
(2014) 02 MP CK 0067
In the Madhya Pradesh High Court
Case No : W.A. No. 452 of 2013

Abhilakh Singh

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:

Citation : (2014) 02 MP CK 0067

Hon'ble Judges : S.K. Gangele, J;G.D. Saxena, J

Bench : Division Bench

Advocate : S.S. Raghuvanshi, for the Appellant; Vivek Khedkar, Dy. Advocate General, for the Respondent

Final Decision : Allowed

Judgement

1. Because the matter is in regard to compassionate appointment, hence, with the consent of the learned counsel for the parties, this appeal is heard and disposed of finally. This appeal has been filed by the appellant against the order dt. 8.8.2013 passed in W.P. No. 8913/2012.

2. Father of the appellant was died on 19.8.1993 when he was in service. At that time, he was working as Assistant Teacher. The appellant was minor at that time. After attaining the age of majority, he submitted an application for compassionate appointment on 21.5.2002. It was rejected vide order dt. 22.6.2005 on the ground that because the case of the appellant for compassionate appointment was of more than seven years, hence, as per the policy, the application of the appellant could not be considered.

3. Thereafter, the appellant filed a writ petition before the court. It was registered as W.P. No. 2999/2009. The court vide order dt. 24.7.2009 disposed of the aforesaid petition with the following directions:-

Resultantly, the present writ petition is disposed of with a direction to the District Education Officer, District Bhind to consider the case of the petitioner for grant of compassionate appointment keeping in view the circular dated 05th May, 2003,

read with the policy of the State Government in vogue for grant of compassionate appointment. The aforesaid exercise shall be concluded within a period of four months from the date of receipt of a certified copy of this order, in accordance with law. No order as to costs.

4. Again the application of the appellant was rejected vide order dt. 4.9.2009 for compassionate appointment by the District Education Officer on the ground that the circular of the Government is dated 5.5.2003 and the appellant attained the age of majority on 5.4.2000 and the application was to be considered, as per the circular, up to 5.4.2007 within a period of seven years. Because the aforesaid period had elapsed, hence, the application of the appellant could not be considered for compassionate appointment. Then the appellant filed a writ petition before this court. Learned Writ Court rejected the application on the ground that after lapse of time, the appellant has no right of compassionate appointment. Learned Writ Court relied on the judgment of the Hon"ble Supreme Court in the case of Sanjay Kumar Vs. The State of Bihar and Others, .

5. Earlier the application of the appellant was rejected vide order dt. 22.6.2005 on the ground that the compassionate appointment could be offered to a dependent of the deceased employee up to a period of seven years. Because that period was elapsed, hence, the application of the appellant could not be considered. Aforesaid order was passed on 22.6.2005. The government issued a circular on 5.5.2003 in regard to consideration of cases of dependents of deceased employee. It is mentioned in the circular that the family members of those employees, who were not major at the time of the death of the deceased employee, would be eligible for consideration of compassionate appointment up to the period of seven years after attaining the age of majority. In the present case, the appellant attained the majority on 5.4.2000 as mentioned by the District Education Officer in the order dt. 4.9.2009. His earlier application was rejected on 22.6.2005. At that time, the application of the appellant was within time. Hence, the appellant was eligible to be considered for compassionate appointment. Subsequently, the District Education Officer vide order dt. 4.9.2009 rejected the application of the appellant on the ground that the period of seven years after attaining the age of majority came to an end on 5.4.2007 in the case of the appellant, hence, he is not eligible for compassionate appointment. It is erroneous because the earlier application filed by the appellant was within time and it was rejected in the year 2005 without considering the circular of the government dt. 5.5.2003.

6. Learned writ court dismissed the Writ Petition on the ground that the compassionate appointment could not be offered after a long lapse of time. While passing the order, Hon"ble Supreme Court in Sanjay Kumar (supra) has made following observation :-

Moreover, when the first application was made by the petitioner on 2-6-1988, the petitioner was a minor and not eligible for appointment. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a

number of years, unless there are some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief. Therefore, the instant SLP is meritless.

7. In the aforesaid case, Hon''ble Supreme Court has made the observation that if there are some specific provisions, then the case would be different. In the present case, there is a specific provision i.e. circular of the government dt. 5.5.2003. It provides that if the dependents of the deceased employee were minor at the time of the death of the employee (deceased), they would be eligible to be considered for compassionate appointment within a period of seven years after attaining the age of majority. Hence, the appellant had a right to be considered for compassionate appointment because he filed the application for compassionate appointment within seven years.

8. Consequently, the appeal is allowed. The impugned order dt. 8.8.2013 passed by the writ court W.P. No. 8913/2012 and the order dt. 4.9.2009 passed by the District Education Officer, Bhind are hereby quashed. The District Education Officer - respondent No. 4 is directed to consider the application of the appellant for compassionate appointment in accordance with law without questioning the right of the appellant to get compassionate appointment, however, the authority is at liberty to consider other qualifications. The order be complied with within a period of three months from the date of receipt of copy of the order. No order as to costs.