
(2017) 02 MP CK 0187
In the Madhya Pradesh High Court
Case No : 5386 of 2015

RAVI PRAKASH GARG

APPELLANT

Vs

STATE OF M P AND ANR.

RESPONDENT

Date of Decision : 13-02-2017

Acts Referred:

Constitution of India, Article 14, Article 16 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Dissolution of a Distr

Citation : (2017) 02 MP CK 0187

Hon'ble Judges : Prakash Shrivastava

Bench : Single Bench

Advocate : C.M. Nair, M.S. Dwivedi

Judgement

1. This writ petition has been filed by petitioner claiming compassionate appointment and challenging amended compassionate appointment policy of 2013 with a further prayer to apply the policy dated 30th January, 1997 in the petitioner's case.

2. Sans unnecessary details the essential facts are that petitioner's father Dwarka Prasad Shrivastava was working as Line Inspector with respondent and had died while in harness due to heart attack on 2/9/06. Petitioner had made an application for compassionate appointment on 2/1/2007 and vide communication dated 2/6/08 he was informed that on account of ban on compassionate appointment the prayer in the application could not be granted. Thereafter the amended compassionate appointment policy 2013 was brought in force and petitioner had sent the notices dated 8/1/14 and 25/5/14 but compassionate appointment was not granted. Since the case of petitioner is not covered by the amended compassionate appointment policy therefore, he has challenged the policy also.

3. Countering the case of petitioner, reply has been filed by the respondent/

Board contending that though petitioner had applied for compassionate appointment but since the board had put a ban on compassionate appointment hence petitioner was denied the same and petitioner's case is not covered under the new scheme of compassionate appointment. It is also stated that vide letter dated 2/6/08 petitioner's claim was rejected and notice sent by petitioner after the amended policy was duly replied on 31/1/14 informing about the ineligibility of petitioner.

4. Learned counsel for petitioner submits that since the petitioner had filed application under the scheme of compassionate appointment dated 30/1/1997 therefore, his case requires consideration under that scheme and that the conditions which are imposed by the amended scheme of 2013 are unreasonable and arbitrary.

5. As against this learned counsel for respondents has supported the impugned action and has submitted that the scheme which was prevailing at the time of consideration of petitioner's application is to be applied and new amended policy is not arbitrary or discriminatory in any manner.

6. Having heard the learned counsel for parties and on perusal of the record it is noticed that on 2/6/08 when the petitioner's application for compassionate appointment dated 2/1/07 came up for consideration at that time there was a ban on compassionate appointment in the respondent/Board. The ban was imposed vide order dated 1/9/2000 therefore, at that time respondents had rightly denied the compassionate appointment keeping in view the existing ban which was prevailing at the time of consideration of the application.

7. No error in the above action of the respondents is found because an application for compassionate appointment is required to be considered in accordance with policy prevailing at the time of its consideration (See: Bank of Maharashtra and another Vs. Manoj Kumar Deharia and Another reported in ILR (2010) MP 1876 (FB)).

8. The petitioner's contention that he should be given appointment under 1997 policy has also no force in view of the above Full Bench Judgment because at that time policy of 1997 was not in force and in the similar circumstances writ petitions of other petitioners have been rejected vide order dated 14/1/08 passed in WP No. 6286/06 in the case of Lokendra Ambia Vs. MP State Electricity Board and others, Division Bench judgment in WA No. 275/08 in the matter of Lokendra Ambia Vs. MP State Electricity Board and others and in the matter of Ankit Verma Vs. M.P. Madhya Kshetra Vidyut Vitran Company reported in 2016(1) MPLJ 418.

9. The new scheme of compassionate appointment was introduced on 3rd June, 2013 which was amended on 29/12/14 by incorporating clauses 1.1(a) & 1.1(b) confining benefit of the scheme only to certain category of persons in respect of old

cases prior to 10/4/12. Clauses 1.1 & 3.8 relevant for present controversy provide as under: "VERNACULAR MATTER OMITTED"

10. As per clause 1.1(a) the dependents of the employee dying in harness due to sudden accident, electrocution, murder or vehicular accident while doing the work of company/board after 15/11/2000 and prior to 10/4/12 working in earlier MP State Electricity Board/company are eligible for compassionate appointment and as per clause 3.8 the cases except relating to accidental death after 15/11/2000 and prior to 10/4/12 either rejected, decided or pending, will not be considered.

11. Since the father of petitioner had died on account of heart attack therefore, in terms of clauses 1.1(a) and 3.8 of the policy petitioner's case falls outside the purview of consideration under the new amended policy of 2013.

12. The matter does not end here because the petitioner has challenged the new amended policy of 2013 itself on the ground of being arbitrary and unreasonable.

13. The compassionate appointment is an exception to the General Rule of appointment to public office. As a general rule appointment to public office is to be made strictly in accordance with mandatory requirement of Articles 14 & 16 of the Constitution. The object of compassionate appointment is to remove the financial constraints of the bereaved family on losing the bread earner and to enable the family of deceased employee to tide over the sudden crises.

14. Compassionate appointment is not a vested right (See. MGB Gramin Bank Vs. Chakrawarti Singh reported in AIR 2013 SC 3365, Umesh Kumar Nagpal Vs. State of Haryana & others reported in (1994) 4 SCC 138) .

15. Since it is not a vested right therefore, respondent's option to change the policy of compassionate appointment is not closed. (See Kuldip Singh Vs. Government, NCT Delhi reported in AIR 2006 SC 2652).

16. It is no longer *res integra* that compassionate appointment is to be granted on consideration of several factors such as eligibility, financial condition of the company etc. as may be provided in the scheme and such a right is a legal right which is creation of terms of the applicable scheme.

17. Power to frame policy by executive decision or by legislation also includes power to withdraw the same unless in the former case, it is done by malafide exercise of power or the decision or action taken is in abuse of power. The doctrine of legitimate expectation plays no role when the appropriate

authority is empowered to take a decision by an executive policy or under law. The authority also has full range of choice within the limits of its executive or legislative power. (See: P.T.R. Exports (Madras) Pvt. Ltd. And others Vs. Union of India and others reported in (1996) 5 SCC 268).

18. In the present case the amended policy reveals that benefit of compassionate appointment in the cases concerning the period prior to

10/4/2012 is restricted to only certain categories of persons. The justification for providing cut off date as 10/4/12 for such cases is given in para 1.1 of the scheme itself. Under Clause 1.1(a) of the amended policy, the new scheme has retrospective application for the period prior to 10/4/2012 only to the dependents of the employee dying in harness on account of accidental death in certain specified eventualities while doing the work of the Board/company. Such employees form separate class, therefore, the classification is reasonable having nexus with object sought to be achieved. The policy is not tailor made to favour any particular person nor malafides are reflected and it is also neither whimsical nor has been issued with ulterior motive. Hence the petitioner's challenge to the amended policy of 2013 for compassionate appointment cannot be accepted.

19. Keeping in view the above analysis, the petitioner cannot be granted the benefit of judgment of the Supreme court in the matter of The Energy and Resources Institute Vs. Suhrid Sudarshan Shah and others reported in AIR 2016 SC (Civil) 2475 and in the matter of Reliance Energy Ltd. And another Vs. Maharashtra State Road Development Corporation Ltd. And others reported in (2007) 8 SCC 1.

20. Hence I am of the opinion that the writ petition filed by

petitioner is devoid of any merit and petitioner is not entitled for the relief of compassionate appointment since his case is not covered by the above policy of compassionate appointment. The writ petition is accordingly dismissed. C.c. as per rules.