ground that her brother is working in State Bank of India cannot be sustained. We are of the view that the learned Single Judge was not justified in expanding the provision of Clause 6A to also include any other type of employment beyond the government service within the ambit of Clause 6A.

50. In that view of the matter, the order dated 07.02.2018 passed by the learned Single Judge in WPS No.1206/2018 is set aside and the writ appeal is allowed.”





14. In **WA No.236/2022 (State of CG vs. Umesh Thakur)**, a Division Bench of this Court disagreeing with the view taken earlier by another Division Bench of this Court in **WA No.91/2022 (State of CG vs. Kevra Bai Markandey & anr)** holding that since another son of deceased employee is already in government service, he would come within the meaning of a family of deceased employee, referred the matter to a Larger Bench, which answered the reference in affirmative, concluding that **Kevra Bai Markandey's case (supra)** was rightly decided by Division Bench laying down the correct law.

15. In the given facts of the case and decisions of Hon'ble Supreme Court as also order passed by Division Bench of this Court in WPS No.223/2022 & 91/2022, I am of the considered view that respondent No.4 has not committed any illegality or infirmity in rejecting application of petitioner for grant of compassionate appointment in terms of Clause 6A of consolidated Instructions 2016, warranting interference in exercise of writ jurisdiction.

16. Consequently, there is no merit in this writ petition, the same is liable to be and is hereby dismissed. No order as to costs.

17. Certified copy as per rules.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-