
(2018) 06 MP CK 0148
In the Madhya Pradesh High Court
Case No : Writ Petition No. 845 Of 2017

Jaishri Ragase

APPELLANT

Vs

State Of Madhya Pradesh & Ors

RESPONDENT

Date of Decision : 28-06-2018

Acts Referred:

Madhya Pradesh Ashashkiya Shiksha Sanstha Anudan Niyam 2008 — Rule 8

Citation : (2018) 06 MP CK 0148

Hon'ble Judges : VANDANA KASREKAR, J

Bench : Single Bench

Advocate : K.C.Ghildiyal, J. Pandit, Jaideep Sirpurkar

Final Decision : Allowed

Judgement

The petitioner has filed the present petition challenging the orders dated 08/05/2015 and 04/01/2017.

2. Brief facts of the case are that the husband of the petitioner late Shri Narendra Pandurang Ragase was appointed as Lower Division Clerk in

respondent No.5 Institution vide order dated 09/10/1987. He expired on 05/07/2016 in harness. The respondent No.5 Society where the husband

of the petitioner was working is 100% grant in aided institution and is governed by Madhya Pradesh Ashashkiya Shikshan Sanstha (Adhyapako Tatha

Anya Karmcharyo ke Vetano ka Sanday) Adhiniyam, 1978. The husband of the petitioner was the sole bread earner of the family and family has no

other source of income. In absence of any livelihood, the petitioner is in the state of penury. The family consists of the petitioner and three daughters,

one of is already married whereas two other daughters have just completed their education. Due to death of the husband of the petitioner, it is difficult

for the petitioner to survive as there is no other source of income. The State

Government has issued a circular on 23/02/1989 which was for grant of compassionate appointment to the dependent of an employee serving in the government aided institution. On death of the husband of the petitioner, the petitioner immediately submitted an application before respondent No.5 for grant of compassionate appointment on 31/08/2016.

The said application for forwarded to respondent No.4 on the same day. Thereafter, application was forwarded to respondent No.2 on 17/09/2016.

Respondent No.2 issued an order dated 30/09/2016 directed the respondent No.4 to decide the application submitted by the petitioner in accordance with the circular dated 29/09/2014. As the application submitted by the petitioner was not decided by respondent No.4, the petitioner submitted another application to respondent No. 2 to 4 on 31/10/2016. The petitioner has received a communication from respondent No.4 dated 04/01/2017 whereby the petitioner was informed that in view of the letter dated 08/05/2015 issued by respondent No.1, fresh appointments on vacant posts are banned and, therefore, the petitioner cannot granted compassionate appointment. Being aggrieved by that order, the petitioner has filed the present petition.

3. Learned counsel for the petitioner argues that the order dated 08/05/2015 which is referred in the letter dated 04/01/2017 does not deal with the compassionate appointment. He further submits that in view of the decision rendered by the Honâ??ble Apex Court on 07/01/2014, the employees appointed in the private aided institutions prior to 01/04/2000 are governed by the Adhinyam, 1978. The State Government has issued a circular governing the compassionate appointment on 23/02/1989. Hence, the petitioner cannot be denied compassionate appointment on the basis of the circular issued by respondent No.1 on 08/05/2015. The order dated 08/05/2015 has no application while dealing with the cases of the employees appointed prior to 01/04/2000. He further relied upon the judgment passed in identical W.P.No.1974/2003 decided on 17/08/2006. In such circumstances, learned counsel for the petitioner submits that the petitioner deserves to be allowed. He further relied on the judgment passed by the Apex Court in the case of Umesh Kumar Nagpal vs. State of Haryana & others, 1994 (4) SCC 138, and the judgment passed by the Apex Court in the case of Director of Education (Secondary) & another vs. Pushpendra Kumar & others, 1998(5) SCC 192.

4. Respondents No. 1 to 4 have filed their reply. In the reply, respondents have stated that the petitioner cannot claim compassionate appointment as a matter of right because it is prerogative of the State Government to decide as to who should be given the compassionate appointment by assessing the need of the family condition. Respondents have further stated that the State Government has issued a Gazette Notification dated 20/02/2008 whereby Rule 8 of the Madhya Pradesh Ashashkiya Shiksha Sanstha Anudan Niyam 2008 has been repealed. Thus, the circular and policy regarding compassionate appointment dated 29/09/2014 whereby Clause 4.4 deals as if the employee working in the public sector, their family members will not be entitled for compassionate appointment. Respondents further submits that the respondents have issued a circular dated 08/05/2015 whereby it has been stated that the employee working in the grant in aided school, if the post is lying vacant under the department for any reason, no fresh appointment can be made and post has been abolished automatically. Therefore, in view of the aforesaid, the petition deserves to be dismissed.

5. Heard learned counsel for the parties and perused the record. In the present case, husband of the petitioner late Shri Narendra Pandurang Ragase was working as Lower Division Clerk with the respondent No.5 Institution. Respondent No.5 is an institute which is receiving 100% grant-in-aid from the State Government and, therefore, Rules 1978 are made applicable to the institution. The husband of the petitioner had died on 05/07/2016 in harness. After the death of husband, the petitioner was the sole bread earner of the family, therefore, she submitted an application for grant of compassionate appointment on 31/08/2016. The said application was duly forwarded by respondent No.5 to respondent No.2. The application submitted by the petitioner was not decided, the petitioner therefore submitted another application on 31/10/2016. Thereafter, petitioner has received a communication dated 04/01/2017 issued by the respondent No.4 whereby the petitioner was informed that in view of the letter dated 08/05/2017 issued by respondent No.1, fresh appointment on vacant posts are banned and, therefore, the petitioner cannot be granted compassionate appointment. The said order has been issued in pursuance of the order dated 08/05/2015 issued by respondent No.1, it shows that the same is applicable for the fresh appointment on vacant post. However, the case of the petitioner is for the compassionate appointment, not for the fresh appointment. It is further seen

that the order dated 08/05/2015 is applicable in the case of those appointments which are made after 01/04/2000. The Apex Court vide order dated 07/01/2014 has held that the employees appointed in the private aided institutions prior to 01/04/2000 are governed by the Adhiniyam of 1978. The Circular regarding compassionate appointment has been issued by the State Government on 23/02/1989. Husband of the petitioner was appointed in respondent No.5 institution prior to 01/04/2000, Therefore, the circular issued on 23/02/1989 would be applicable in the case of the petitioner. The circular dated 08/05/2015 has not applicable while dealing with the cases of employees appointed prior to 01/04/2000. This Court while deciding W.P.No.1974/2003 on 17/08/2016 has held that the employees working in the private aided institutions are also entitled for compassionate appointment.

6. The Supreme Court in the case of Umesh Kumar Nagpal (supra) in para 2 has held as under :-

“2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does

not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the Change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.

7. The Honâ??ble Apex Court in the case of Director of Education (Secondary) and another (supra) in para 8 has held as under :-

â??8. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful appointment to one of the dependents of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right

conferred by the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependent of a deceased employee. In *Umesh Kumar Nagpal v. State of Haryana*, this Court has taken note of the object underlying the rules providing for appointment on compassionate grounds and has held that the Government or the public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. In that case the Court was considering the question whether appointment on compassionate grounds could be made against posts higher than posts in Classes III and IV. It was held that such appointment could only be made against the lowest posts in non-manual categories. It was observed :

“The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

8. Thus, as per the judgment passed by the Hon^{ble} Apex Court, the object underlying a provision for grant of compassionate employment is to enable the family of deceased employee to tide over the sudden crisis.

9. Thus, in view of the aforesaid, the petitioner is allowed. The order dated 04/01/2017 is hereby quashed and the respondents are directed to reconsider the case of the petitioner for appointment on compassionate ground

within a period of three months from the date of receipt of certified copy of the order passed today.