

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.6689 of 2018

Purendra Kumar Sinha, aged about 31 years, S/o Late Chandrabhushan Sinha, R/o Village Jhalmala (Balod), Police Station, Tahsil, Civil & Revenue District Balod (C.G.)
Mo.No.9926208705

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Tribal Department, Mahanadi Bhawan, Mantralaya, Raipur, P.S. Kewli, Tahsil & District Raipur, Civil & Revenue District Raipur (C.G.)
2. Collector (Tribal Development Department), Balod, Police Station, Tahsil, Civil & Revenue District Balod (C.G.)
3. Assistant Commissioner (Tribal Development Department), Balod, Police Station, Tahsil, Civil & Revenue District Balod (C.G.)

---- Respondents

For Petitioner: Mr. Ratnesh Kumar Agrawal, Advocate.
For Respondents/State: Mr. Amrito Das, Additional Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board
(Through Video Conferencing)

12/01/2022

1. The petitioner takes exception to the impugned order dated 14-9-2018 (Annexure P-1) by which his application for compassionate appointment has been rejected finding no merit on the ground that his brother namely, Dinesh Kumar Sinha is already on Government job (Indian Army).
2. Chandrabhushan Sinha – father of the petitioner herein, while working as Assistant Grade-II in the establishment of the Government died in harness on 3-12-2017 leading to filing of application claiming compassionate appointment on 2-1-2018 which has been rejected now by the competent authority vide Annexure P-1 in view of



paragraph 2 of the circular dated 29-8-2016 (Annexure R-1) holding that brother of the petitioner is already in Government service, therefore, in the light of that circular, the petitioner is not eligible to be considered for the post on compassionate basis which has been sought to be challenged in this writ petition on the ground that enquiry ought to have been made as to whether his brother who is already in service is not supporting the petitioner, therefore, enquiry has to be made on dependency and then only the application ought to have been considered.

3. Return has been filed by the State / respondents stating inter alia that the application for compassionate appointment has rightly been rejected, as the petitioner's brother is already in Indian Army and in view of the circular Annexure R-1, the petitioner is not entitled to be considered for compassionate appointment.

4. No rejoinder has been filed opposing the averments made in return filed by the State / respondents.

5. Mr. Ratnesh Kumar Agrawal, learned counsel appearing for the petitioner, would submit that though the petitioner's brother is in Government service (Indian Army), but he is not supporting the petitioner's family and the petitioner's family have no source of income to earn their livelihood and therefore enquiry on dependency has to be made in the light of the decision rendered by this Court in the matter of Smt. Sulochana Netam v. State of Chhattisgarh and others¹ followed in the matter of Veermani Sonwani v. State of Chhattisgarh and others² and as such, the writ petition be allowed and the impugned order be set aside, and enquiry on dependency be directed as directed by this Court in Sulochana Netam (supra).

1 WPS No.2728/2017, decided on 23-11-2017

2 WPS No.2355/2020, decided on 23-6-2020



6. Mr. Amrito Das, learned Additional Advocate General appearing for the State / respondents, while vehemently opposing the submission of learned counsel for the petitioner, would submit that clause 6(a) of the policy dated 14-6-2013 as amended on 29-8-2016 (Annexure R-1) bars consideration of claim for compassionate appointment if one of the family members of the deceased Government employee is already in Government service, this provision is complete in itself and no enquiry is necessary as no exception has been provided in clause 6(a) of the policy dated 14-6-2013 as amended vide Annexure R-1, otherwise, it would amount to rewriting the policy which is the exclusive domain of the executive. He would cite the decisions of the Supreme Court in the matters of A. Umarani v. Registrar, Cooperative Societies and others³, Teri Oat Estates (P) Ltd. v. U.T., Chandigarh and others⁴, V. Sivamurthy v. State of Andhra Pradesh and others⁵, Bhawani Prasad Sonkar v. Union of India and others⁶, Chief Commissioner, Central Excise and Customs, Lucknow and others v. Prabhat Singh⁷, MGB Gramin Bank v. Chakrawarti Singh⁸ and State of Himachal Pradesh and another v. Parkash Chand⁹ in support of his submission and would submit that the writ petition deserves to be dismissed.

7. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

8. Shri Chandrabhushan Sinha, who was father of the present petitioner,

3 (2004) 7 SCC 112

4 (2004) 2 SCC 130

5 (2008) 13 SCC 730

6 (2011) 4 SCC 209

7 (2012) 13 SCC 412

8 (2014) 13 SCC 583

9 (2019) 4 SCC 285



admittedly, died in harness on 3-12-2017 while working as Assistant Grade-II in the respondent Department and undisputedly, the petitioner's elder brother is already in Government service (Indian Army) as disclosed by the petitioner while submitting application for compassionate appointment (Annexure P-4). The applicable circular dated 14-6-2013 for compassionate appointment has been amended vide Annexure R-1 by order dated 29-8-2016 in which paragraph 2(2) states as under: -

“2/ राज्य शासन एतद्द्वारा इस विभाग के संदर्भित परिपत्र क्रमांक एफ 7-1/2012/1-3, दिनांक 14.06.2013 में निम्नानुसार और संशोधन करता है :-

(2) निर्देश क्रमांक 6 के पश्चात् नया बिन्दु 6 (अ) निम्नानुसार जोड़ा जाता है :-

“6 (अ) दिवंगत विवाहित 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।” “

9. A careful perusal of the aforesaid clause would show that the said clause is applicable to the case of the petitioner in which it has been stated that if the married Government servant dies and his one of the family members is already in Government service, the other family member will not be eligible for compassionate appointment. The respondent authority by its order dated 14-9-2018 vide Annexure P-1, rejected the application of the petitioner for compassionate appointment on the ground that his brother Dinesh Kumar Sinha, S/o Late Chandrabhushan Sinha, is already in Government service (Indian Army).

10. The policy clearly bars and prohibits consideration of other member of the family if one member of the family is already in Government service, but, however, the petitioner has relied upon the decision





rendered by this Court in Sulochana Netam (supra) in which a coordinate Bench of this Court in paragraph 9 of the order, directed for enquiry as to whether financial help is being provided to the petitioner (therein) and her family by the brother, who is in Government service, and observed 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.”

Thereafter, in paragraph 10, operative portion, it has been held as under: -

“10. In the present case, I am inclined to issue direction to the respondents to hold enquiry in the matter to verify the petitioner's claim that her father-in-law is living separately and not providing financial help and therefore, the petitioner is in need of compassionate appointment. The impugned order is set aside and the matter is remitted to the Superintendent of Police, Special Task Force, Durg. The petitioner may submit all necessary documentary evidence in support of her claim that her father-in-law is not providing financial help and living separately. In the enquiry, if it is





found that the petitioner is not getting financial help and father-in-law is living separately, the petitioner's case for grant of compassionate appointment should be considered favourably. The enquiry should be made within a period of three months from the date of receipt of a copy of this order by the Superintendent of Police, Special Task Force, Durg."

11. At this stage, the submission of Mr. Das, learned Additional Advocate General, that no such enquiry can be made on the fact of dependency and judgments relied upon by him as well, deserve to be noticed.

12. In A. Umarani (supra), the Supreme Court has observed qua the consideration of the application for compassionate appointment strictly as per the policy, as under: -

"66. In Civil Appeal No. 1413 of 2003 an additional ground has been raised to the effect that as the appellant was appointed on a compassionate ground, this Court on sympathetic consideration should issue appropriate directions directing the respondents to regularise her services. It appears that the appellant was appointed as supervisor in 3rd respondent Bank by the President of the Bank on a consolidated pay of Rs 2500 by an order dated 5-3-2001. Her appointment is said to have been made on compassionate ground on the plea that her husband had deserted her. It has not been shown before us that there exists a scheme in terms whereof a deserted woman can be appointed on compassionate grounds. Even such appointment, in our opinion, would be illegal.

67. In *State of Manipur v. Mohd. Rajaodin*¹⁰ this Court observed that the purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the breadwinner in the family.

68. In a case of this nature this court should not even exercise its jurisdiction under Article 142 of the Constitution of India on misplaced sympathy."

13. Similarly, in Teri Oat Estates (P) Ltd. (supra), it has been held by their Lordships of the Supreme Court in paragraph 36 of the report that this Court ordinarily would not pass an order which would be in contravention of a statutory provision. Paragraph 36 of the report



states as under: -

“36. We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation where to the appellants miserably fail to establish a legal right. It is further trite that despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order which would be in contravention of a statutory provision.”

14. Likewise, in V. Sivamurthy (supra), the Supreme Court has summarised the legal position qua the compassionate appointment as under: -

“18. The principles relating to compassionate appointments may be summarised thus:

(a) and (b) xxx xxx xxx

(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) xxx xxx xxx”

15. In Bhawani Prasad Sonkar (supra), the Supreme Court while dealing with the object of compassionate appointment, and entitlement and requisites for compassionate appointment held as under: -

“15. Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognised as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an





employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.

20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts."

16. In **Prabhat Singh's** case (supra), the Supreme Court while considering the application for compassionate appointment has held that the courts and tribunals should not fall prey to any sympathy syndrome, so as to issue directions for compassionate appointments, without reference to the prescribed norms and observed in paragraph 19 of its report as under: -

"19. The courts and tribunals should not fall prey to any sympathy syndrome, so as to issue directions for



compassionate appointments, without reference to the prescribed norms. The courts are not supposed to carry Santa Claus's big bag on Christmas eve to disburse the gift of compassionate appointment to all those who seek a court's intervention. The courts and tribunals must understand that every such act of sympathy, compassion and discretion wherein directions are issued for appointment on compassionate grounds could deprive a really needy family requiring financial support, and thereby, push into penury a truly indigent, destitute and impoverished family. Discretion is therefore ruled out. So are misplaced sympathy and compassion."

17. Finally, in Parkash Chand's case (supra), the Supreme Court has held that direction to consider application for compassionate appointment of dependants 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 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*¹¹, *SBI v. Kunti*



Tiary¹², Punjab National Bank v. Ashwini Kumar Teneja¹³, SBI v. Somvir Singh¹⁴, Mumtaz Yunus Mulani v. State of Maharashtra¹⁵, Union of India v. Shashank Goswami¹⁶, SBI v. Surya Narain Tripathi¹⁷ and Canara Bank v. M. Mahesh Kumar¹⁸.]

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.”

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

19. In the present case, since the policy dated 14-6-2013 as amended on 29-8-2016 is absolute in its term and clearly prohibits consideration of dependants of the deceased Government servant if one of the members of the family of the deceased Government servant is already in Government service and since no exception has been carved out while formulating the policy by the State Government; as such, I am of the considered opinion that the policy framed by the State Government for grant of compassionate appointment to a dependent of a deceased Government servant having died in harness has to be

12 (2004) 7 SCC 271

13 (2004) 7 SCC 265

14 (2007) 4 SCC 778

15 (2008) 11 SCC 384

16 (2012) 11 SCC 307

17 (2014) 15 SCC 739

18 (2015) 7 SCC 412



construed strictly and this Court in exercise of jurisdiction under Article 226 of the Constitution of India is jurisdictionally not empowered to alter the policy so formulated as held by their Lordships of the Supreme Court in Parkash Chand's case (supra) and cannot go beyond the policy so formulated. Consequently, direction by this Court to hold enquiry as to whether one of the family members, who is already in Government service, is financially supporting to the other members of the family claiming appointment and then to consider the application for compassionate appointment would amount to amend / alter the policy framed by the State Government. Accordingly, the judgment of this Court in Sulochana Netam (supra) requires reconsideration by larger Bench on the following stated question in accordance with Rule 33 of the High Court of Chhattisgarh Rules,

2007: -

“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?”

20. Let the matter be placed before Hon'ble the Chief Justice for constitution of larger Bench for consideration of the aforesaid issue.

Sd/-
(Sanjay K. Agrawal)
Judge



HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.6689 of 2018

Purendra Kumar Sinha

Versus

State of Chhattisgarh

Head Note

The policy framed by the State Government for grant of compassionate appointment to a dependent of a deceased Government servant having died in harness, has to be construed strictly.

सेवाकाल के दौरान मृत शासकीय सेवक के आश्रित को अनुकम्पा के आधार पर नियुक्ति प्रदान करते समय राज्य सरकार द्वारा बनाई गयी नीति का कड़ाई से पालन करना चाहिये।

