
(2017) 09 MP CK 0025
In the Madhya Pradesh High Court
Case No : 326 of 2017

Manohar	Vs	APPELLANT
State of M.P. & another		RESPONDENT

Date of Decision : 25-09-2017

Acts Referred:

Citation : (2017) 09 MP CK 0025

Hon'ble Judges : Hemant Gupta, Vijay Kumar Shukla

Bench : Single Bench

Advocate : Shri Anoop Nair, Shri P.K.S. Sengar

Judgement

1. This intra-court appeal takes exception to the order dated 10-11-2016 passed by the learned Single Judge in W.P. No.6204/2013 whereby the petition has been allowed.

2. Factual expose adumbrated in a nutshell, are that the father of the writ-petitioner (respondent herein) while in service died on 8-7-1997. Thereafter, the mother of the respondent applied for compassionate appointment on 27-10-1997. Later, the respondent applied for compassionate appointment having requisite qualifications on 7-01-1998. Since the said application was not considered, therefore, the writ petitioner made applications on 3-02- 2006 and 6-6-2008 and on the said applications, the Collector vide letter dated 23-6-2008 asked the respondents/appellants to proceed in the matter.

3. The Additional Secretary of the erstwhile M.P. Electricity Board, Jabalpur vide its his letter dated 11-9-2009 expressed financial crisis and as per Circular dated 01-9-2000, expressed his inability to provide compassionate appointment to the writ petitioner. Thereafter again vide letter dated 11-8-2009 Office of the Collector sought for the informations about the appointment of the respondent. The writ-petitioner/respondent filed W.P. No.11656/2009 which was decided by order dated 12-12-2012 whereby the letter dated 10-8-2009 was quashed. A direction was given to consider the application of the writ petitioner afresh in

accordance with the policy. The respondent again submitted his representation on 20-12-2012 but the same was rejected by order dated 6-02-2013. The appellants passed the order that as compassionate appointment policy has already been ceased to be in effect from 01-9-2000 and the said scheme has not been revived, therefore, the case of the writ petitioner cannot be considered for compassionate appointment at present. It was further mentioned that the same would amount for re-introduction of the compassionate appointment policy.

4. Counsel for the appellants submitted that since the policy of compassionate appointment was already closed and there was no policy existing for compassionate appointment, therefore, the competent authority has rightly rejected the case of the respondent for compassionate appointment. It is further submitted that compassionate appointment is not a matter of right. It is a concession which is extended to the dependants of an employee and the same is an exception to the rule of appointment. If there is no policy for compassionate appointment, there cannot be any order for appointment on compassionate ground. The father of the writ petitioner had died in the year 1997 and after a prolong period of more than 12 years, previous petition was filed in the year 2009. It is further submitted that any direction for grant of compassionate appointment after such a long period, is contrary to the object of compassionate appointment, as the object is that a family whose earning member has expired does not suffer financial problem because of such an untimely death.

5. Per contra, counsel for the respondent submitted that in view of order passed in the previous petition a right for appointment on compassionate appointment has accrued and the Full Bench in the case of Bank of Maharashtra and another vs. Manoj Kumar Deharia and another, 2010(3) MPLJ 213 would not apply in the present case, as the same would have no impact of wiping out of the judgment between between the parties inter se, which has attained finality. He further relied on the order passed in the case of Govind Prasad Saini vs. M.P. State Electricity Board and others (W.P. No.9774/2011) and supports the order passed by the learned Single Judge on the ground that a right has accrued in his favour, in view of the directions passed by this Court in W.P. No.11656/2009 and also because of dismissal of the Review Petition No.446/2015.

6. The learned Single Judge has proceeded in the matter on the assumption that right has accrued in favour of the writ petitioner/respondent and, therefore, the same could not have been wiped out by the subsequent policy. He further submits that the Full Bench has not taken into consideration the principles culled out in State Bank of India and others vs. Jaspal Kaur, (2007) 9 SCC 571, and therefore, the learned Single Judge has rightly held that the right accrued in favour of the respondent, could not have been taken away by the subsequent policy. Reliance is placed on the verdict of the apex Court pronounced in the case of Canra Bank vs. M. Mahesh Kumar, (2015) 7 SCC 412.

7. Counsel for the appellants further relied on the judgment of Full Bench of this Court rendered in the case of Manoj Kumar Deharia and another (supra) and

submitted that a case of compassionate appointment has to be considered in view of the policy which is prevailing at the time of consideration. In the said case the following question was addressed by the Full Bench: "In a case of compassionate appointment pursuant to the death of a deceased employee, which policy of the Government is to be applied :-

1. The policy prevailing at the time of the death of employee ? OR
2. The policy prevailing at the time of application for compassionate appointment ?

OR

3. The policy prevailing at the time of consideration of the application for compassionate appointment "

8. This Court in *Manoj Kumar Deharia and another (supra)* held that compassionate appointment is neither a vested right which can be considered at any time, even after the crisis created by death of the earning member is over nor it is a hereditary right, therefore, it cannot be bequeathed. Para 18 of the judgment being relevant for the present purpose, is extracted hereunder: "18. Thus, understood, compassionate appointment is neither a vested right, which can be exercised at any time even after the crisis created by the death of the earning member is over, nor is it a hereditary right. It cannot be bequeathed. These principles are laid down in the cases of *Haryana State Electricity Board vs. Naresh Tanwar*, (1996) 8 SCC 23; *Srikanth vs. Chief Engineer, Karnataka Electricity Board*, 1996(1) SLR 118; and *Ashok Kumar Maiti vs. State of West Bengal*, 1995 Lab IC 2175." It is further held that while granting compassionate appointment various factors have to be taken note of, like, availability of vacancy, financial condition of the dependants, manpower of the establishment and its financial position etc. That being so, the employer is always at liberty to formulate a policy in regard to appointment on compassionate consideration and, therefore, the policy with regard to compassionate appointment depending upon various factors may also change from time to time.

9. The Full Bench after referring to the various decisions of the apex Court including *Jaspal Kaur (supra)* held thus: "33. In view of the foregoing discussion, we proceed to record our conclusions as follows:

(a) That grant of compassionate appointment is not a vested legal right. It is only a benefit granted in certain circumstances dehors 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 dehors 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 decision 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. "

10. In the present case, the learned Single Judge has held that once the right has accrued in favour of the petitioner because of the directions passed by this Court in W.P. No.11656/2009, the same could not have been wiped out because of the judgment of the Full Bench in Manoj Kumar Deharia and another (supra). It is noted from the facts of the present case that the representation of the respondent was rejected on 6-02-2013 and the judgment of the Full Bench in Manoj Kumar Deharia and another (supra) was delivered on 27-10-2009. Even otherwise, once the Full Bench has held that the right of compassionate appointment is neither a vested right which can be exercised at the time, nor it is a hereditary right, then the case of the respondent for compassionate appointment has to be considered in the light of the law laid down by the Full Bench of this Court.

11. Another Full Bench of this Court in the case of Jabalpur Bus Operators Association and others vs. State of M.P. and another, 2003(1) MPHT 226 (FB) held that a Bench of lesser strength is bound by the view expressed by a Bench of larger strength and cannot take a view in departure or in conflict therefrom. The Full Bench has referred the judgment passed in the case of Jaspal Kaur (supra). The learned Single Judge has relied on certain verdicts of the Apex Court and held that a right has accrued in favour of the writ-petitioner and same could not have been wiped out by respondents, is not in conformity with the law

laid down by the Full Bench in the case of Manoj Kumar Deharia and another (supra).

12. In view of the aforesaid, the judgement passed by the Full Bench in Manoj Kumar Deharia and another (supra) the case of compassionate appointment has to be considered in view of the policy which was prevailing at the time of consideration.

13. Accordingly, the writ appeal is allowed and the order passed by the learned Single Judge in the writ petition is set aside and as a logical corollary, the writ petition stands dismissed.