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**(2019) 05 RAJ CK 0037**

**In the Rajasthan High Court**

**Case No : Civil Writ Petition No. 15576 Of 2017**

Smt. Anita Devi And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

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**Date of Decision : 03-05-2019**

**Acts Referred:**

Rajasthan Compassionate Appointment Of Dependents Of Deceased Government  
Servant Rules, 1996 — Rule 10(3)

**Citation : (2019) 05 RAJ CK 0037**

**Hon'ble Judges : Alok Sharma, J**

**Bench : Single Bench**

**Advocate : Sanjay Mehla, Nikhil Simlote, R.B. Mathur**

**Final Decision : Disposed Off**

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## **Judgement**

The case of the petitioner is that Subhash Chandra, father of petitioner no.1 and husband of petitioner no.2 while working as Constable at Excise Police Station, Nawalgarh, District Jhunjhunu, met with an accident and died on 10.2.2015. At the time of death of Subhash Chandra, the petitioner no.2 Sahil Choudhary was minor. Therefore, his mother (the petitioner no.1) submitted an application dated 1.10.2015 to the concerned Circle Inspector to protect the right of her minor son for appointment on compassionate ground untill he attains the age of maturity. The said application dated 1.10.2015 was forwarded to the Excise Officer, which was replied vide letter dated 6.11.2015 informing the petitioner no.1 that under Rajasthan Compassionate Appointment of Dependents of Deceased Government Servant Rules, 1996 (hereafter 'the Rules of 1996') (as amended in the year 1999) as her son (the petitioner no.2) would be attaining the age of 18 years on 27.9.2020, the application for his compassionate appointment through proper channel be filed three months thereafter. When the petitioner no.1 was awaiting the age of maturity of her son, the petitioner no.2, she received a letter dated 30.6.2017 from the respondents stating that in terms of the Notification dated 11.9.2002 issued by the Department of Personnel, the application filed on behalf

of petitioner no.2 for his appointment on compassionate ground even prior to attaining the age of majority was not acceptable. In such circumstances, the petitioner no.1 submitted an application dated 5.7.2017 to the respondents for giving herself an appointment on compassionate ground. Vide reply dated 2.8.2017 the petitioner no.1 was informed that her application not being submitted within time i.e. within 90 days of her husband's death as warranted under rule 10(3) of the Rules of 1996, her case for appointment on compassionate ground was not sustainable. Hence this petition.

Reply to the petition has been filed. It has been submitted that vide Notification dated 11.9.2002 Rule 10(3) of the Rules of 1996 was amended and thereby provision for keeping application for compassionate ground pending at the instance of minor children of the deceased employee till they attained the age of majority was excluded. Thus, the petitioner no. 2 who applied for compassionate appointment before attaining the age of 18 years was not entitled to be considered for compassionate appointment under the Rules of 1996 on attaining the age of majority. So far as application submitted by the petitioner no.1 for compassionate appointment is concerned, the defence is that it was not submitted within the stipulated time of 90 days as provided for under Rule 10(3) of the Rules of 1996 and therefore rejected. In support of these contentions, Mr. Nikhil Simlote counsel for the respondents has place reliance on the order passed by this Court in the case of Manchha Ram Versus State of Rajasthan & Ors. - SBCWP No. 2773 of 1999; decided on 19.4.2000.

Heard. Considered.

Admittedly an application dated 1.10.2015 for compassionate appointment submitted on behalf of petitioner no.2 then a minor by the petitioner no.1, his mother, due to the death of his father was kept pending by the respondents for more than 2 years and then effectively rejected on 30.6.2017 in view of the amendment of the then extant rule 10(3) of the Rules of 1996. In the circumstance, on 5.7.2017 the petitioner no.1 submitted her own application for compassionate appointment which was rejected vide letter dated 2.8.2017 for the reason that the said application was filed belatedly beyond the 90 days limitation for the purpose under Rule 10(3) of the Rules of 1996. Albeit vide Notification dated 11.9.2002 issued by Department of Personnel, Rule 10(3) of the Rules of 1996 has been amended, but proviso even of the amended Rule 10(3) of the Rules of 1996 confers discretion on the competent authority of the State Government to relax the rule in the event enforcement thereof causes financial hardship to the family of the deceased government servant. It is well settled that discretion conferred on a statutory authority is always coupled with a duty for its exercise where facts and circumstances for the exercise of discretion are made out. The discretion conferred on a statutory authority cannot be used mechanically and unthinkingly de hors the facts of a given case without regard to the justice and equity of a specific case before it to circumvent the obligation towards fairness and justice demanded in a case. In the garb of non exercise of

discretion without as much as a disclosure of a good cause - even when challenged - a statutory authority cannot negate the spirit / object of law conferring such discretion.

The object of the Rules of 1996 is to mitigate the hardship which the dependents of a government servant suffer due to the sudden death of the bread earner of the family. The period of 90 days under the now extant rule 10(3) of the Rules of 1996, within which an application for compassionate appointment is to be made, is not iron clad. There is a statutory discretion under the proviso to Rule 10 (3) to condone delay and entertain an application under the Rules of 1996 filed beyond 90 days for reason of justice and equity if the conditions of financial hardship of the applicant are made out. In the instant case delay in filing the application for compassionate appointment by the petitioner no.1 was caused because of the fact that initially petitioner no. 2's application being a minor was kept pending by the respondents for about 2 years. Soon after the rejection of the said application of the petitioner no.2, petitioner no.1 applied for compassionate appointment. It is thus quite pellucid that the respondents have completely overlooked the facts and circumstances of the petitioner no. 1's delayed application and rejected it mechanically.

The order passed in the case of Manchha Ram (supra), on which reliance has been placed by counsel for the respondents does not attract to the instant case for the reason that in the said case application for appointment on compassionate ground was submitted by the petitioner without good cause belatedly after 3 years from the death of his father and that too when he had not attained the age of maturity. In the instant case, the petitioner, who is the widow of the deceased government servant submitted her application for compassionate appointment after the application for compassionate appointment first submitted by her on behalf of her minor son and earlier kept pending by the respondents for the reason that he was minor, was then rejected in the month of June, 2017. The petitioner no.1 thereafter, on coming to know that the Rules of 1996 as amended did not countenance keeping the rights of a minor of deceased government servant pending till his attaining the age of majority and requisite qualifications, filed application for her appointment under the Rules of 1996 within a week. No intent to abandon the statutory right under the Rules of 1996 in the facts of the case can be attributed to the petitioner no.1. Nor could her application for compassionate appointment be rejected on the ground of delay in the circumstances. Contrarily, the application was so entitled to be considered on merit by treating it as valid by resort to the proviso to Rule 10(3) of the Rules of 1996.

For this reason, the impugned order dated 2.8.2017 is quashed and set-aside. The respondents are directed to treat the petitioner no.1's application under the Rules of 1996 to have been filed with justifiable delay, condone the delay and consider it on merit. This be done within 3 months of submission of a certified copy of this order.

Writ petition stands disposed of accordingly.