
(2018) 08 MP CK 0116

In the Madhya Pradesh High Court

Case No : Writ Petition No.18109 Of 2015

Rakesh Kumar Bhatnagar

APPELLANT

Vs

Registrar General And Others

RESPONDENT

Date of Decision : 14-08-2018

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : (2018) 08 MP CK 0116

Hon'ble Judges : Hemant Gupta, CJ;Vijay Kumar Shukla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

The petitioner has invoked the writ jurisdiction of this Court for issuing a direction to the respondents to appoint the petitioner as Assistant Grade III by way of compassionate appointment.

2- Shri K.K. Bhatnagar, father of the petitioner, died as Deputy Clerk of Court on 11.2.2011. The petitioner sought appointment on compassionate

grounds vide an application dated 3.3.2011. He was initially appointed on 16.11.2011 as a contingency paid employee, but on 23.11.2011, the

petitioner was appointed on full time basis. Thereafter, the petitioner submitted representations for appointment to the post of Assistant Grade III, in

view of his qualification and appointment given to other similarly situated persons.

3- In the return, the stand is that essential condition of appointment to the post of Assistant Grade III is Diploma in Computer Application, which the

petitioner was not possessing, therefore, he was appointed against the post to which he was qualified.

4- In Umesh Kumar Nagpal Vs. State of Haryana, 1994 (4) SCC 138, the court held that appointment to public posts are required to be made on merit

after applications are invited from general public but 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. The Honâ??ble Supreme Court held as under:-

â??2. 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 permissible. 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 dependants 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 dependants 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. â?!.â??

5- In IG. (Karmik) and others Vs. Prahlad Mani Tripathi, 2007 (6) SCC 162, the Supreme Court held that public employment is considered to be

wealth. In terms of constitutional scheme it cannot be given on descent. The Supreme Court has carved out an exception and the same must be

strictly complied with. Appointment on compassionate ground is given only for mitigating the hardship which is faced by the family by reason of death

of bread earner. It is held as under:

â??6. An employee of a State enjoys a status. Recruitment of employees of the State is governed by the rules framed under a statute or the proviso

appended to Article 309 of the Constitution of India. In the matter of

appointment, the State is obligated to give effect to the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. All appointments, therefore, must conform to the said constitutional

scheme. This Court, however, while laying emphasis on the said proposition carved out an exception in favour of the

15. children or other relatives of the officer who dies or who becomes incapacitated while rendering services in the police department. See

Yogender Pal Singh and Others v. Union of India and Others [(1987) 1 SCC 631].

7. Public employment is considered to be a wealth. It in terms of the constitutional scheme cannot be given on descent. When such an exception has

been carved out by this Court, the same must be strictly complied with. Appointment on compassionate ground is given only for meeting the immediate

hardship which is faced by the family by reason of the death of the bread earner. When an appointment is made on compassionate ground, it should be

kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion. 16.

6- Considering the aforesaid judgments, the Supreme Court in a judgment reported as Steel Authority of India Limited Vs. Madhusudhan Das and

others, (2008) 15 SCC 560, held that the provision of compassionate appointment was made as a measure of social benefit, but it does not lay down a

legal principle that the Court will pass an order to that effect despite the fact that condition precedent has not been satisfied. It was held as under:

This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be

provided for in the rules. The criteria laid down therefor, viz. that the death of the sole bread earner of the family, must be established. It is meant to

provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into

consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts

which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is

a concession, not a right. [See General Manager, State Bank of India and Others v. Anju Jain, (2008) 8 SCC 475, para 33].

16. **** **

17. It may be that such a provision was made as a measure of social benefit but it does not lay down a legal principle that the court shall pass an order

to that effect despite the fact that the conditions precedent therefor have not been satisfied. â?|â??

7- In another judgment reported as Bhawani Prasad Sonkar Vs. Union of India and others, (2011) 4 SCC 209, the court delineated the factors which

have to be kept in mind while giving compassionate appointment. It was held as under:

â??20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to

be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate

appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the

bread winner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the

financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee, viz. parents, spouse, son or

daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.â??

8- In another judgment reported as State of Haryana and others Vs. Vipin Kumar, AIR 2002 SC 2867, the Honâ??ble Supreme Court held that

appointment on compassionate ground can be given only on a post lower than the post held by the deceased employee. The relevant extract from the

judgment reads as under:

â??3. All that need to be done is that, post that is offered to the respondent claiming a post on compassionate ground, should be at least one step

below that was held by the deceased employee and that does not mean it should

be the immediate post below it, it could be even lower than that. If

that is the correct interpretation to be placed of the relevant rules, the post offered to the respondent appears to us to be correct. â?|.â??

9- In view of the aforesaid judgments, we find that the petitioner was not qualified for appointment to the post of Assistant Grade III, as he did not

have Diploma in Computer Application. Still further, he could be appointed to Class III or Class IV post. Once he has been appointed on a Class IV

post, he cannot say that he should be given compassionate appointment on the higher post.

10- In view thereof, we do not find any merit in the writ petition.

Dismissed.