

(2017) 02 MP CK 0256
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2710 Of 2008

Nikita Mishra

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 02-02-2017

Acts Referred:

Citation : (2018) 1 MPLJ 194 : (2017) 1 MPWN 272

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : A.K. Sethi, Rahul Sethi, Romesh Dave

Final Decision : Dismissed

Judgement

1. The petitioner before this Court has filed the present petition being aggrieved by letter dated 11-2-2008 (Annexure-P/7) by which the petitioner was informed by the respondents about rejection of her representation for compassionate appointment to the post of Assistant Auditor.

The petitioner's father late Ganga Prasad Dixit died while working as Assistant Auditor in the State Government on 1-10-1980. At the time of death of her father, the petitioner was minor. Thereafter, she passed the higher secondary in the year 1986 and completed her graduation in the year 1989. After completion of her graduation, she applied for compassionate appointment in the department. Vide order-dated 10-8-1990 she was given appointment to the post of Lower Division Clerk (LDC) in the pay-scale of ` 950-1530 with a condition that she is required to pass the Hindi typing examination.

According to the petitioner, she made a representation before the respondents that she is entitled for appointment to the post of Assistant Auditor as has given in the case of one Mrs. Pravina Tiwari who was directly given appointment to the post of Assistant Auditor. The said request was not considered then she approached the State Administrative Tribunal (SAT) by way of filing the Original Application No. 262/1998. In the said application, the State Government filed the

return and submitted that the case of the petitioner for compassionate appointment was considered at the relevant time on the basis of circular dated 22-8-1980 and the said circular provides for appointment to the post of LDC and Class-IV post only not above. The case of Mrs. Pravina Tiwari is altogether different as she was given appointment on 29-11-1978 under the policy dated 1-11-1972 prevailing for grant of compassionate appointment on higher post is on the recommendation of the head of department.

2. That vide order dated 21-1-1999, the said Original Application was allowed and the tribunal has held that the applicant is entitled for annual grade increment and other allowances but regularization of her services on the said post can only be done after passing the Hindi Typing Examination or attaining the age of 40 years. So far as the appointment of Compassionate Appointment to the post of Assistant Auditor is concerned, the matter is remitted back to the Department to decide it afresh at par with the case of Mrs. Pravina Tiwari.

3. That the State Government has not decided the petitioner's representation, therefore, the petitioner preferred contempt petition before the Tribunal which was later on transferred to the High Court on abolition of the State Administrative Tribunal (SAT) and the case has been re-registered as MCC No. 774/2003. The said MCC was disposed of vide order dated 21-9-2007 by giving six months time to the respondents to implement the order.

4. That vide order dated 20-4-1999, the State Government has constituted a two member committee for considering the case of the petitioner and the said Committee has found that the petitioner is not entitled for compassionate appointment to the post of Assistant Auditor. The said order was communicated to the petitioner vide letter dated 20-4-1999 (Annexure-R/1). The petitioner has disputed this fact that she has not received the said communication but filed petition and the letter sent to her Counsel after giving legal notice.

5. Being aggrieved by her rejection, the present writ petition is filed.

6. Shri A.K. Sethi, learned senior counsel appearing on behalf of the petitioner submits that after the order of Tribunal dated 21-1-1999 there was no scope for the State Government has to reject her claim for appointment to the post of Assistant Auditor and the order of the Tribunal has attained finality as no writ petition was filed at the relevant time by the Government.

7. Shri Sethi, learned senior counsel further submits that the Tribunal while deciding the original application has held that the case of the petitioner is similar to the case of Mrs. Pravina Tiwari who was directly given the appointment to the post of Assistant Auditor. There is no special qualification to hold the post of Assistant Auditor as the minimum qualification is graduation which the petitioner also possess, therefore, there is no reason for the State Government to reject the claim of the petitioner.

8. Per Contra, Shri Romesh Dave, learned Government Advocate appearing on

behalf of the respondents-State submits that the case of Mrs. Pravina Tiwari is altogether distinguishable from the case of the petitioner, as petitioner was given appointment under the circular dated 22-8-1980 which was prevailing at the time of death of her father and under the said circular the appointment can be given to the post of Class-IV employees or to the post of LDC maximum and not more than above, therefore, the case of the petitioner cannot be considered in light of the policy dated 1972 or of 1994, therefore, the respondents have not committed any error while rejecting the representation of the petitioner.

9. I have heard learned counsel for the parties.

10. It is not disputed that the father of the petitioner died on 1-10-1980, therefore, in light of the judgment passed by this Court in the case of Santosh Rathore v. State of M.P. and another, reported in MANU/MP/0824/2016 : 2017(1) M.P.L.J. 95 which is based on the judgment of Supreme Court in the case of Canara Bank v. M. Mahesh Kumar, reported in MANU/SC/0634/2015 : 2016(1) M.P.L.J. (S.C.) 262 : 2015(7) SCC 412 the prevailing policy at the time of death would apply for considering the case of the petitioner for compassionate appointment. The policy dated 22-8-1980 was prevailing at the time of death of her father. The policy dated 22-8-1980 is reproduced below :

मध्य प्रदेश शासन

सामान्य प्रशासन विभाग

एफ ई0 3-2/80/3/1

भोपाल, दिनांक 22 अगस्त 1980

प्रति,

शासन के समस्त विभाग,

अध्यक्ष, राजस्व मंडल, मध्यप्रदेश ग्वालियर,

समस्त आयुक्त,

समस्त विभागाध्यक्ष,

समस्त जिलाध्यक्ष,

मध्यप्रदेश

विषय:- शासकीय सेवकों की असागयिक मृत्यु होने पर उनके परिवार के आश्रित सदस्यों को नौकरी में प्राथमिकता देना-समेकित अनुदेश।

संदर्भ:- (1) इस विभाग का ज्ञापन ईमांक 714/381/1 (3) 72 दिनांक 1.11.1972

(2) इस विभाग का ज्ञापन एफ ईमांक 3-5/75/3/1 दिनांक 24 मार्च 1975

इस विभाग के द्वारा उपर्युक्त ज्ञापनों के अन्तर्गत अनुकम्पा नियुक्तियों के संबंध में निकाले गये अनुदेशों की पुनरीक्षा की

गई तथा शासन द्वारा उपर्युक्त दोनों ज्ञापनों का अधिर्दमण करते हुए अब निम्नलिखित समेकित अनुदेश सूचनार्थ एवं अनुपालन के लिये जारी किये जाते हैं:-

(1) "जब किसी शासकीय सेवक की मृत्यु सेवा करते समय हो जाती है और उसके परिवार को आर्थिक सहायता की तुरंत आवश्यकता हो, अर्थात् उसकी आर्थिक स्थिति अच्छी न हो और परिवार में कोई भी कमाने वाला सदस्य न हो, तो उक्त शासकीय सेवक के परिवार के एक सदस्य को रोजगार कार्यालय के माध्यम से भरती की पद्धति में छूट देकर निम्न श्रेणी लिपिक के पद पर अथवा उसके समतुल्य स्तर के किसी पद पर अथवा चतुर्थ श्रेणी के पद पर जिसके लिए उसके पास आवश्यक अर्हता हो, अनुकम्पा नियुक्ति के लिये विभागाध्यक्ष को निम्नलिखित उपबंधों एवं शर्तों के अधीन अधिकार दिया जाता है।

(2) उपर्युक्त प्रकार अनुकम्पा नियुक्ति के लिये आवेदक को तभी नियुक्त किया जा सकेगा जबकि वह भरती नियमों के प्रावधानों के अनुसार उक्त किसी पद के लिये सब प्रकार से पात्र तथा उपयुक्त हो। यदि किसी उपयुक्त मामले में आवेदक की आयु अधिकतम आयु-सीमा से अधिक हो तो उसे सामान्य प्रशासन विभाग की सहमति लेकर आयु-सीमा में छूट देकर नियुक्त किया जा सकेगा। केवल चतुर्थ श्रेणी के कर्मचारी की सेवा काल में मृत्यु होने पर उसके परिवार के सदस्य को चतुर्थ श्रेणी के पद पर नियुक्त करने के लिये सामान्य प्रशासन विभाग से सहमति प्राप्त कर शैक्षणिक अर्हता में भी छूट दी जा सकती है। अन्य श्रेणियों के व्यक्तियों को शैक्षणिक अर्हता में छूट नहीं दी जाएगी।

11. That in the said policy, the appointment can be given to the post of LDC and has been given to the petitioner on 10-8-1990 which the petitioner had accepted. She approached the Tribunal in the year 1998, claiming two reliefs i.e. the payment of increment without passing the Hindi Typing Examination and appointment to the post of Assistant Auditor. The Tribunal has prima-facie found that the case of the petitioner is similar to the case of Mrs. Pravina Tiwari. That the condition of circular of 1972 and circular of 1994 are similar, which provides that the heads of the department on request may consider the appointment on higher pay-scale except the executive post for which the applicant must possess the technical qualification. As held above, the case of the applicant was not liable to be reconsidered either under the circular of 1972 or under the circular of 1994 and there is no such condition or provision in the circular of 1980. Therefore, the respondents has rightly considered the case of the petitioner in view of the circular dated 22-8-1980 which was in vogue at the time of death of her father. That during the intervening period after accepting the compassionate appointment to the post of LDC, the petitioner has got married in the year 1995 and started living with her husband. The mother and other two children are no more dependent to her, therefore, the case of the petitioner cannot be considered for the post of Assistant Auditor. The respondents have not committed any error or illegality while rejecting the application of the petitioner. Hence, the present petition has no merit and is accordingly dismissed.

The petition fails and is accordingly dismissed.