
(2022) 09 MP CK 0068
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4370 Of 2017

Garima Bhadoriya

APPELLANT

Vs

Madhya Pradesh Madhya Kshetra And Others

RESPONDENT

Date of Decision : 07-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Workmen's Compensation Act, 1923 — Section 3(1)

Citation : (2022) 09 MP CK 0068

Hon'ble Judges : Gurpal Singh Ahluwalia, J

Bench : Single Bench

Advocate : Smrati Sharma, Vivek Jain

Final Decision : Dismissed

Judgement

Gurpal Singh Ahluwalia, J

1. This petition under Article 226 of the Constitution of India has been filed seeking following reliefs:

2. That, the impugned order contained in Annexure P/1 may kindly be quashed and the respondents may kindly be directed to allow the application submitted by the petitioner for grant of compassionate appointment and accordingly confer appointment in favour of the petitioner on suitable post as per her qualification within specified period of time.

3. The cost of the petition be awarded to the petitioners.

4. Any other order or directions deemed fit in the circumstances of the case be issued in favour of the petitioners.

2. The facts necessary for disposal of the present petition in short are that the father of the petitioner died in a vehicular accident on 24.8.2010. At the relevant time, he was working on the post of Assistant Grade-II.

On 31.10.2013, the mother of the petitioner filed an application for grant of appointment on compassionate ground which was rejected by the authorities by order dated 26.9.2015 on the ground that she was not having minimum educational qualification for appointment on any post and, accordingly, in lieu of appointment on compassionate ground, Rs.1,00,000/- were sanctioned. Looking to the ground on which the claim of the mother of the petitioner was rejected, the petitioner moved an application for appointment on compassionate ground on 2.6.2016. Thereafter, on an application dated 8.7.2016 made by her mother, the respondents made an offer to the mother of the petitioner pointing out that as per her minimum educational qualification, she can be given appointment on the post of Security Guard but at present no such post is vacant and, therefore, an offer was given that as per clause 8.1 of the amended policy for appointment on compassionate ground, the last drawn of the deceased employee after deducting the pension can be paid for a period of five years or till the age of superannuation of the deceased employee whichever is earlier or as per amended policy, an opportunity can be granted to the aspirant to acquire minimum qualification within a period of three years and thus it was directed that the mother of the petitioner may give her consent accordingly.

3. Thereafter, by impugned order dated 24.4.2017, the application filed by the petitioner has been rejected on the ground that as per amended policy, 2016, the dependent of deceased employee is entitled for appointment on compassionate ground only if the deceased employee dies in a vehicular accident while he was on duty. Since the deceased died on 24.8.2010 at 11:30 P.M. in a vehicular accident whereas his shift was from 12:00 in the night, therefore, it is clear that the accident did not take place on duty and hence it was held that the petitioner is not entitled for appointment on compassionate ground as per the policy.

4. Challenging the order passed by the respondents, it is submitted by the counsel for the petitioner that undisputedly the duty of the father of the petitioner was in the night shift starting from 12:00 A.M. For attending his night shift, he was going to the office and on his way to the office he met with an accident, therefore, it is clear that the father of the petitioner had died out of and in the course of employment. It is further submitted that it is not the case of the respondents that the accident took place at a place which may indicate that he was not going to attend his duty. Thus, it is clear that while the deceased was on his way to the office to attend his night shift, he met with a vehicular accident and expired.

5. Per contra, the petition is vehemently opposed by the counsel for the respondents. It is submitted by the counsel for the respondents that death of an employee in a road accident which might have taken place on his way to work place cannot be said to be an accident arising out of or in the course of employment.

6. Heard the learned counsel for the parties.

7. In the impugned order, the respondents have reproduced the definition of accidental death which reads as under:

8. Clause 1.1(3) of Policy as amended on 13.4.2016 reads as under:-

9. From the plain reading of aforesaid policy, it is clear that if an on duty employee dies in a vehicular accident caused either by the vehicle of the department or private vehicle within the territorial area of the respondents, then his case would be covered by the policy for appointment on compassionate ground.

10. Thus, the only question for consideration is that if an employee dies in an accident while he was on his way to a place of employment then whether it can be said to be an accident arising out of or in the course of employment or not?

11. The Supreme Court in the case of *Malikarjuna G. Hiremath vs. Branch Manager, Oriental Insurance Company Limited* and another reported in (2009) 13 SCC 405 has held that under Section 3(1) of Workmen's Compensation Act, it has to be established that there was some casual connection between the death of the workman and his employment. Any death which has taken place in the course of employment will not amount to accident, the death must arise out of accident.

12. The Supreme Court in the case of *General Manager, B.E.S.T. Undertaking, Bombay vs. Mrs. Agnes* reported in AIR 1964 SC 193 has held that where a free transport is provided by the employer in the interest of service and an employee dies in an accident while returning back from his office, then it cannot be said that he had boarded the bus in exercise of his right as a member of the public but he had boarded the bus as belonging to a service. Therefore, it can be said that the accident had occurred during the course of employment.

13. However, the Supreme Court in the case of *Regional Director, E.S.I. Corporation and another vs. Francis De Costa and another* reported in (1996) 6 SCC 1 has held that unless it can be said that the employment began as soon as he set out for the factory from his house, it cannot be said that the injury or death was caused by an accident "arising out of and in the course of employment". A road accident may happen any where at any time. But such accident cannot be said to have arisen out of employment, unless it is shown that the employee was doing something incidental to his employment. Therefore, it was held that if an employee meets with an accident while driving his own bicycle on the way to his place of work, it cannot be said that the accident was reasonably incidental to the employment and was in the course of employment and accordingly, it was held as under:

14. The point raised before us can be answered on the basis of the principle laid down in the aforesaid two cases. But Mr. Chacko, appearing on behalf of the respondent has contended that proximity of time and place is a factor to be borne in mind. The employee was to report for duty at 4.30 P.M. The accident

took place at 4.15 P.M. only one kilometer away from the factory. In our view this cannot be a ground for departing from the principle laid down by the aforementioned cases that the employment of the workman does not commence until he has reached the place of employment. What happens before that is not in course of employment. It was also pointed out by Lord Denning in the aforesaid case of *R. v. National Insurance Commr, ex. p Michael* that the extension of the meaning of the phrase "in the course of his employment" has taken place in some cases but in all those cases, the workman was at the premises where he or she worked and was injured while on a visit to the canteen or some other place for a break. The test of what was "reasonably incidental" to employment, may be extended even to cases while an employee is sent on errand by the employer outside the factory premises. But in such cases it must be shown that he was doing something incidental to his employment. There may also be cases where an employee has to go out of his workplace in the usual course of his employment. Latham, C.J. in *South Maitland Railways Proprietary Ltd v. James* observed that when the workmen on a hot day in course of their employment had to go for a short time to get some cool water to drink to enable them to continue to work without which they could not have otherwise continued, they were in such cases doing something in the course of their employment when they went out for S water. But the case before us does not fall within the exceptions mentioned by Lord Denning or Latham, C.J. The case squarely comes within the proposition of law propounded by S. Jafar Imam, J.

14. In the policy, the word "while working for the company" have been used. Therefore, it necessarily means that the accident must occur while the deceased was on his duty.

15. The counsel for the petitioner could not point out any circular issued by the respondents or any law which provides that going to the place of employment would also amount to "while working for the company". Undisputely, the father of the petitioner died at 11:30 while he was on his way to the place of employment, but it cannot be said that at the time of accident he was on his duty.

16. It is next contended by the counsel for the petitioner that as per clause 1.1(3), preference has to be given to the dependents of the deceased employee who died an accidental death over and above the cases of normal death. Therefore, the petitioner is entitled for compassionate appointment as her father died an accidental death.

17. Considered the submissions.

18. In order to claim preference over and above the cases of normal death, the petitioner has to prove that her father had died an accidental death. As already pointed out, the petitioner could not prove that her father had died in an accident which took place while he was working for the Company/on duty.

19. Accordingly, this Court is of the considered opinion that the respondents did not commit any mistake by rejecting the claim of the petitioner on the ground

that since the accident of the father of the petitioner did not take place while he was on his duty, therefore, the policy for appointment on compassionate ground would not apply.

20. Accordingly, the petition fails and is hereby dismissed.