
(2012) 05 MP CK 0040
In the Madhya Pradesh High Court
Case No : W.P.No. 292 of 2007

Gajpal Singh Rathore

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 16-05-2012

Acts Referred:

Citation : (2012) 4 MPHT 542 : (2012) 4 MPLJ 422

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Advocate : Pravin Bhatt, for the Appellant; Pramod Mitha, GA, for the Respondent

Judgement

Hon"ble Shri N.K. Mody, J.—The prayer in the petition is for quashment of the order Annexure P/1 dated 20/03/03 whereby application filed by the petitioner for compassionate appointment was dismissed. Short facts of the case are that Late Shri Bahadursingh Rathore was in the employment of respondents and was posted as Head Constable, who died on 23/07/01. An application was filed by the petitioner for compassionate appointment, wherein it was alleged that the petitioner is eligible for the post of Constable, therefore, application filed by the petitioner be considered and the petitioner be appointed as Constable on compassionate ground. The application was taken into consideration and was dismissed, against which present petition has been filed.

2. Learned counsel for the petitioner argued at length and submits that the impugned order passed by the respondents is illegal, incorrect and deserves to be set aside. It is submitted that the application filed by the petitioner has been dismissed only on the ground that the brother of the petitioner is in Government employment, hence the petitioner is not entitled for compassionate appointment. It is submitted that Ishwarsingh Rathore is brother of the petitioner, who was working as Siksha Karmi, Class-III, whose certificate is on record as Annexure P/12, wherein it is alleged that the salary of Ishwarsingh Rathore is Rs.2,312/- per month. It is submitted that the respondents committed error in dismissing the

application on the ground that the brother of the petitioner is in Government employment. It is submitted that the petition filed by the petitioner be allowed and the respondents be directed to appoint the petitioner on compassionate ground.

3. Reply has been submitted by the respondents, wherein it is alleged that for the purpose of compassionate appointment policy dated 01/05/2000 has been introduced by the State Government, according to which if any member of the family of the deceased employee is in Government job, then other member of the family is not entitled for appointment on compassionate ground. It is submitted that since the brother of the petitioner is in employment, therefore, the application has rightly been dismissed.

4. Annexure R/1 is the Policy. Relevant clause for rejecting the application is as under:

5. The sole question for consideration is whether the employee working as Sikha Karmi (Contractual Basis) is a Government employee or not. In the matter of Arun Singh Bhadoriya Vs. State of M.P., 2009(II) MPWN 112 a Divisional Bench of this Court has held that Panchayat employee under the provisions of Panchayat Samvida Shala Shikshak (Recruitment and Conditions of Contract) Rules, 2005 is not a Government servant. In the matter of Union Public Service Commission Vs. Girish Jayanti Lal Vaghela and Others, wherein Girish Jayantilal Vaghela was appointed as Drug Inspector on short term contract basis on a fixed salary for a period of six months from the date of joining or till the date he was selected by the Union Public Service Commission and appointed on a regular basis, whichever was earlier and his appointment was renewed after every six months with short breaks and it continued for over five years, Hon"ble Apex Court held that since Girish Jayantilal was working on short term contract basis, he was not a Government servant.

6. Word "Family" has not been defined under the Rules. Whether the son who was living with his wife and children separately can be treated a member of the family of the deceased, as he was not dependent on the deceased. This aspect has not been taken into consideration by the competent Authority while dismissing the application. In the facts and circumstances of the case this Court is of the view that the rejection of the application filed by the petitioner on the ground that his brother is in Government employment is not correct and cannot be allowed to sustain. Hence, the petition filed by the petitioner is allowed and the impugned order is set aside with a direction that the petitioner shall submit a fresh application in continuation to the earlier application, wherein petitioner shall state full facts about the employment, salary, residence and family members of the brother of the petitioner. Upon filing the application alongwith copy of the order passed today, the competent Authority shall decide the same after giving an opportunity of hearing to the petitioner by passing a reasoned order, in which this aspect of the case shall also be taken into consideration that whether brother of the petitioner is member of the family of the deceased or not.

Needful be done within a period of two months. With the aforesaid observations, petition stands disposed of.