

(2023) 08 MP CK 0134

In the Madhya Pradesh High Court

Case No : ?Writ Petition No. 16737 Of 2021

Aneela Khan

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 28-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2023) 08 MP CK 0134

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : K.N. Bundela, Ankit Agrawal

Final Decision : Dismissed

Judgement

Sujoy Paul, J

1. With the consent, finally heard.
2. The challenge is mounted in this petition filed under Article 226 of the Constitution of India to an order dated 05.05.2021 (Annexure P/1) thereby the application of petitioner for grant of compassionate appointment was rejected by the Police Headquarter.
3. Shri K.N. Bundela submits that the petitioner's mother died in harness on 30.08.2012. The petitioner preferred application for grant of compassionate appointment. The petitioner later on filed W.P. No.6511 of 2021 for considering her claim for compassionate appointment. This Court vide order dated 23.03.2021 (as quoted in para-5.9 of W.P.) directed the respondents to decide the application within a period of 60 days. In turn, the impugned order has been passed. By placing reliance on a Full Bench Judgment of this Court passed in W.A. No.756 of 2019 (Meenakshi Dubey vs. M.P. Poorva Kshetra Vidyut Vitran Co. Ltd. and others). It is submitted that married daughter of employee is also entitled to get compassionate appointment.

4. Shri Ankit Agrawal, Government counsel opposed the same and contended that a plain reading of return shows that respondents have taken a definite stand in para 3 that petitioner's application for compassionate appointment was initially rejected on 26.09.2012. Thereafter, yet another application of the same nature was rejected on 07.02.2015. The petitioner neither in the previous round nor in this round of litigation challenged the aforesaid rejection orders dated 26.09.2012 (Annexure R/1) and 07.02.2015 (Annexure R/2). The petitioner's claim was rejected in the teeth of Clause 12.2 of the Government Policy dated 29.09.2014 which specifically deals with those claims of compassionate appointment where decision has already been taken and those decisions will not be reopened even as per the Judgment of Full Bench of this Court in Meenakshi Dubey (supra).

5. Faced with this, Shri K.N. Bundela submits that aforesaid rejection orders dated 26.09.2012 and 07.02.2015 were never communicated to the petitioner. On a specific query from the Bench, Shri K.N. Bundela fairly submits that in the rejoinder the petitioner mentioned and dealt with the said rejection orders but did not mention that said orders were never served on her.

6. No other point is pressed by learned counsel for the parties.

7. This Court has requisitioned the record of W.P. No.6511 of 2021 and find substance in the argument of learned Government counsel that in the previous round petitioner did not challenge the rejection orders dated 26.09.2012 and 07.02.2015.

8. In the opinion of Court, the purpose of grant of compassionate appointment is to provide immediate helping hand to the family in distress. The delay defeats the very purpose of grant of compassionate appointment. The delay, in this case, is on the part of the petitioner. Petitioner suffered two rejection orders mentioned above but did not challenge the same with quite promptitude. In catena of judgments, this Court held that the prayer for compassionate appointment with delay is not entertainable. This Court in W.P. No.8290 of 2011 held as under:

"Apart from this, in the present case the father of petitioner died in the year 1997. Petitioner submitted application for appointment in 2010. The basic purpose of providing compassionate appointment is to provide helping hand to the family of the deceased Government servant. It cannot be done after a decade. There cannot be a reservation of vacancy till a candidate becomes major after number of years. This view is taken by Supreme Court in (2000) 7 SCC 192 [Sanjay Kumar vs. State of Bihar and others]. The relevant portion reads as under :-

"3. This Court has held in a number of cases that co0mpassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the breadearner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of

Education vs. Pushpendra Kumar. It is also significant to notice that on the date when the first application was made by the petitioner on 02/06/1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as a 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 get immediate relief."

A Division Bench of this Court took same view in 2003 (1) MPLJ 342 [Beni Lal Bamney vs. Union of India and others] and 2005 (4) MPLJ 575 (Riazuddin Khan vs. State of M.P. and others]."

9. The Apex Court in its recent judgment State of W.B. v. Debabrata Tiwari, 2023 SCC OnLine SC 219 took the similar view and ruled that :-

"35. Considering the second question referred to above, in the first instance, regarding whether applications for compassionate appointment could be considered after a delay of several years, we are of the view that, in a case where, for reasons of prolonged delay, either on the part of the applicant in claiming compassionate appointment or the authorities in deciding such claim, the sense of immediacy is diluted and lost. Further, the financial circumstances of the family of the deceased, may have changed, for the better, since the time of the death of the government employee. In such circumstances, Courts or other relevant authorities are to be guided by the fact that for such prolonged period of delay, the family of the deceased was able to sustain themselves, most probably by availing gainful employment from some other source. Granting compassionate appointment in such a case, as noted by this Court in Hakim Singh would amount to treating a claim for compassionate appointment as though it were a matter of inheritance based on a line of succession which is contrary to the Constitution. Since compassionate appointment is not a vested right and the same is relative to the financial condition and hardship faced by the dependents of the deceased government employee as a consequence of his death, a claim for compassionate appointment may not be entertained after lapse of a considerable period of time since the death of the government employee."

10. The ancillary question is whether the order dated 05.05.2021 gives fresh cause of action to the petitioner. As noticed above, the petitioner did not challenge previous rejection orders dated 26.09.2012 and 07.02.2015. She again preferred representation and one such representation was directed to be decided by this Court. The curtains on this issue are drawn by Supreme Court by holding that in such matters, a subsequent representation even if directed to be decided by Court and in turn the department decides such representation, it will not give cause of action to the petitioner and become reason to ignore the delay. Reference may be made to the judgment of Supreme Court in (2010) 2 SCC 59 (Union of India v. M.K. Sarkar). The relevant portion reads as under:-

"14. The order of the Tribunal allowing the first application of respondent without

examining the merits, and directing the appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in *C. Jacob v. Director of Geology and Mining* [(2008) 10 SCC 115 : (2008) 2 SCC (L&S) 961] : (SCC pp. 122-23, para 9).

"9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realise the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored."

15. When a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

16. A court or tribunal, before directing "consideration" of a claim or representation should examine whether the claim or representation is with reference to a "live" issue or whether it is with reference to a "dead" or "stale" issue. If it is with reference to a "dead" or "stale" issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or tribunal deciding to direct "consideration" without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

11. Thus, for twin reasons, this petition cannot be entertained. Firstly, the petitioner's mother died way back on 30.08.2012 and the previous rejection orders were not challenged with quite promptitude. Secondly, the subsequent

rejection order dated 05.05.2021 will not give or revive the cause of action or can be reason to wriggle out of delay. Thus, in this backdrop, the Judgment of Meenakshi Dubey (supra) is of no assistance to the petitioner.

12. The Writ Petition fails and is hereby dismissed.