



HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.1034 of 2022

Order reserved on: 2-3-2022

Order delivered on: 7-3-2022

Piyush Kumar Anchal, S/o Late Shri Mohan Lal Anchal, aged about 23 years, R/o Near Old Bus Stand, Bangali Para, Distt. Surajpur (C.G.)

---- Petitioner

Versus

1. State of C.G., through the Secretary, Food, Civil Supplies and Consumer Protection Department, Mahanadi Bhawan, New Raipur, District Raipur (C.G.)
2. The Managing Director, Chhattisgarh State Warehousing Corporation, Head Office, Village Jhanjh, Sector-24, Atal Nagar, New Raipur, District Raipur (C.G.)
3. The Secretary and General Manager, Chhattisgarh State Warehousing Corporation, Head Office, Village Jhanjh, Sector-24, Atal Nagar, New Raipur, District Raipur (C.G.)
4. The Manager Personnel, Chhattisgarh State Warehousing Corporation, Head Office, Village Jhanjh, Sector-24, Atal Nagar, New Raipur, District Raipur (C.G.)
5. The Branch Manager, Chhattisgarh State Warehousing Corporation, Branch Pratappur, Surajpur, District Surajpur (C.G.)

---- Respondents

For Petitioner: Mr. Rakesh Pandey, Advocate.

For Respondent No.1 / State: -

Mr. Amrito Das, Additional Advocate General.

For Respondents No.2 to 5: -

Mr. B.D. Guru, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

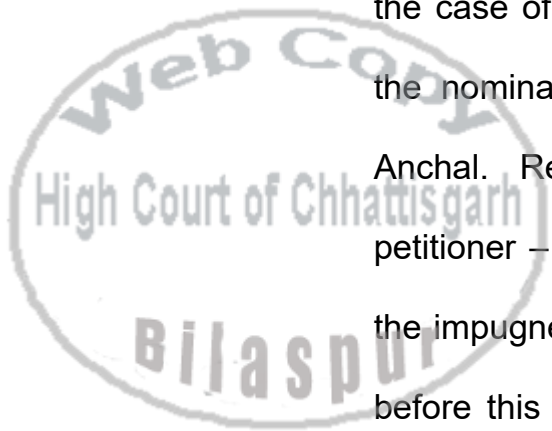
C.A.V. Order

1. This writ petition is directed against order dated 2-12-2021 by which respondent No.2 has directed the petitioner to obtain succession



certificate in order to claim compassionate appointment on account of death of his father late Shri Mohan Lal Anchal.

2. Shri Mohan Lal Anchal was working as Junior Assistant at Branch Pratappur of the Chhattisgarh State Warehousing Corporation. He died in harness on 26-4-2021 on account of being infected by COVID-19. Suresh Kumar Anchal claiming to be son of Late Shri Mohan Lal Anchal with his first wife Smt. Rajkumari claimed compassionate appointment by filing application on 25-5-2021, whereas the present petitioner being son of Late Shri Mohan Lal Anchal through wife Smt. Tara Devi also filed application for compassionate appointment. It is the case of the petitioner that his mother's name is also recorded in the nomination form submitted by his father Late Shri Mohan Lal Anchal. Respondent No.2 directed Smt. Tara Devi and the present petitioner – Piyush Kumar Anchal to obtain succession certificate, by the impugned order. The present petitioner earlier filed a writ petition before this Court being W.P.(S)No.4796/2021 in which this Court by order dated 9-9-2021 has directed respondent No.2 to decide the claim of the petitioner for compassionate appointment. Now, order has been passed rejecting the application filed by the petitioner on the ground that valid succession certificate has not been filed by the petitioner and liberty has been given to the petitioner to consider the application after the valid succession certificate is obtained against which this writ petition has been filed.
3. Return has been filed on behalf of respondents No.2 to 5 stating inter alia that the order passed by respondent No.2 is strictly in accordance with law and since two applications by two rival claimants have been preferred claiming appointment on compassionate ground, the





respondent Corporation has rightly directed the petitioner to obtain succession certificate. No rejoinder has been filed on behalf of the petitioner.

4. Mr. Rakesh Pandey, learned counsel appearing for the petitioner, would submit that the petitioner being son of Late Shri Mohan Lal Anchal through his wife Smt. Tara Devi, is entitled for compassionate appointment and the order directing for submission of succession certificate is unsustainable and bad in law and it is liable to be set aside. He would rely upon the decision of the Supreme Court in the matter of Union of India and another v. V.R. Tripathi¹ and also relied upon the decision of the Supreme Court in the matter of Mukesh Kumar and others v. The Union of India (UOI) and others² in which the decision of the Supreme Court in V.R. Tripathi's case (supra) has also been followed. Mr. Pandey, learned counsel, further relied upon the decision of the Patna High Court in the matter of Raj Kishore Kumar v. State of Bihar and others³ to buttress his submission.
5. Mr. B.D. Guru, learned counsel appearing for respondents No.2 to 5, would support the impugned order stating that on account of two rival claimants, the application of the petitioner herein has rightly been rejected requiring and directing the petitioner to obtain succession certificate as to whether he is entitled for compassionate appointment or not.
6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the material available on record with utmost circumspection.

1 AIR 2019 SC 666

2 Civil Appeal No.1620/2022, decided on 24-2-2022

3 2009 SCC OnLine Pat 582



7. There is serious dispute between the parties, whether the petitioner's mother is first wife of the deceased Government servant late Shri Mohan Lal Anchal or the mother of Suresh Kumar Anchal, who also claimed compassionate appointment being another son of late Shri Mohan Lal Anchal from Smt. Rajkumari, is the first wife of the deceased Government servant, but the fact remains that even the illegitimate son / daughter is also entitled for compassionate appointment and this question is no longer *res integra* and stand decided authoritatively by the Supreme Court in V.R. Tripathi's case¹ (supra).
8. The Bombay High Court in the matter of Union of India and others v. V.R. Tripathi⁴ considered the issue relating to grant of compassionate appointment to the children born out of second marriage in the light of circular dated 2-1-1992 and directed for consideration for grant of compassionate appointment sustaining the order of the Central Administrative Tribunal in favour of the claimant of compassionate appointment therein. When the matter was taken-up by the petitioners -Railway authorities before the Supreme Court in V.R. Tripathi's case¹ (supra), their Lordships in paragraph 12 formulated the following issue for consideration: -

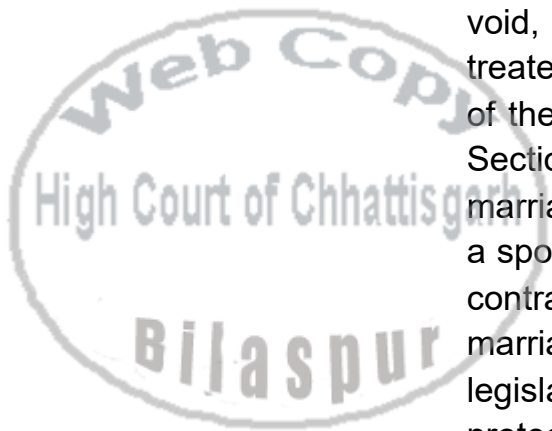
“12. The real issue in the present case, however, is whether the condition which has been imposed by the circular of the Railway Board under which compassionate appointment cannot be granted to the children born from a second marriage of a deceased employee (except where the marriage was permitted by the administration taking into account personal law, etc) accords with basic notions of fairness and equal treatment, so as to be consistent with Article 14 of the Constitution. ...”



Their Lordships considered the issue threadbare and answered in affirmative holding that the child born out of second marriage is still a legitimate child and is entitled for grant of compassionate appointment upholding the view taken by the Board and the High Court in paragraphs 13 and 14, and held as under: -

“13. In sub-section (1) of Section 16, the legislature has stipulated that a child born from a marriage which is null and void under Section 11 is legitimate, regardless of whether the birth has taken place before or after the commencement of Amending Act 68 of 1976. Legitimacy of a child born from a marriage which is null and void, is a matter of public policy so as to protect a child born from such a marriage from suffering the consequences of illegitimacy. Hence, though the marriage may be null and void, a child who is born from the marriage is nonetheless treated as legitimate by sub-section (1) of Section 16. One of the grounds on which a marriage is null and void under Section 11 read with clause (i) of Section 5 is that the marriage has been contracted when one of the parties had a spouse living at the time of marriage. A second marriage contracted by a Hindu during the subsistence of the first marriage is, therefore, null and void. However, the legislature has stepped in by enacting Section 16(1) to protect the legitimacy of a child born from such a marriage. Sub-section (3) of Section 16, however, stipulates that such a child who is born from a marriage which is null and void, will have a right in the property only of the parents and none other than the parents.

14. The issue essentially is whether it is open to an employer, who is amenable to Part III of the Constitution to deny the benefit of compassionate appointment which is available to other legitimate children. Undoubtedly, while designing a policy of compassionate appointment, the State can prescribe the terms on which it can be granted. However, it is not open to the State, while making the scheme or rules, to lay down a condition which is inconsistent with Article 14 of the Constitution. The purpose of compassionate appointment is to prevent destitution and penury in the family of a deceased employee. The effect of the circular is that irrespective of the destitution which a child born from a second marriage of a deceased employee may face, compassionate





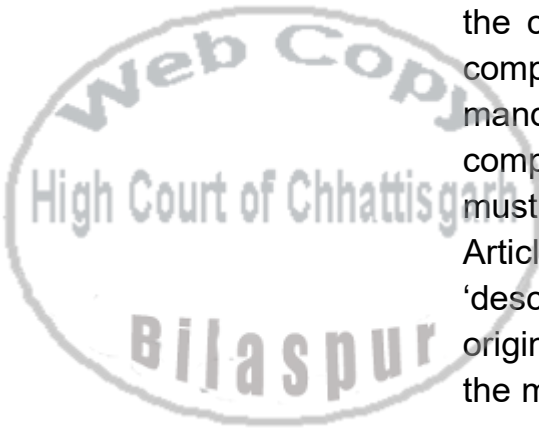
appointment is to be refused unless the second marriage was contracted with the permission of the administration. Once Section 16 of the Hindu Marriage Act, 1955 regards a child born from a marriage entered into while the earlier marriage is subsisting to be legitimate, it would not be open to the State, consistent with Article 14 to exclude such a child from seeking the benefit of compassionate appointment. Such a condition of exclusion is arbitrary and ultra vires.”

9. The principle of law laid down by their Lordships of the Supreme Court in V.R. Tripathi's case¹ (supra) was further followed by a Three Judge Bench of the Supreme Court in Mukesh Kumar (supra) with approval and it has been held in paragraph 9 as under: -

“9. While compassionate appointment is an exception to the constitutional guarantee under Article 16, a policy for compassionate appointment must be consistent with the mandate of Articles 14 and 16. That is to say, a policy for compassionate appointment, which has the force of law, must not discriminate on any of the grounds mentioned in Article 16(2), including that of descent. In this regard, ‘descent’ must be understood to encompass the familial origins of a person.⁵ Familial origins include the validity of the marriage of the parents of a claimant of compassionate appointment and the claimant’s legitimacy as their child. The policy cannot discriminate against a person only on the ground of descent by classifying children of the deceased employee as legitimate and illegitimate and recognizing only the right of legitimate descendant. Apart from the fact that strict scrutiny would reveal that the classification is suspect, as demonstrated by this Court in V.R. Tripathi, it will instantly fall foul of the constitutional prohibition of discrimination on the ground of descent. Such a policy is violative of Article 16(2).”

10. As such, in view of the aforesaid decisions, it is quite vivid that the petitioner herein / another son of the deceased Government servant, even if he is illegitimate son of the deceased Government servant, would be entitled for consideration on compassionate ground and

5 See, *Gazula Dasaratha Rama Rao v. State of Andhra Pradesh and others*, (1961) 2 SCR 931





cannot be denied consideration on the ground that he is illegitimate son of the deceased Government servant.

11. Now, the next question would be, who would be entitled for appointment in view of the two rival claimants (two sons) for compassionate appointment, whether it would be the petitioner herein or Suresh Kumar Anchal – another son of the deceased Government servant?

12. Admittedly and undisputedly, circular dated 14-6-2013 and revised circulars dated 22-3-2016 and 30-4-2016 would be applicable for consideration on compassionate ground. The candidates who would be eligible for compassionate appointment have been given in para 5 of circular dated 14-6-2013 which states as under: -

5. अनुकम्पा नियुक्ति हेतु पात्र उम्मीदवार. - दिवंगत शासकीय सेवक के आश्रित परिवार के निम्नलिखित वयस्क सदस्यों में से किसी एक सदस्य को नीचे दर्शित क्रमानुसार अर्थात् (क) के अस्वीकार करने पर या पात्र न होने पर (ख) को एवं उसके पश्चात् इसी अनुक्रम में आगे (ग), (घ) एवं (ङ) की अनुकम्पा नियुक्ति हेतु क्रमशः विचार किया जायेगा:-

- (क) दिवंगत शासकीय सेवक की विधवा/विधुर,
- (ख) पुत्र/दत्तक पुत्र,
- (ग) पुत्री/दत्तक पुत्री,
- (घ) आश्रित विधवा पुत्री/आश्रित दत्तक विधवा पुत्री एवं,
- (ङ) आश्रित तलाकशुदा पुत्री/आश्रित तलाकशुदा दत्तक पुत्री,
- (च) पुत्र वधु ।

13. A careful perusal of para 5 of the aforesaid circular would show that preference has been given for consideration on compassionate ground in para 5 and if a widow or widower of the deceased Government servant is not eligible, then only, son / adopted son would be entitled for consideration and in absence of that, daughter / adopted daughter would be entitled for consideration. In the instant



case, application has been filed by two sons of the deceased Government servant who have claimed compassionate appointment. In fact, both the widows have not claimed compassionate appointment and relinquished their claim in favour of their respective sons and therefore two sons of the deceased Government servant would be entitled for consideration and eligibility has to be considered upon considering their applications for compassionate appointment. The respondent authorities have rejected the applications and directed for obtaining succession certificate in view of the fact that there is rival claim by two sons of the deceased Government servant for compassionate appointment, as both will fall within the category of para 5(ख) of circular dated 14-6-2013, but the circular is silent about the manner / method of consideration in case of two rival claims in one category.

14. In this regard, the decision of the Patna High Court in Raj Kishore Kumar (supra) may be noticed herein profitably in which it has been held that it is the settled principle of law that the entitlement to compassionate appointment has to be considered in order of seniority, i.e., case of the elder brother will have the first priority and only if his case is rejected then the case of the younger brother shall be considered. It has been observed in paragraph 9 as under: -

“9. In the aforesaid facts and circumstances, both the writ applications are allowed and the impugned letter dated 27.12.2005 and the decision of the District Compassionate Committee dated 8.12.2005 in C.W.J.C. No.993 of 2006 as also the impugned letter dated 8.11.2006 and the decision dated 10.8.2006 of the District Compassionate Committee in C.W.J.C. No.16352 of 2008 are quashed and the matter is remanded to the District Compassionate Committee, Muzaffarpur to reconsider the cases of both the petitioners in accordance with law and take a final decision in the



matter within a period of two months from the date of receipt/production of a copy of this order. It is made clear that as per the settled decisions of this Court the entitlement to compassionate appointment has to be considered in order of seniority, i.e., case of the elder brother, Jai Kishore Manto will have the first priority and only if his case is rejected then the case of the younger brother Raj Kishor Kumar shall be considered.”

15.As such, the decision of the Patna High Court in Raj Kishore Kumar (supra) recognizing the principle that in case of two sons being eligible, elder son has to be preferred first in order of seniority and will have the first priority if qualified / eligible as per rules, appears to be valid, rational and justified. The principle of law laid down by the Patna High Court in Raj Kishore Kumar (supra) has been followed by the Jharkhand High Court in the matters of Janki Devi and another v. Jharkhand State Electricity Board and others⁶ and Abhishek Nitin v. Jharkhand State Electricity Board and others⁷. I fully agree with the view taken by the High Court of Patna in Raj Kishore Kumar (supra) followed by the Jharkhand High Court.

16.In view of the aforesaid analysis, the impugned order dated 2-12-2021 directing to produce succession certificate is hereby set aside and the matter is remitted to the respondent authorities to consider the applications of the petitioner and one Suresh Kumar Anchal – sons of the deceased Government servant for compassionate appointment after giving them an opportunity to file representation qua their entitlement / eligibility in light of the observations made herein-above. Decision will be taken within 45 days from the date of receipt of a copy of this order on its own merit, in accordance with law.

6 2014 SCC OnLine Jhar 816

7 2014 SCC OnLine Jhar 2775



17. The writ petition is allowed to the extent indicated herein-above leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma





HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.1034 of 2022

Piyush Kumar Anchal

Versus

State of C.G. and others

Head Note

Illegitimate son is also entitled to be considered for compassionate appointment.

अधर्मज पुत्र भी अनुकम्पा नियुक्ति हेतु विचार किये जाने का अधिकारी है।

