

(2006) 08 MP CK 0015
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1974 of 2003

Bhuvaneshwar Upadhyay

APPELLANT

Vs

Kesharwani Higher Secondary School, Jabalpur and others

RESPONDENT

Date of Decision : 17-08-2006

Acts Referred:

Citation : (2007) 1 MPLJ 40

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Advocate : Vivek Rusia, for the Appellant; Ramesh Shrivastava for Respondent No. 1, Om Namdeo, Government Advocate for Respondents No. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Abhay M. Naik, J.

This petition has been preferred to seek appointment on compassionate ground in the institution of Respondent No. 1, which is in receipt of grant-in-aid (now known as block grant).

Short facts leading to the writ petition are that Raj Kumar Upadhyay, father of the Petitioner was Upper Division Teacher in Kesharwani Higher Secondary School, Jabalpur (Respondent No. 1) and maintenance grant was being paid in respect of his employment. He died during his service on 8-11-1996. Petitioner submitted an application on 30th November, 1996 for seeking appointment on the post of Teacher on compassionate ground. Mother and brother of the Petitioner who also survived Raj Kumar Upadhyay, submitted their affidavits disclosing their no objection to the appointment of the Petitioner in place of Raj Kumar Upadhyay on compassionate ground. Case of the Petitioner was forwarded to Respondent No. 1 vide letter dated 7th March, 1998, contained in Annexure P-5 for necessary processing and action pursuant thereto by the Joint Director, Public Instruction, Jabalpur Division. It was not processed for a considerable

time, so, the Petitioner submitted an application dated 24th August, 1998 to the Deputy Divisional Superintendent of Education. The application of the Petitioner was not processed, so he again made an application to the District Education Officer (hereinafter referred to as "D.E.O."), Jabalpur who found that the Petitioner fulfilled all the qualifications/conditions for appointment on compassionate ground on the vacant post of Peon, in place of his father. Accordingly, he directed the Respondent No. 1 to issue an appointment letter in favour of the Petitioner on compassionate ground, vide Annexure P-7 dated 20-12-2001. In turn, Respondent No. 1 vide its letter dated 7-1-2002, Annexure P-8, informed the D.E.O., Jabalpur that a ban has been imposed on such appointments by the School Education Department of Madhya Pradesh vide its letter No. F-73-18/99/20-Part dated 30th November, 1999. Respondent No. 1 asked D.E.O., Jabalpur whether the ban has been removed by the State Government. Respondent No. 1 finally informed vide its letter dated 12th September, 2002 (Annexure P-10) that appointment of the Petitioner will not be possible within the financial limitations of the block grant. It was further informed vide Annexure P-10 that the name of the Petitioner may be considered for the post of Peon, only in case of sanction of additional grant. D.E.O., Jabalpur informed Respondent No. 1 vide letter contained in Annexure P-11 that the appointment of the Petitioner may be made within the financial limitations of the block grant and intimation to this effect be given to his office. The D.E.O., Jabalpur also provided the photocopies of the orders of the Government pertaining to appointment on compassionate ground and directed Respondent No. 1 to provide compassionate appointment to the Petitioner, vide Annexure P-12. Respondent No. 1 vide its letter dated 31-5-2002, informed the D.E.O., Jabalpur that in view of poor financial condition of the institution, appointment to the Petitioner cannot be given. Again D.E.O., Jabalpur vide his letter dated 2-1-2003 (Annexure P-14) informed Respondent No. 1 that block grant was being paid in respect of employment of one Peon, Parmulal who resigned from his post on 15-11-2002. Sanction for compassionate appointment of the Petitioner on the post of Peon, vacated by Parmulal was granted vide Annexure P-14 and direction was issued to Respondent No. 1 to appoint the Petitioner on the said post immediately. This was not complied with. Hence, the petition.

Respondent No. 1 submitted its return and expressed its inability to appoint the Petitioner on compassionate ground. It has been inter alia contended that the strength of students in the school went on decreasing every year. Position of admitted students in the school and that of the staff has been mentioned in the return to substantiate its inability in providing compassionate appointment to the Petitioner. Apart from it, a circular dated 30-11-1999 has also been annexed as Annexure N.A.1/1 which has been issued by the School Education Department of Madhya Pradesh, containing a decision that vacant posts in private educational institutions be not filled up against grant-in-aid.

State Government has also submitted its return, accompanied by Annexure R-1 dated 9-2-2005, showing that 4 posts of Peon were sanctioned in the said school

out of them 2 posts are vacant. This document is signed by the Principal of Respondent No. 1 as well as by the D.E.O. of Jabalpur. Thus, according to the State Government, the Petitioner is entitled to appointment as prayed for.

A rejoinder has been submitted by the Petitioner with Annexures P-17 and P-18, which are the letters issued by the D.E.O., Jabalpur appointing thereby persons on compassionate ground in private aided schools.

Respondent No. 1 submitted its additional return and reiterated its inability to give appointment to the Petitioner on compassionate ground, in view of the financial crisis of the institution.

Shri Vivek Rusia, Shri Ramesh Shrivastava and Shri Om Namdeo, Learned Counsels appearing for the respective parties, advanced their arguments in support of their clients.

Considered the submissions and perused the record.

Admittedly, Respondent No. 1 was in receipt of grant-in-aid at the relevant time from the State Government. Its Principal has certified vide Annexure R-1 that there are 4 posts of Peon sanctioned for the purposes of grant. It is further cleared vide Annexure R-1 that only two posts of Peon are occupied and two posts are vacant. Death of father of the Petitioner occurred on 8-11-1996 and an application for compassionate appointment was submitted by the Petitioner immediately on 30-11-1996. Obviously, the ban on compassionate appointment vide order dated 30th November, 1999, relied upon by Respondent No. 1 was not in force at the relevant time. Moreover, the State of M.P. repeatedly asked Respondent No. 1 to issue an appointment letter in favour of the Petitioner on compassionate ground through its different officers vide Annexures P-7, P-11, P-12 and P-14 at different occasions. Since, sanctioned post of Peon was vacant with Respondent No. 1 and there is already a direction by State Government to appoint the Petitioner on the vacant/sanctioned post of Peon on compassionate ground, it is not open for Respondent No. 1 to take shelter of ban on appointment or of financial crisis.

The present case relates to an appointment on compassionate ground which is not a source of recruitment. The Hon'ble Supreme Court of India in the case of National Hydroelectric Power Corporation and Another Vs. Nanak Chand and Another, has held:

It is to be seen that the appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement regarding appointments being made on open invitation of application on merits. Basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden financial crises.

The Supreme Court in the case of State of Haryana and Others Vs. Rani Devi and Another, has held that:

The claim of the person concerned for appointment on compassionate ground is based on the premise that he was dependent on the deceased employee. Strictly this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right.

Learned Counsel for the parties did not dispute that there are various Government orders empowering the authorities to direct for appointment on compassionate ground. In similar situations, appointments on compassionate ground are already made as revealed in Annexure-P/17 and P/18 which are not disputed by the Learned Counsel for the parties. Appointments vide Annx. P/17 and P/18 are undoubtedly made in private aided educational institutions. Thus, the authenticity of various directions contained in Annexures-P-7, P-11, P-12 and P/14 has not been doubted at all by the Learned Counsel for the Respondents. The death of father of the Petitioner occurred on 8-11-1996 and the application for compassionate appointment was made immediately on 30-11-1996. A direction for issuance of appointment letter was made to the Respondent No. 1 by the District Education Officer, Jabalpur way back in the year 2001, vide Annexure-P/7. Thereafter, repeated directions were issued to the Respondent No. 1 of like nature. The Supreme Court in the case of Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, has clearly held that:

In all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

Considering the aforesaid legal position and more so in the absence of any disabling provision, this petition is hereby allowed and a writ of mandamus is hereby granted in favour of the Petitioner commanding the Respondent No. 1 to issue appointment letter in favour of the Petitioner pursuant to Annexure-P-7, P-11, P-12 and P-14 within a period of thirty days on the sanctioned vacant post of peon, with all consequential benefits. Costs of the petition is awarded at Rs. 3,000/- (Rupees three thousand) if already certified.