



HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No.236 of 2022

(Arising out of order dated 23-3-2023 passed by the learned Division Bench in W.A.No.236/2022)

Order reserved on: 1-5-2023

Order delivered on: 21-6-2023

1. State of Chhattisgarh, through the Secretary, Department of Higher Education, First Floor Mahanadi Bhawan, Mantralaya, Nawa Raipur, Atal Nagar, Chhattisgarh, 492002
(Respondent No.1 in the W.P.)
2. Directorate of Higher Education, through Additional Director, Address Block 03, Second/Third Floor, Indrawati Bhawan, Nawa Raiur, Atal Nagar, Chhattisgarh, 492002
(Respondent No.2 in the W.P.)
3. Principal, Narayan Rao Meghawale, Government Girls College, Dhamtari Rd, Dani Tola, Dhamtari, Chhattisgarh, 493773
(Respondent No.3 in the W.P.)
---- Appellants

Versus

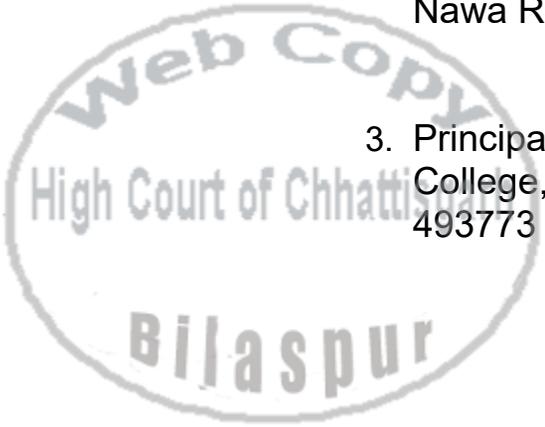
Umesh Thakur

(Petitioner in the W.P.)
---- Respondent

For Appellants/State: Mr. S.C. Verma, Advocate General with Mr. H.S. Ahluwalia, Deputy Advocate General.
For Respondent: Mr. Ashish Shrivastava, Senior Advocate with Mr. Aman Pandey, Advocate.

Full Bench: -
Hon'ble Mr. Ramesh Sinha, CJ,
Hon'ble Mr. Sanjay K. Agrawal and
Hon'ble Mr. Parth Prateem Sahu, JJ.

C.A.V. Order





Ramesh Sinha, CJ.

1. Division Bench of this Court while hearing this writ appeal (W.A.No.236/2022) against the order dated 5-8-2021 passed by the learned Single Judge in W.P.(S)No.3990/2021 finding themselves in disagreement with the decision rendered by another Division Bench of this Court in W.A.No.91/2022 (**State of Chhattisgarh and others v. Kevra Bai Markandey and another**), decided on 23-2-2022, referred the matter to Hon'ble the Chief Justice (one of us) for constituting a larger Bench to decide the following stated question: -

“When any dependent family member of deceased employee is already in Government service, in that circumstance whether any other member of the family would be deprived for employment on compassionate ground, without consideration of dependancy of family on such Government employee?”

2. The aforesaid stated question has arisen for consideration in the following factual backdrop: -
3. Shri Than Singh Thakur while working as Peon (Class-IV employee) in NRM Government Girls College, Dhamtari died in harness on 2-7-2019 being survived by widow and two daughters namely Suman Thakur and Bharti Thakur (already in Government job) and one son Umesh Thakur (writ petitioner). Umesh Thakur filed an application claiming compassionate appointment on account of death of his father,

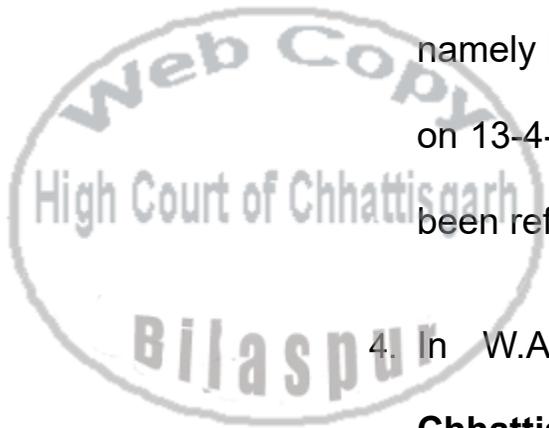




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but it was rejected by the competent authority holding that he is not eligible for compassionate appointment as per the policy of the State Government, as his sister Bharti Thakur is already working as Assistant Engineer, which Umesh Thakur challenged by way of writ petition which the learned Single Judge on 5-8-2021 allowed and directed the competent authority to reconsider the claim of writ petitioner Umesh Thakur afresh after conducting an enquiry for ascertaining the dependency part and also in respect of any support which the writ petitioner – Umesh Thakur is getting from his elder sister namely Bharti Thakur, which the State Government challenged on 13-4-2022 by filing writ appeal before this Court, which has been referred to larger Bench.

4. In W.A.No.334/2021 (Neeraj Kumar Uke v. State of Chhattisgarh and others), decided on 10-12-2021, Division Bench of this Court while dismissing the appeal has held that compassionate appointment cannot be claimed as a matter of right, as it is not a vested right and compassionate appointment can be claimed only on the basis of scheme applicable for such appointment and further held that when the scheme itself provides that no appointment shall be granted on compassionate ground, 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. It was also held that no





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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. It has been held in paragraph 16 of the report as under: -

“16. 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 ground, 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.”

5. Thereafter, again in W.A.No.33/2022 (**State of Chhattisgarh and others v. Smt. Muniya Mukharjee**), decided on **18-2-2022**, Division Bench of this Court has held that if any of the family members as shown in clause 5 of the Scheme is already in Government service, in terms of clause 6(A), the other members of the family as mentioned in clause 5 would not be eligible for compassionate appointment. Paragraphs 15 and 16 of the report state as under: -

“15. A perusal of clause 5 of the Scheme would go to show that it does not envisage that on the death of a married government servant, the parents of the government servant would be entitled to compassionate appointment. It is the spouse of the deceased government employee who is given the first preference and then the son/adopted son, and





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son on and so forth in the sequence as laid down in clause 5. As only the dependent family members of the deceased government servant as indicated in clause 5 of the Scheme are eligible for compassionate appointment, in absence of definition of family in the Scheme, it will be reasonable to hold that the relations of the deceased government employee as mentioned in clause 5 would constitute the family of the deceased government employee. If any of the family members as shown in clause 5 of the Scheme is already in government service, in terms of clause 6(A), the other members of the family as mentioned in clause 5 would not be eligible for compassionate appointment.

16. Explanation to clause 6A does not in any way relate to family of the deceased married government servant. What is the relevance of the explanation is also not discernible inasmuch as when the scheme had excluded dependent parents for being considered for compassionate appointment, there is no purpose in describing who are the dependents of the deceased married government servant.”

6. Thereafter, in **Kevra Bai Markandey's** case (supra), the Division Bench relying upon its earlier decisions rendered in **Neeraj Kumar Uke** (supra) and **Smt. Muniya Mukharjee's** case (supra) has held that since another son of the deceased employee is already in government service, such son, who is in the government employment, would come within the meaning of a family of the deceased employee, and accordingly interfered with the order of the learned Single Judge.

7. In the meanwhile, in W.P.(S)No.6689/2018 (**Purendra Kumar Sinha v. State of Chhattisgarh and others**), decided on 12-





1-2022, one of us (Sanjay K. Agrawal, J.) referred the following stated question for consideration by larger Bench: -

“Whether this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India is empowered to direct the State Government to hold an enquiry qua the dependency / financial support by one of the family members of the deceased Government servant, who is already in Government service, to the dependent of the deceased Government servant claiming compassionate appointment whereas, the policy dated 29-8-2016 does not stipulate any such enquiry and then consider the application for compassionate appointment, as bar being absolute?”

8. The reference so made in **Purendra Kumar Sinha** (supra) was considered by Division Bench of this Court in the matter of **Purendra Kumar Sinha v. State of Chhattisgarh and others**¹ and other connected cases and answered the stated question in paragraph 42 of that judgment holding that in exercise of jurisdiction under Article 226 of the Constitution of India, the writ court cannot direct the State Government to hold an enquiry qua dependency/financial support by one of the family members of the deceased government servant who is already in government service to the other family members of the deceased government servant when a claim is made by another member of the family for compassionate appointment as the same would amount to rewriting the terms of the policy. Paragraph 42 of the judgment of the Division Bench of this Court in **Purendra Kumar Sinha** (supra) states as under: -

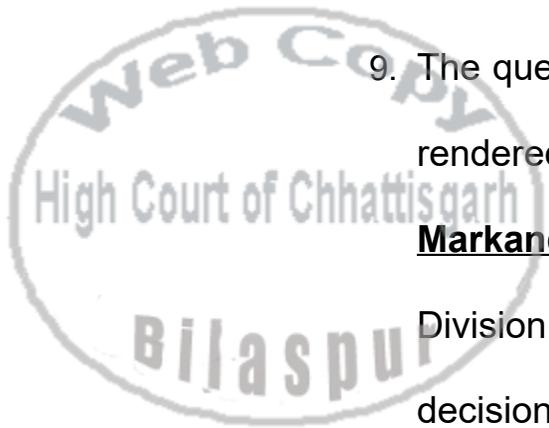
¹ 2022 SCC OnLine Chh 1598



"42. Reiterating the conclusion in *Neeraj Kumar Uke* (supra) and bearing in mind that compassionate appointment must be governed by terms on which the State lays down the policy offering employment assistance to a member of the family of a deceased government employee, the question posed by the learned Single Judge is answered by observing that this Court, in exercise of writ jurisdiction under Article 226 of the Constitution of India, cannot direct the State Government to hold an enquiry qua dependency/financial support by one of the family members of the deceased government servant who is already in government service to the other family members of the deceased government servant when a claim is made by another member of the family for compassionate appointment as the same would amount to rewriting the terms of the policy."

9. The question for consideration would be, whether the decision rendered by the Division Bench of this Court in **Kevra Bai Markandey's** case (supra) was rightly decided or not as the Division Bench now did not agree with the view taken by the decision of the Division Bench in **Kevra Bai Markandey's** case (supra)?

10. Basically, the Division Bench of this Court in **Kevra Bai Markandey's** case (supra) has followed its earlier decision rendered in **Neeraj Kumar Uke** (supra) in which it has clearly been held in paragraph 16 that compassionate appointment cannot be claimed as a matter of right, as it is not a vested right, it can be claimed only on the basis of scheme applicable for such appointment and when the scheme itself provides that no appointment shall be granted on compassionate ground, if any of the family members is in government service,





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no appointment can be claimed on the ground that the family member in government service is not giving any financial assistance, and 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. While rendering decision in **Neeraj Kumar Uke** (supra), Division Bench of this Court took into consideration the decisions rendered by the Supreme Court in the matters of **Umesh Kumar Nagpal v. State of Haryana**², **State Bank of India and another v. Somvir Singh**³, **State Bank of India v. Raj Kumar**⁴ and **State of Himachal Pradesh and another v. Parkash Chand**⁵.

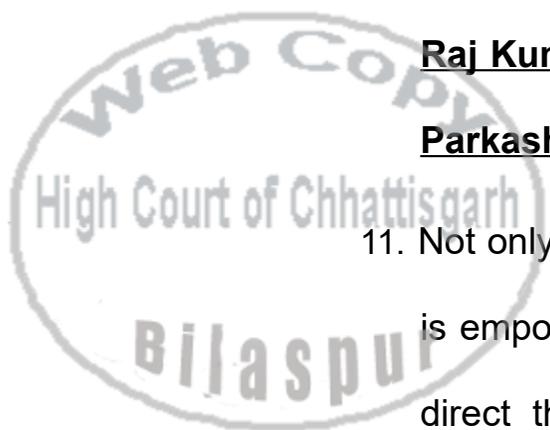
11. Not only this, the specific question as to whether the writ court is empowered under Article 226 of the Constitution of India to direct the competent authority to hold an enquiry qua the dependency / financial support by one of the family members of the deceased Government servant, who is already in Government service, to the dependent of the deceased Government servant claiming compassionate appointment, has already been considered and answered by the Division Bench of this Court in **Purendra Kumar Sinha** (supra) holding that under Article 226 of the Constitution of India, writ court cannot direct the State Government to hold an enquiry qua

2 (1994) 4 SCC 138

3 (2007) 4 SCC 778

4 (2010) 11 SCC 661

5 (2019) 4 SCC 285



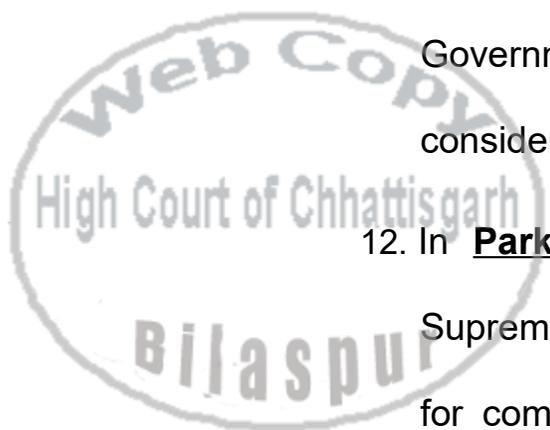


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dependency/financial support by one of the family members of the deceased Government servant who is already in Government service to the other family members of the deceased Government servant when a claim is made by another member of the family for compassionate appointment, as the same would amount to rewriting the terms of the policy. We are in full agreement with the view taken by the Division Bench of this Court in **Purendra Kumar Sinha** (supra) as it has correctly laid down the law holding that if one member of the family of the deceased Government servant is already in Government service, other member of his family cannot be considered for compassionate appointment.

12. In **Parkash Chand**'s case (supra), their Lordships of the Supreme Court have held that direction to consider application for compassionate appointment of dependents of deceased employee de hors policy is impermissible, and observed as under: -

“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





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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*², *SBI v. Kunti Tiwary*⁶, *Punjab National Bank v. Ashwini Kumar Teneja*⁷, *SBI v. Somvir Singh*³, *Mumtaz Yunus Mulani v. State of Maharashtra*⁸, *Union of India v. Shashank Goswami*⁹, *SBI v. Surya Narain Tripathi*¹⁰ and *Canara Bank v. M. Mahesh Kumar*¹¹.]

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 fulfill the terms of the Policy. This is impermissible.”

13. Further, their Lordships of the Supreme Court in **Parkash Chand**'s case (supra) have clearly observed that no direction contrary to the terms of the policy can be issued and consideration of application for compassionate appointment has to be made only in accordance with the terms of the policy applicable for grant of compassionate appointment, otherwise

6 (2004) 7 SCC 271

7 (2004) 7 SCC 265

8 (2008) 11 SCC 384

9 (2012) 11 SCC 307

10 (2014) 15 SCC 739

11 (2015) 7 SCC 412





it would amount to rewriting the terms of the policy which has been issued by the Government for compassionate appointment.

14. Recently, in the matter of **Central Bank of India v. Nitin**¹², the Supreme Court has held that consideration for compassionate appointment must, therefore, be strictly in accordance with the prevalent rules for compassionate appointment applicable to the deceased employee.

15. In our considered opinion, in view of the decisions rendered by two Division Benches of this Court in **Neeraj Kumar Uke** (supra), **Kevra Bai Markandey's** case (supra) and the reference answered by another Division Bench of this Court in **Purendra Kumar Sinha** (supra) answering the issue involved in this reference and in light of the principles of law laid down by the Supreme Court in **Parkash Chand's** case (supra) and **Nitin's** case (supra), compassionate appointment has to be granted in accordance with the policy applicable and where the policy applicable for compassionate appointment clearly indicates that where one of the family members of the deceased Government servant is already in Government service then other members of the family of the deceased Government servant would not be entitled for compassionate appointment, then the writ court in exercise of its power and jurisdiction under Article 226 of the Constitution of India would





not direct to hold for enquiry qua dependency/financial support by one of the family members of the deceased Government servant who is already in Government service to the other family members of the deceased Government servant when a claim is made by another member of the family for compassionate appointment, as it would amount to rewording / revising the terms of the applicable policy for compassionate appointment, which, in our considered opinion, is wholly impermissible in law. Accordingly, we hold and answer the stated question as under: -

When one of the family members of the deceased Government servant is already in Government service and the applicable policy bars and prohibits the consideration of other dependent of the deceased Government servant for appointment on compassionate ground, then this Court under Article 226 of the Constitution of India would not direct for holding enquiry qua dependency/financial support by one of the family members of the deceased Government servant who is already in Government service to the other family member of the deceased Government servant when a claim is made by other member of the family for compassionate appointment, as it would amount to rephrasing / rewording of the terms of the applicable scheme / policy for compassionate appointment, as such, such enquiry is totally barred.

16. In conclusion, we hold that **Kevra Bai Markandey's** case (supra) was rightly decided by Division Bench of this Court





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laying down the correct law. The reference is answered accordingly.

17. Let the matter be placed before the appropriate Division Bench for deciding the writ appeal in accordance with law, in view of the reference having been answered.

Sd/-
(Parth Prateem Sahu)
Judge

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Soma

