
(2008) 08 MP CK 0044

In the Madhya Pradesh High Court

Case No : Writ Petition No. 15573 of 2003

Pawan Shrivastava

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 26-08-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2009) 1 MPLJ 106

Hon'ble Judges : Ravi Shankar Jha, J

Bench : Single Bench

Advocate : Smt. Sudha Pandit, for the Appellant; Om Namdeo, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Jha, J.

The petitioner has filed this petition being aggrieved by the non-grant of annual increments to him on account of not passing the Hindi typing examination.

The case put forth by the petitioner, in brief, is that the petitioner was initially appointed on compassionate grounds in accordance with the policy dated 10-6-1994 on the post of Lower Division Clerk by order dated 1-9-1994. It is submitted that thereafter the petitioner successfully completed training but was not granted increments and was continued on the basic pay scale admissible to a Lower Division Clerk. The petitioner filed a representation claiming increments which was rejected by order dated 23-7-1999 on the ground that the petitioner being a compassionate appointee was required to pass the Hindi Typing Examination within one and a half years of his appointment or to claim exemption therefrom on attaining 40 years of age and as the petitioner did not fulfill either of the requirements, he was not entitled to annual increments. Being aggrieved by the aforesaid, the petitioner filed an original application before the M.P. State Administrative Tribunal in 2000 which has been transferred to this

Court and is now being decided by this order.

It is submitted by the learned counsel for the petitioner that the petitioner having been appointed as a Lower Division Clerk and having rendered satisfactory service on that post till date, is entitled to regular increments as granted to all other Lower Division Clerks, in view of the provisions of the M.P. Fundamental Rules and denial of the same amounts to discrimination and violates the petitioner's fundamental rights under Articles 14 and 16 of the Constitution of India.

The learned Government Advocate appearing for the respondents, per contra submits that the petitioner was appointed in view of the policy for compassionate appointment of the State issued on 10-6-1994 on account of the fact that the petitioner's father, while working as an Accountant at Primary Health Centre, Lalbarra, died while in service on 28-6-1993. It is submitted that condition No. 1 of the order of appointment of the petitioner dated 1-9-1994 clearly stipulates that the petitioner was compulsorily required to clear the Hindi Typing Examination within one and half years but as the petitioner failed to clear the Hindi Typing Examination within one and half years, he was not given annual increments and the representation filed by him claiming the same was rejected by order dated 23-7-1999. It is submitted that in the facts and circumstances of the case, the impugned action does not suffer with any infirmity and the petition deserves to be dismissed.

I have heard the learned counsel for the parties at length. Admittedly, the petitioner's father died in 1993 and he was given compassionate appointment by order dated 1-9-1994 as a Lower Division Clerk. A perusal of Condition No. 1 of the appointment order clearly indicates that there is a specific stipulation therein to the effect that the petitioner was compulsorily required to pass the Hindi Typing Examination within one and half years of the appointment. Admittedly, the petitioner did not clear the Hindi Typing Examination within the stipulated period.

At this stage, it is pertinent to take into consideration the mandatory statutory qualifications prescribed by the recruitment rules as well as the policy relating to the compassionate appointment. The appointment on the post of Lower Division Clerk in the Health Department is governed by the provisions of the M.P. Public Health and Family Welfare (Directorate of Health Services) Class-III Ministerial Service Recruitment Rules, 1989. Schedule III (a), framed under Rule 8 and appended to the Rules, prescribes the minimum qualifications necessary for appointment of various posts in the Health services. Item No. 2 lays down the qualifications necessary for appointment on the post of L.D.C. The minimum qualification prescribed under the aforesaid Schedule is Higher Secondary Examination or High School Pass under 10+2 Education System and passing of the Hindi Typing Examination from the M.P. Board of Shorthand and Typing. The relevant part of the Schedule reads as under :-

SCHEDULE III (a) (See Rule 8)

Age and qualifications of the Persons to be recruited directly Ministerial Directors of Health Services, M.P.

S. No.	Name of Service	Minimum age limit	Maximum age limit	Prescribed Educational qualifications and experience	Remark
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(1)	(2)	(3)	(4)	(5)	(6)
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K 2. Category-I Selection Committee

L.D.C./ Assistant	1	30	Higher Secondary Examination or High School Passed under 10+2 Education System.	2.	Deputy Director, Health Services (Office Establishment-Member).
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2. Passed Hindi typing Examination from M.P. Board of the Shorthand and typing.

In view of the aforesaid provision of the rule, it is clear that a person has to possess the qualification of passing the Hindi Typing Examination from the M.P. Board of the Shorthand and Typing for being eligible for appointment on the post of Lower Division Clerk. Admittedly the petitioner did not possess the said qualification at the time of appointment on 1-9-1994.

The policy relating to compassionate appointment dated 10-6-1994, under which the petitioner's case was considered and he was granted compassionate appointment, has been filed along with the return as Annexure R-I. Para 20 of the aforesaid policy stipulates that except for the widow of a deceased Government employee, all others who are appointed on compassionate ground as Lower Division Clerk and who do not possess the requisite qualification can be given regular appointment only from the date of their passing the Hindi Typing Examination or on their attaining the age of 40 years. It is also apparent that it was in view of the provisions of recruitment rules and paragraph 20 of the Policy relating to compassionate appointment dated 10-6-1994 that condition No. 1 was included in the order of appointment of the petitioner.

It is settled law that compassionate appointment is not a right but is granted to a surviving member of the family of a Government employee who dies while in service in specific circumstances as a special case. In view of the aforesaid circumstances, when the aforementioned recruitment rules, the policy relating to compassionate appointment and the condition in the petitioner's appointment order are read in juxtaposition, it becomes abundantly clear that though the petitioner did not possess the mandatory qualification as prescribed by the recruitment rules, he was given compassionate appointment as a special case under the policy relating to compassionate appointment subject to a specific condition that the petitioner would have to pass the Hindi Typing Examination within one and half years from the date of appointment only then he would be granted regular appointment. It is an un-denied fact that the petitioner did not clear the Hindi Typing Examination within the aforesaid period.

In view of the above, it is clear that the petitioner could have been given regular appointment only on his passing of the Hindi Typing Examination or on his failure to do so, on his attaining 40 years of age as specified in the policy relating to compassionate appointment as well as the order of appointment dated 1-9-1994. From the above, it follows as a natural corollary that until and unless he becomes a regular employee of the department, he is not entitled to claim increment as a regular employee.

It is submitted by the learned counsel for the petitioner that in spite of the provisions of the recruitment rules and the policy relating to compassionate appointment, the petitioner is entitled to grant of annual increments under the provisions of Fundamental Rules 24 and 26 which prescribe that every employee would be entitled to annual increments as a matter of course unless it is withheld and that an increment may be withheld only in case the employee's conduct has not been good or his work has not been satisfactory. It is submitted that in the instant case the petitioner's work was good and was to the satisfaction of his superior authorities and, therefore, in accordance with the provisions of FR 24 and 26, the petitioner was entitled to annual increment from the date of his appointment.

I am of the considered opinion that the aforesaid submission made by the learned counsel for the petitioner cannot be accepted in view of the fact that FR 24 itself provides that increments would be granted as a matter of course unless they are withheld. The argument fails to take into consideration that FR 24 deals with the case of a regular employee who has been appointed after following the due procedure prescribed by law and who possesses the required statutory qualification prescribed by the rules. In the instant case, the petitioner was not appointed after following the procedure prescribed by the rules and admittedly he did not possess the requisite qualifications prescribed therein for the post of Lower Division Clerk but was given appointment on compassionate ground under the policy of the State dated 10-6-1994 which clearly stipulates that a person appointed in such circumstances would become a regular member of the service only on his passing of the Hindi Typing Examination or on attaining the age of 40 years and on being given regular appointment thereafter. In the aforesaid circumstances, FR 24 and 26 would not be attracted to the petitioner's case as he was not a regular member of the service and as his increments were deemed to be withheld in view of the policy and the specific condition in his appointment order which clearly makes a stipulation to that effect.

From the analysis of the aforesaid facts and the provisions of law I have no hesitation in arriving at the conclusion that the petitioner, who does not possess the statutory eligibility qualification, but was appointed under the scheme of compassionate appointment subject to the condition that he passes the typing examination within a stipulated period, cannot be granted the relief as claimed by him as he has not fulfilled the condition subject to which he was appointed under the scheme of compassionate appointment.

There is yet another reason for denying the relief sought by the petitioner and that is that the petitioner sought for and obtained appointment under the scheme of compassionate appointment without going through the procedure prescribed by the statutory rules and in spite of his not possessing the requisite eligibility qualifications and, therefore, once having obtained advantage of the special benefit under the compassionate appointment scheme and having accepted appointment subject to the condition of passing the typing examination which was specifically stated in the order of appointment, the petitioner cannot be permitted to turn around and assail the clauses of the scheme for compassionate appointment or the condition in his appointment order as he is prohibited from doing so on the principles of acquiescence and estoppel. The petitioner having obtained advantage and benefit of the compassionate appointment scheme is required to fulfill all the conditions prescribed therein and in the order of his appointment.

In view of the aforesaid legal position, I am of the considered opinion that no fault can be found with the impugned order dated 23-7-1999 rejecting the petitioner's representation for grant of regular annual increments on the ground that he has not fulfilled the condition prescribed in the order of appointment and has neither passed the Hindi Typing Examination nor attained 40 years of age.

The petition filed by the petitioner being merit less is accordingly dismissed. In the peculiar facts and circumstances of the case, there shall be no order as to costs.