
(2018) 07 CHH CK 0332

Chhattisgarh High Court

Case No: Writ Petition (S) No. 4765 Of 2015

Bed Bai

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision: July 27, 2018

Hon'ble Judges: P. Sam Koshy, J

Bench: Single Bench

Advocate: Anand Shukla, Chandresh Shrivastava

Final Decision: Allowed

Judgement

P. Sam Koshy, J

1. The challenge in this petition is to the order dated 28.10.2015 whereby the claim of the petitioner for compassionate appointment has been rejected

by the respondents. The ground of rejection was that the Husband of the petitioner was not a government employee, but was a Collector rate employee.

2. The contention of the petitioner was that her husband late Bhel Singh was working as Cleaner-cum-Chowkidar in the department since, 1996. In

between the State Govt. vide their circular dated 26.02.2007 had initiated proposal for absorption of those employees who are working against the

vacant sanctioned post. Based on the said circular dated 26.02.2007, the case of the husband of the petitioner was also considered and thereafter he

was transferred from veterinary hospital Chendrivan, Nawagaon (Dondilohara) to veterinary hospital, Durg on the post of Chowkidar.

3. The employee while working on the said post of Chowkidar was attacked by a group of robbers who were trying to inter into the premises where

the employee was performing his duty of Chowkidar and in the course there was a fight resulting in grievous injuries to the employee to which he later on succumbed on 07.10.2010. An FIR in this regard was lodged on the same day which establishes and proves the incident. Immediately thereafter the present petitioner had moved an application on 07.11.2010 for grant of compassionate appointment. The said application had been forwarded by the superior authorities in the department like Deputy Director, Veterinary Service, Durg on couple of occasions recommending the claim of the petitioner for grant of compassionate appointment. Since the respondent-State did not pass final order in this regard, the petitioner was forced to file a writ petition vide WPS No.1996 of 2015.

4. The said writ petition stood disposed of on 29.07.2015 with a direction that the State shall take a decision in the case of the petitioner for grant of compassionate appointment in the light of the recommendations which have been made by the Deputy Director, Veterinary Services Durg on 24.06.2011 and 18.07.2011. It is thereafter the impugned order was passed on 19.10.2015 which was intimated to the petitioner on 28.10.2015 stating that her claim has been rejected only on the ground that her Husband does not fall within the category of government employee. He was infact a collector rate employee and therefore the scheme for compassionate appointment would not be applicable in the case of the petitioner.

5. The contention of the petitioner is that the document dated 30.05.2007 by itself would evidently reveal that the services of the employee was infact absorbed by the respondents and thereafter he was transferred from veterinary hospital Chendrivan, Nawagaon (Dondilohara) to veterinary hospital, Durg. According to the petitioner, had the employee's status remained that of a daily wage employee, the respondents did not have a power of transferring a daily wage employee from one Hospital to another.

6. He further submits that the said document also clearly indicates of the service of the employee having been absorbed in the State service in the department for the reason that the order dated 30.05.2007 has been passed in reference to the earlier order of the State Govt. in this regard dated 26.02.2007 which by itself shows that subsequent to 26.02.2007, the case of the petitioner was scrutinized and thereafter the final order was passed

on 30.05.2007. Thus, the impugned order of the respondents to the extent that the employee was not a government employee is not proper, legal and justified and the same deserves to be set aside.

7. The State counsel on the contrary opposing the petition submits that even the document dated 30.05.2007 which has been relied upon by the petitioner does not reveal that the services of the petitioner stands absorbed or regularized to the service of the State Govt. The said order is only a recommendation and no final order had been passed in favour of the employee. Therefore, the provisions of compassionate appointment formulated by the State would not be applicable in the present case and the impugned order has rightly been passed. Thus, prayed for rejection of the petition.

8. Indisputably, the husband of the petitioner had been working with the respondents since December, 1996. The State had taken a policy decision for absorbing all those daily wage workers working against the sanctioned vacant post. The case of the petitioner was also considered and order was passed on 30.05.2007. After the order being passed, the Husband of the petitioner was transferred from Dondilohara to Durg. This subsequent development and the order dated 30.05.2007 would prima facie establish the fact that the respondents had considered the case of the petitioner for absorption and order also was passed. Moreover, the fact that the services of the employee had been transferred from Dondilohara to Durg also shows that the respondents had absorbed the services of the employee to the department or else no rules, power or authority empowers the department to transfer a daily wage employee from one place to another.

9. Last but not the least, what cannot be lost sight of is the manner in which the employee died. The employee died protecting the property of the respondent while discharging his duties. He was engaged as Chowkidar and in the course of discharging of his duties he had been assaulted fighting a group of robbers. That, in the course of protecting the property of the respondent, he received grievous injuries and later lost his life.

10. Another aspect which is also to be borne in mind is that the department has been sympathetic to the case of the petitioner and they have recommended the case of the petitioner for grant of compassionate appointment repeatedly, but the respondents have not shown any sympathetic

consideration for the petitioner. It would be relevant at this juncture to refer to the judgment of Division Bench of this court in Supram Prasad Vs.

State of Chhattisgarh & Another, 2012(4)CGLJ 137 (DB) wherein it has been held as under:

7. In our view here is a case of the appellant, which should have been considered by the State authorities on pure and simple sympathetic approach

rather than with legalist approach. A person has died while he was in his early forties leaving behind one illiterate widow and minor children. He left

the world leaving the family in total financial hardship to suffer with no one to look after and maintain them during their minority and at the same time,

there was no one in the family to take up the State employment due to circumstances prevailing in the family.

8. In our view, we have no hesitation in recording a finding that cause of hardship persisted and continued to exist till date in the appellants' family

and if in these circumstances, the appellant being the only major son applied for giving him compassionate appointment in State Service immediately on

his attaining the majority, then it ought to have been given to him to overcome the cause of hardship in the family of late Kanhaiya Prasad. The State

authorities should have realized that if the post is less remunerative then the hardship becomes more to the person concerned and to those who have

suffered. This is what has happened in this case and hence we can not ignore this hard realities faced by the family for all these years by the survivors

of the family members. In our opinion it had to be taken into consideration in the facts of the case regardless of any circulars for providing some

solace.

11. Given the aforesaid factual matrix of the case and also taking into consideration the order of the Deputy Director, Veterinary Services, Durg dated

30.05.2007 in respect of the status of the petitioner and also considering the recommendations which have been made by the department, this court is

of the opinion that rejection of petitioner's application for grant of compassionate appointment was not proper, legal and justified. The same deserves

to be and is hereby set aside/quashed.

12. The petition is allowed. It is directed that the respondents shall consider the case of the petitioner for grant of compassionate appointment and an

order be passed forthwith within a period of 90 days from the date of receipt of certified copy of this order.