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BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT**BILASPUR****WRIT PETITION (S) NO. 2377 / 2010****PETITIONER:**

Smt. Suruj Bai,
Wd/o Late Bisahuram
Bhuarya Aged about 45
years, R/o Village
Dewarbhata Tehsil Balod,
Post Admabad, District
Durg, C.G.

VERSUS**RESPONDENTS**

1. State of Chhattisgarh,
Through the Secretary
Public Works Department,
D.K.S. Bhawan
Mantralaya, Raipur, C.G.
2. Engineer in Chief,
Public Works Department,
Akashwani Chowk,
Raipur, C.G.
3. Chief Engineer,
Public Works Department,
Akashwani Chowk,
Raipur, C.G.
4. Superintending Engineer,
Public Works Department,
Circle Durg, District Durg
C.G.
5. Executive Engineer,
Public Works Department,
Balod Division, District
Durg, C.G.

P.R. No. 2561/2010
Presented by K.K. Dewangan
dated 5/5/2010

**WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA .**

The petitioner submits the particulars of the petition as under: -

1. PARTICULARS OF THE PETITIONER:

As stated in the cause title above .

2. PARTICULARS OF THE RESPONDENTS:

As stated in the cause title above.

*For
Adv*



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HIGH COURT OF CHHATTISGARH : BILASPUR

WRIT PETITION (S) NO.2377 OF 2010

PETITIONER

Smt. Suruj Bai

Versus

RESPONDENTS

State of Chhattisgarh & Others

Post for pronouncement of the orders on the 28th day of February, 2011

Sd/-
Satish K. Agnihotri
Judge

HIGH COURT OF CHHATTISGARH : BILASPUR

WRIT PETITION (S) NO.2377 OF 2010

PETITIONER

Smt. Suruj Bai

Versus

RESPONDENTS

State of Chhattisgarh & Others

(Writ petitions under Article 226 of the Constitution of India)

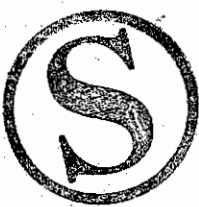
Single Bench : Hon'ble Shri Satish K. Agnihotri, J.

Present :- Shri Satyendra Sahu, Advocate for the petitioner.

Shri Y.S. Thakur, Deputy Advocate General for the State.

(Delivered on this 28th day of February, 2011)

1. By this petition, the petitioner seeks to challenge the legality and validity of the order dated 09-02-2010 (Annexure P/1), whereby and whereunder the application for grant of compassionate appointment has been rejected on the ground that the husband of the petitioner namely Bisahuram Bhuarya (since deceased) was not permanent Gangman.
2. The indisputable facts, in nutshell, as projected by the petitioner, are that the petitioner is the widow of late Bisahuram who was working as permanent Labour at Balod Sub Division No.2 in Public Work Department, died in harness on 19-04-2008 as is evident from Annexure P/2 (death certificate). After the death of the deceased employee, the petitioner made an application before the respondent authorities for grant of compassionate appointment which has been rejected on the ground that the husband of the petitioner was not a permanent Gangman in the respondent department. Thus, this petition.



3. Shri Sahu, learned counsel appearing for the petitioner, would submit that as per the prevailing policy, the respondents are required to issue appointment order in favour of the petitioner, as the deceased employee was working in the respondent department as permanent Gangman, as is evident from dated 04-08-2008 (Annexure P/6). The first line of the said order reads to the effect that "श्री बिसाहू राम हल्बा स्थाई गैंग श्रमिक की दिनांक 19.4.2008 को मृत्यु होने के फल स्वरूप सेवा...."
4. Shri Sahu would further submit that after the death of the deceased employee there is no earning member in the family of the petitioner. Therefore, the respondents are required to consider the case of the petitioner in view of well settled principles of law laid down by the Supreme Court as well as this Court in umpteen number of cases.
5. Shri Sahu would also submit that the same benefit has been granted to the similarly situated persons, as is evident from Annexure P/4 as per the MP/CG Work Charged and Contingency Paid Employee Service Conditions Rules, 1975 (for short "the Rules, 1975"), the petitioner is entitled for grant of compassionate appointment, as the said rules have also been adapted by the State of Chhattisgarh on 29-10-2002. The impugned action of the respondent authorities is against the well settled provisions enshrined under Article 14 and 16 of the Constitution of India.
6. On the other hand, Shri Thakur, learned Deputy Advocate General appearing for the State, would submit that the husband of the petitioner died in the year 2008, whereas the petitioner filed the application after a period of two years i.e. in the year 2010.



Learned counsel would further submit that the husband of the petitioner was a daily wager and had never been regularized or appointed as work charged contingency paid employee. The petitioner has not produced any document to show that the husband of the petitioner was getting regular pay scale. Therefore, it can be said that the husband of the petitioner was a daily wager employee. Hence, the petitioner is not entitled to any relief and the petition deserves to be dismissed.

7. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.
8. The authorities concerned rejected the application of the petitioner on the ground that the husband of the petitioner was not engaged in the work charged establishment as permanent Gangman, which is contrary to the earlier order dated 04-08-2008 (Annexure P/6) passed by the Executive Engineer, Department of Public Works, Balod Division, Balod, holding that the deceased employee was permanent Gang Man Shramik.
9. In view of the above, it appears that the impugned order has been passed without examining the full facts of the case. Thus, the same is bad and illegal.
10. The respondents have not produced any documents to contradict the statement made by the petitioner as well as the status of the deceased employee recorded in the order dated 04-08-2008 (Annexure P/6). The circular dated 23-12-1977 clearly makes a provision in case of death of permanent Gangman in harness to the effect that one member of the family may be considered for appointment on compassionate basis as regular labour.



11. The question with regard to definition of 'permanent Gangman' came into consideration before this Court in *Govind & Others v. State of C.G. & Others*¹. 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 gangmen 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, 1976, Rule 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."

12. The question with regard to who would be a permanent gangman under the Work Charged Contingency Paid Employees (Recruitment and Conditions of Services) Rules, 1975, as pleaded by the learned Dy. Advocate General appearing for the State, has

¹ 2007 (2) CGLJ 29



already been settled by this Court in *Govind* (supra), as aforestated.

13. Reliance of Shri Thakur in the order of the Division Bench of this Court in *State of Chhattisgarh & Another v. Kesram Patel*², is not relevant here, as the said matter was remitted back to the learned single Judge to consider afresh.
14. The State has circulated a chart along with its written submissions after the hearing was over. The chart supplied by the State indicating difference between the permanent gang labour and work charged contingency paid employee, is not clear and, as such, not admissible on the ground that the same is not supported by any documentary evidence or statutory rules/executive instructions. The petitioner was found permanent gang labour in the order dated 4-8-2008 (Annexure – P/6). Thus, the chart filed by the State does not make any difference and the same was not supported by relevant documents.
15. The application of the petitioner for grant of compassionate appointment was not rejected on the ground of delay, thus, the same is not relevant here. The application of the petitioner was rejected on the ground that the husband of the petitioner namely; Bisahuram Bhuarya was not a permanent Gangman, which is contrary to the record, as the order dated 04-08-2008 (Annexure P/6) clearly indicates that the husband of the petitioner was working as permanent Gangman, when he died on 19-04-2008 in harness. Thus, the petitioner is entitled for consideration of her case for grant of compassionate appointment, in accordance with law.

² W.A.No.33 of 2009 (decided on 7-7-2010)

16. In view of the above, the impugned order dated 09-02-2010 (Annexure P/1) is quashed. The respondent authorities are directed to examine the matter afresh on the basis of documents and pass appropriate order, in accordance with law, as aforesaid, on its own merits, as early as possible preferably within a period of two months from the date of receipt of a copy of this order.
17. As an upshot, the writ petition is allowed to the above extent. No order as to costs.

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Sd/-
Satish K. Agnihotri
Judge