

(2017) 02 MP CK 0123
In the Madhya Pradesh High Court
Case No : 12463 of 2015

Amrat Singh Dhakad

APPELLANT

Vs

State of Madhya Pradesh & Others.

RESPONDENT

Date of Decision : 01-02-2017

Acts Referred:

Citation : (2017) 02 MP CK 0123

Hon'ble Judges : Sujoy Paul

Bench : Single Bench

Advocate : Brijesh Choubey, Pushpendra Yadav

Judgement

1. This is second visit of the petitioner for claiming compassionate appointment. Petitioner's father died on 26.08.2004. Earlier petitioner's claim was rejected on the ground of delay by order dated 11.12.2012. The said order was challenged in W.P. No.9880/2013 in the light of the order passed in W.P. No.609/2013 (Parbendra Singh Vs. State of Madhya Pradesh). In turn, the petitioner's claim was considered and rejected on 26.08.2014 (Annexure-P/13). In the rejection order, it is stated that for the post of Samvida Shala Shikshak Grade III, the claimant should possess 50% mark in Higher Secondary + qualification of D.Ed.

2. Learned counsel for the petitioner challenged this order dated 26.08.2014 on twin grounds. Firstly, it is submitted that Shri Prabendra Singh and petitioner are similarly situated but he was given appointment whereas the petitioner is subjected to hostile discrimination. Secondly, it is urged that in the policy dated 18.08.2008, there is no mention about essential qualification which is to be possessed by the claimant, hence reason assigned in the rejection order is bad in law.

3. The prayer is opposed by Shri Yadav, learned Govt. Advocate. By placing reliance on policy, he submits that in cases of compassionate appointment, there was no relaxation in eligibility condition. Thus, the candidate, who does not have any minimum essential qualification, cannot get compassionate appointment.

4. Parties confined their arguments to the extent indicated above.

5. So far the policy dated 18.08.2008 (Annexure-P/5) is concerned, Clause 6.3 of this policy makes it clear that relaxation in the recruitment rules is confined to the extent of recruitment process and condition of registration of name in the Employment Exchange. In other words, the person claiming compassionate appointment will not be required to undergo the same selection process which is applicable for recruitment of a regular incumbent nor he was required to get his name registered in the Employment Exchange. I am unable to read this policy in the manner suggested by Shri Choubey. Clause 6.3, in my considered view, shows that other conditions including eligibility condition relating to qualification is not relaxed by the respondents. Admittedly, the petitioner does not have minimum 50% in the Higher Secondary Examination. He did not have qualification of D.Ed. on the date of consideration. Thus, a person, who is not eligible, cannot claim parity with any other candidate, who is appointed.

6. Putting it differently, even if Shri Prabendra Singh is appointed despite having no eligibility, he cannot be come an example for continuing the illegality. In other words, the petitioner is claiming the benefit of negative parity which cannot be granted while exercising writ jurisdiction. [See: 1997 (1) SCC 35 (Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and others), 2000 (4) SCC 186 (C.S.I.R. and others Vs. Dr. Ajay Kumar Jain), 2007 (8) SCC 249 (State of Jharkhand and others Vs. Manshu Kumbhkar) and 2011 (3) SCC 436 (State of Orissa and another Vs. Mamata Mohanty)].

7. Since, the petitioner does not have minimum essential qualification for consideration for compassionate appointment, I find no reason to entertain this petition. No fault can be found in the impugned order. Petitioner fails and is hereby dismissed. No cost.