
(2013) 07 MP CK 0266

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3542 of 2012 (S)

Amit Shrivass

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 19-07-2013

Acts Referred:

Citation : (2013) 07 MP CK 0266

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Arvind Dudawat, for the Appellant; Praveen Newaskar, DGA for State, for the Respondent

Final Decision : Allowed

Judgement

Sujoy Paul, J.—The petitioner, dependant of late Ranglal Shrivass preferred an application for compassionate appointment. Deceased-Ranglal expired on 11/12/2009 after rendering services for more than 02 decades. The pension payment order Annexure-P/4 was issued in his favour. In this order it was mentioned that deceased worked from 12/03/1987 to 11/12/2009 (22 years 09 months). Petitioner's application for grant of compassionate appointment is rejected by Annexure-P/9 dated 19/08/2010 on the ground that dependants of work charge contingency employees are not entitled for compassionate appointment and in lieu thereof, they are entitled for lump sum payment. This is challenged on the ground that as per Rule 2(c) of M.P. (Work Charge Contingency Paid Employees) Pension Rules, 1979 on completion of 15 years of service or above, the employee becomes a permanent employee, hence, by no stretch of imagination, petitioner's father can be treated as an employee on work charge and contingency basis, indeed he was a regular employee. That is the reason, in the PPO also it was mentioned that he was a regular employee. Shri Dudawat relied on judgment passed in this regard in W.P. No. 2731/2010 (Shahjad Khan Vs. State of M.P. & others), which was affirmed in W.A. NO. 110/2013.

2. It is opposed on the ground that petitioner has not chosen to challenge the

relevant clause 12.1 of the policy, which deprives him from consideration for compassionate appointment. In addition, it is stated that deceased employee never claimed permanency during his life time.

3. I have heard learned counsel for the parties and perused the record

4. In W.P. No. 2731/2010, the respondents filed their return and in the said case, they took the same stand. Page 02 of the return in the said case reads as under:-

However, it is submitted that the father of the petitioner namely Salamat Kahn was not in regular establishment and he was working as against the post of work charges establishment. Accordingly as per policy prevailing at the relevant time and governing thereto, case of the petitioner for grant of compassionate appointment cannot be given as the father of the petitioner who was working in work charged establishment, is barred after his death, and therefore petitioner is not entitled to have any benefit of compassionate appointment in view of the matter and subsequent policy of the State Government. Copy of the policy is already enclosed by the petitioner as Annexure-P/1 which was issued on 22/01/2007 as such petition of the petitioner being misconceived deserves to be dismissed.

5. This Court in Shahjad Khan (supra) considered the effect of Rule 2(c) of the said rules and opined that after serving for more than 15 years, petitioner's father deemed to be a permanent employee. Para 5 of the said judgment reads as under:-

5. Looking to the aforesaid position, which has been enumerated, respondent No. 3-Chief Engineer, Pubic Works Department, Moti Mahal, Gwalior is hereby directed that in case the petitioner's father had qualified the status of permanent employee as envisaged under Rule 2(c) of the aforesaid Rules of 1979, he be deemed to be a permanent employee and accordingly, the application of petitioner for appointment on compassionate basis be considered. Let the decision be taken by the respondent No. 3 on or before 31st March, 2012. Petitioner is hereby directed to serve a copy of this order to the respondent No. 3.

6. This is not in dispute that this judgment has attained a finality in view of the dismissal of W.A. No. 110/2013. Thus, it is clear that the point involved in this case is squarely covered by the judgment of Shahjad Khan (supra). Since petitioner's father enjoyed the status of permanent employee automatically, on completion of 15 years of service as per Rule 2(c) aforesaid, there was no need for him to seek any declaration during his life time. Thus, this contention of respondent is without any basis. So far, the objection regarding challenge to relevant clause of the policy is concerned, in my opinion, the said clause 12.1 is not an impediment for the petitioner. That clause may be applicable to such employees, who have not attained the status of permanent employee. Once an employee becomes a permanent employee under the rules, by no stretch of imagination, clause 12.1 can be pressed into service against the post for grant of compassionate appointment. Apart from this, it is gathered that respondents

have granted benefit of kramonnati also to the petitioner's father.

7. On the basis of aforesaid analysis, the impugned order cannot be permitted to stand and the same is hereby set aside. Respondents are directed to consider the case of the petitioner for compassionate appointment within 60 days and pass appropriate orders and communicate it to him. Petition is allowed. No costs.