

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 5754 of 2014**

Shivan Lal Netam, S/o. Late Shri Jayram Netam, Aged about 25 years, R/o. Village Saraitola, Post Dugli, Police Station Nagri, District Dhamtari, Chhattisgarh

---- **Petitioner****Versus**

1. State Of Chhattisgarh, Through Secretary, Public Works Department, Mahanadi Bhawan, Mantralaya, New Raipur, Chhattisgarh
2. The Executive Engineer, Public Works Department, Dhamtari Division, Dhamtari, Chhattisgarh
3. The Sub-Divisional Officer, Bridge Constructions, Public Works Department, Sub-Division Dhamtari, Chhattisgarh

----**Respondents**

For Petitioner	:	Mr. D.N. Prajapati, Advocate
For State	:	Mr. S.P. Kale, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****01/10/2018**

1. The challenge in the present writ petition is to the order Annexure P/1 whereby the claim for compassionate appointment of the petitioner has been cancelled.
2. The facts of the case is that the father of the petitioner namely late Jayram Netam was working in the contingency establishment under the respondents and died in harness on 14.05.2006. Thereafter the petitioner had moved an application for grant of compassionate appointment. The said application finally stood rejected vide order dated 11.02.2013 (Annexure P/1). The order of rejection is a three lines order, which for ready reference is being produced herein under:

“विषयांतर्गत लेख है कि आपको अनुकम्पा नियुक्ति की पात्रता नहीं है।

यदि आप अस्थाई श्रमिक के रूप में नवीन विश्रामगृह धमतरी में कार्य करने के लिए इच्छुक हैं तो अनुविभागीय अधिकारी, लोक निर्माण विभाग उपसंभाग नगरी के कार्यालय में उपस्थित होकर व्यक्तिगत संपर्क करें। ताकि आपके आवेदन पत्र पर विचार किया जा सके।”

3. From the perusal of the aforesaid observations in Annexure P/1, it clearly reflects that the respondents have not given any reasons for rejecting the claim of the petitioner. Under the circumstances, this Court is forced to take into consideration the reasons assigned in the reply of the respondents. In the reply to the writ petition by the respondents, they have taken a categorical stand that the claim of the petitioner was rejected on the ground that the father of the petitioner was not regularized in contingency services and since he was not regularized, the status of the father of petitioner would remain that of a daily wage employee. Therefore, the petitioner would not be entitled for compassionate appointment as the scheme for compassionate appointment specifically excludes the daily wage employees, adhoc employees or contractual employees from getting the benefit of compassionate appointment.

4. Given the aforesaid factual matrix of the case, what is relevant to be considered at this juncture is the scheme for compassionate appointment and the applicability of the scheme. For ready reference, clause 3(i) of the scheme for compassionate appointment applicable in the respondents/ State is reproduced herein under:

“3. अनुकम्पा नियुक्तियां—

(1) निर्देश किन प्रकरणों में लागू होंगे —

अनुकम्पा नियुक्ति दिवंगत शासकीय सेवक के परिवार के निम्नलिखित सदस्यों में से किसी एक को दी जाएगी, जो पूर्णतः उस पर आश्रित रहा हो:—

(क) दिवंगत शासकीय सेवक की विधवा, अथवा

(ख) पुत्र, अथवा

(ग) अविवाहित पुत्री

(दत्तक पुत्र/पुत्रियां शामिल रहेंगे)

“क” के अस्वीकार करने या योग्य न होने पर ही “ख” को एवं उसके पश्चात् “ग” को अनुकम्पा नियुक्ति के लिए विचार किया जाएगा।

टीप:- (अ) दिवंगत शासकीय सेवक से तात्पर्य ऐसे कर्मचारियों से है, जो नियमित शासकीय सेवक के किसी पद को धारण करते हुए दिवंगत हुआ हो, अथवा

(ब) आकस्मिक सेवा/कार्यभारित स्थापना में स्थाई रूप से कार्यरत कर्मचारी रहा हो।

{दैनिक वेतन भोगी/संविदा पर नियुक्त/तदर्थ रूप से नियुक्त या पुनर्नियुक्त/ सेवावृद्धि प्राप्त दिवंगत कर्मचारी के परिवार के आश्रित सदस्यों को अनुकम्पा नियुक्ति की पात्रता नहीं होगी}”

5. The aforesaid portion of the scheme for compassionate appointment specifically depicts that the persons who were in the contingency service and in the contingency establishment permanently placed would also be entitled for the benefit for compassionate appointment.

6. In the light of the aforesaid provisions in the scheme for compassionate appointment, it would be relevant at this juncture to consider the status of the father of the petitioner at the time of his death. The Sub-Divisional Officer, PWD, Sub-division Nagri, District Dhamtari had vide his order dated 11.01.2008 had written a letter, so far as the claim for compassionate appointment of the petitioner is concerned. For ready reference, the contents of the said letter also is necessary to be taken note of for proper adjudication of the case:

“उपरोक्त संदर्भित पत्र के द्वारा स्व. श्री जयराम नेताम परमानेन्ट गैंगमेन के पुत्र श्री सीवन लाल नेताम स्व. श्री जयराम नेताम के स्थान पर अनुकम्पा नियुक्ति हेतु आवेदन को सत्यापित कर अनुशंसा सहित भेजे जा रहे हैं। स्व. श्री जयराम नेताम

जो कार्यभारित पदस्थापना में नियमितीकरण नहीं हुआ था स्थाई गैंग में ही कार्यरत थे।”

7. When we take into consideration the portion emphasized in the preceding paragraphs, it would reveal that there is an admission on the part of the Sub-Divisional Officer himself that the father of the petitioner though was not regularized in the services of the respondents, but was working in the permanent gang in the contingency establishment of the respondents.

8. Given the said admitted position at the behest of the officers of the respondents, if we take into consideration the scheme for compassionate appointment, particularly sub-clause (b) of clause (1) of clause 3, it would reveal that a person, who was in employment on permanent basis in the contingency establishment, the scheme for compassionate appointment would be applicable upon the said person.

9. This Court had an occasion of recently dealing with an identical set of facts in WPS No. 3685/2011 (Taman Lal v. State of Chhattisgarh & Anr.) decided on 30.07.2018, whereby dealing with the facts and circumstances of the case, in paragraphs No.12, 13 & 17 had held as under:

“12. So far as the definition of permanent employee is concerned, it would be relevant to take note of the provision of Rule 2(b) and 2(c) of the Chhattisgarh (Work Charge and Contingency Paid Employees) Pension Rules, 1979.

“(b) “Work-charged employees means” a person employed upon the actual execution, as distinct from general supervision of a specified work or

upon subordinate supervision of the departmental labour, store, running and repairs of electrical equipment and machinery in connection with such work, excluding the daily paid labour and muster-role employee employed on the work.

(c) "Permanent employee" means a contingency paid employee or a work-charged employee who has completed fifteen years of service or more on or after the 1st January, 1974:"

13. As per the definition of permanent employee as referred herein above it clearly reflect that, the requirement to become a permanent employee was not an order of regularization but it the length of service which matters. The moment an employee has put in more than 15 years of service, he attains the status of a permanent employee.

17. It would be trite at this juncture to refer to the order of this Court in the earlier Writ Petition WPS No. 180/2008 which was disposed off on 09/09/2009 relying upon the judgment of this Court in the case of Govind & Ors. v. State of C.G. & Ors. [2007 2 CGLJ 29] wherein in paragraph 7 it has been held as under:-

"7. The question with regard to definition of permanent Gangman came into consideration before this Court in Govind (supra). This Court, after having considered all the aspects observed as under:-

15. Thereafter, in the Madhya Pradesh " Workcharged and Contingency Paid Employees Revision of Pay Rules, 1977, framed under the proviso to Article 309 of the Constitution of India, the post of gangman was shown at serial No. (xxvii) in Annexure-I,

(under Rule 3), under the column “name of the post held by a workcharged or contingency paid employee”. The definition of the contingency paid employee” and “workcharged employee” are the same under the provisions of the Rules, 1976 and that of the Rules, 1979. In Rules, 1979, the 'permanent employee' was defined in Rule 2(c) as a workcharged employee who has completed 15 years of service on or after 1.1.1974. Reading the circulars dated 14.6.1974 and 29.9.1975, Rule 2(h) of the Rules, 8 of the Rules, 1976 Annexure 1 to Rules 1977 and the definition enshrined in Rule 2(b) and in Rule 2(c) i.e. 'permanent employees' under Rules, 1979 together, it clearly follows that the permanent gangmen are governed by the same policy for superannuation, as is applicable to the Class IV government employees, It is not in dispute that the amendment to F.R. 56 under the Act, 1967, as amended by the Madhya Pradesh Shashkiya Sevak (Adhivarshiki-Ayu) Sanshodhan Adhiniyam, 1999 (M.P. Act No.13 of 1999), published in the Gazette (Extraordinary) on 29th April, 1999, provides for age of retirement to the Class IV government servants on attaining the age of 62 years.”

10. Given the aforesaid factual positions and the legal positions as has been laid down by this Court in the case of “**Taman Lal**” (supra) and also taking note of the observations of the Sub-Divisional Officer, so far as the status of the father of the petitioner is concerned vide Annexure P/5, this Court has no hesitation in reaching to the

conclusion that undisputedly the father of the petitioner was working in the contingency establishment and was working as a permanent gang man. The scheme for compassionate appointment is also made applicable for the contingency establishment, who are working on permanent basis.

11. Given the said facts and circumstances of the case, only because the father of the petitioner was not regularized in the services of the respondents, cannot be a ground dis-entitling the claim of the petitioner for compassionate appointment and the impugned order to that extent is not sustainable, and the same deserves to be and is accordingly set-aside/quashed.

12. The respondents are directed to consider the claim for compassionate appointment to the petitioner at the earliest preferably within a period of 90 days from today, subject to the petitioner fulfilling all other requisite eligibility criteria.

13. The writ petition thus stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved