

(2017) 02 MP CK 0113
In the Madhya Pradesh High Court
Case No : 14477 of 2015

Govind Sirvi S/o Rhukhdu Ji Sirvi

APPELLANT

Vs

Ranjana Baghel

RESPONDENT

Date of Decision : 27-02-2017

Acts Referred:

Citation : (2017) 02 MP CK 0113

Hon'ble Judges : Vandana Kasrekar

Bench : Single Bench

Advocate : V D S Chauhan, Kapil Duggal, Pankaj Raj Ahirwar

Judgement

1. The petitioner has filed the present petition challenging the order dated 11.02.2013 passed by respondent No.2, thereby rejecting the application submitted by the petitioner for appointment on compassionate basis.

2. Brief facts of the case are that the father of petitioner was working on the post of Assistant Sub-Inspector in respondent establishment and was posted in Krishi Upaj Mandi, Satna, who died in harness on 06.03.1995. At the time of death of the petitioner's father, the petitioner was minor. Therefore, after attaining the age of majority on 01.07.2002, he applied for compassionate appointment on 01.09.2002. As the respondents have not decided the application submitted by the petitioner, he filed writ petition No.15210/2006 before this Court. The said writ petition was disposed of vide order dated 02.03.2007 directing the respondents to decide the claim of the petitioner within a period of 3 months. In pursuance of the directions issued by this Court, the respondent No.2 has passed the order dated 11.02.2013 and rejected the application submitted by the petitioner for compassionate appointment on the ground that the said application is barred by time, as the same has been filed after lapse of 7 years from death of deceased as per policy dated 23.07.2001. The petitioner has challenged the said order on the ground that the order dated 11.02.2013 is illegal and arbitrary.

3. Learned counsel for the petitioner submits that the respondents have erred in

deciding the application of the petitioner in the light of policy dated 23.07.2001. It is further submitted that at the time of death of father of the petitioner, the policy dated 10.06.1994 was in existence and therefore, the respondents ought to have considered the case of the petitioner in the light of policy dated 10.06.1994. It is also submitted that the State Government thereafter issued a policy dated 13.01.2011, by which the limitation for consideration of claim for compassionate appointment within a period of 7 years has been removed. Learned counsel for the petitioner relies on the decision in the case of Narendra Singh Umath Vs. State of M.P. & Others , 2012 (4) M.P.H.T. 95 as well as the order dated 16.07.2015 passed in W.P. No.21082/2012 (Ram Kumar Ade Vs. The State of M.P.), order dated 25.11.2016 passed in W.P. No.14379/2015 and the decision passed by the Apex Court in the case of Canara Bank and another Vs. M. Mahesh Kumar, (2015) 7 SCC 412.

4. The respondents have filed their reply and in the return, the respondents have stated that the petition suffers from delay and laches. It is further submitted that the impugned order was passed on 11.02.2013 and the instant writ petition is filed on 26.08.2015 and therefore, the present writ petition deserves to be dismissed on the ground of delay and laches. It is also submitted that at the time when the case of the petitioner was considered, the policy of 23.07.2001 was in existence and as the petitioner has not applied within a period of 7 years from the date of death of deceased, his claim has been rightly rejected. It is submitted that the policy dated 13.01.2011 is not applicable in the case of the petitioner as the same policy is made applicable to family members of those employees who died in service after 13.12.2001. In the present case, father of the petitioner died on 18.10.1994, therefore, the policy dated 13.01.2011 would not be applicable in the case of the petitioner. In support of his submission, learned counsel for the respondent No.2 relied on the decision in the case of Bank of Maharashtra and another Vs. Manoj Kumar Deharia and another, 2010 (3) M.P.L.J. 213. On the basis of said decision, it is submitted that the respondents have considered the case of the petitioner on the basis of the policy which was in existence at the time of consideration and as stated above that when the application of the petitioner for appointment on compassionate basis was considered at that time, the policy of 23.07.2001 was in existence, according to which the application for appointment on compassionate appointment is required to be made within a period of 7 years from the date of death of deceased. In support of his submission, he further relied on the decision in the case of Local Administration Department and another Vs. M. Selvanayagam, (2011) 13 SCC 42.

5. I have heard learned counsel for the parties and perused the record. From perusal of the record, it reveals that father of the petitioner was working as Assistant Sub-Inspector in the respondents establishment, who died on 06.03.1995 in harness. At the time of death of father of the petitioner, he was minor. On attaining the age of majority on 01.07.2002, the petitioner applied for compassionate appointment on 01.09.2002. The application submitted by the petitioner for compassionate appointment was rejected on 11.02.2013 on the

ground that the same has been filed after lapse of 7 years of death of his father as per policy dated 23.07.2001. Being aggrieved, the petitioner has filed the present petition. The State Government has framed earlier policy dated 10.06.1994 and as per Clause-5 of the said policy, any member of the deceased family can apply for compassionate appointment after attaining the age of majority. The State Government has framed a new policy for appointment on compassionate ground dated 23.07.2001 and as per said policy, the earlier policy has been amended. Clause 2 (4) of the said policy provides that within a period of 7 years from the date of death of deceased employee, his dependant will be eligible for getting appointment on compensation basis. Thus, as per said the clause the dependant will be entitled to get appointment on attaining the age of majority has been deleted in the policy dated 23.07.2001. As per submissions of learned counsel for the petitioner, the policy which was in existence on the date of death of employee i.e. on 10.06.1994 would be applicable in the present case and the respondents have wrongly rejected his application in the light of policy dated 23.07.2001. The Full Bench of this Court in the case of Bank of Maharashtra (supra) has held that the application has to be decided in accordance with the policy applicable when the matter is taken up for consideration and not on the basis of other scheme or policy which has been lapsed or superseded. Paragraph 31 and 33 of the order reads as under :

"31. It is, therefore, clear that compassionate appointment is not a vested right nor is it a hereditary right. Its grant is based on the policies and scheme which are framed by carving out an exception to the general rule governing public appointment. Once it is held that it is an exception to the General Rule and is granted in accordance with the scheme or rules formulated, then considerations to be made for grant of the appointment would be governed by the provision of the rules or the scheme and in that view of the matter when the rules and the guidelines play a dominant role, considerations have to be made in accordance with the rules and scheme which are applicable at the time of grant. As the entitlement, for compassionate appointment is to be evaluated in accordance with the schemes and rules formulated in that regard, there cannot be any shadow of doubt that consideration and evaluation are required to be made in accordance to the existing policies and not on the basis of a policy or scheme, which has become extinct. In that view of the matter, consideration has to be in accordance to the policy applicable when the matter is taken up for consideration and not on the basis of any other scheme or policy, which has lapsed or superseded. The aforesaid being the position of law, the view expressed in T. Swamy Dass (supra) and Heeralal Baria (supra) is not correct.

33. In view of the foregoing discussion, we proceed to record our conclusions as follows :

(a) The grant of compassionate appointment is not a vested legal right. It is only a benefit granted in certain circumstances de hors the normal rule of appointment and when the employer has a right to evolve an appropriate policy

after considering various factors for granting such a benefit, the considerations have to be made in accordance with the policy that is prevailing at that point of time.

(b) When it is held that compassionate appointment is not a vested right and when grant of such appointment is governed by the rules and policies prevailing in an establishment, then consideration as per the rules existing is required to be made and consideration on the basis of a policy, which is given up by the employer and which has no application at that point of time cannot be insisted upon.

(c) Having regard to the exceptional nature of this appointment and taking note of the fact that it is granted under a special scheme carved out de hors the normal mode of recruitment, the same has to be governed as per the policies or provisions governing such appointment prevalent at a particular point of time when consideration is to be made, and not on the basis of a policy which was in vogue and has been given up by the employer due to changed circumstances.

(d) As compassionate appointment is granted by carving out a special scheme contrary to the normal mode of recruitment and when the employer or the government is at liberty to evolve a scheme for granting such appointment from time to time, then the consideration for appointment has to be made in accordance with the scheme or policy that is in existence.

(e) The decisions rendered in *T. Swamy Dass (supra)* and *Heeralal Baria (supra)* do not lay down the correct law and are hereby overruled.

(f) Any right flowing from a settlement between the employer and employees' union or association has to be in a different compartment.

(g) It would be the obligation of the employer to deal with the application with immediacy and promptitude so that the grievance of a family in distress gets a fair treatment in accordance with law."

6. The decisions relied on by learned counsel for the petitioner would not be applicable in the present case as in both the decisions learned Judge has not taken into consideration the order passed by the Full Bench of this Court in the case of *Bank of Maharashtra (supra)*. So far as the order passed by the Apex Court in *Canara Bank (supra)* is concerned, the Apex Court in paragraph-10 of the said order has held as under :- "10. -----In Para 3.2, it is stated that in case of the dependant of the deceased employee to be offered appointment is a minor, the Bank may keep the offer of appointment open till the minor attains the age of majority provided a request is made to the Bank by the family of the deceased employee and the same may be considered subject to rules prevailing at the time of consideration."

Thus, as per the aforesaid order of the Apex Court, in case of dependant of deceased employee is minor, then the Bank may keep the offer of appointment open till the minor attains the age of majority provided a request is made to the

Bank by the family of the deceased employee and the same may be considered subject to rules prevailing at the time of consideration. Thus, the family member of the employee is required to make a request to the employer and the application is to be considered in the light of rules, which are prevailing at the time of consideration.

7. In the present case, there is no such request made by the family members of the employee deceased and the case has been considered in the light of the policy, which was prevailing at the time of consideration. Further the Supreme Court in paragraph-13 of Local Administration Department (supra) has held as under : "13. In this case the respondent was only 11 years old at the time of the death of his father. The first application for his appointment was made on 02.07.1993, even while he was a minor. Another application was made on his behalf on attaining majority after 7 years and 6 months of his father's death. In such a case, the appointment cannot be said to sub-serve the basic object and purpose of the scheme. It would rather appear that on attaining majority he staked his claim on the basis that his father was an employee of the Municipality and he had died while in service."

8. Thus, in the light of aforesaid order passed by the Apex Court as well as the fact that the petitioner has submitted an application for compassionate appointment after lapse of 7 years from death of his deceased father, the respondents have rightly rejected the application submitted by the petitioner in the light of policy dated 23.07.2001, which was in existence at the time of consideration of application for compassionate appointment. In view of aforesaid, I do not find any reason to interfere in the said petition. Accordingly, the petition is dismissed.