
(2016) 07 MP CK 0052
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5048 of 2010

Sunil Jain

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 28-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 151 FLR 681 : (2016) 3 MPLJ 528

Hon'ble Judges : Shri Vivek Rusia, J.

Bench : Single Bench

Advocate : Shri Umesh Gajankush, Advocate, for the Petitioner; Shri R. Mangal, Government Advocate, for the Respondent/State

Final Decision : Allowed

Judgement

Shri Vivek Rusia, J.—Petitioner has filed the present petition being aggrieved by the order dated 3.11.2009 (Annexure P/6) by which his claim for compassionate appointment has been rejected on the ground of delay.

2. Facts of the case are as under.

Petitioner's father late Shri Vimalchand Jain died on 17.03.2002 while working as Assistant District Excise Officer in the Excise Department. Immediately after his death petitioner submitted an application for grant of compassionate appointment dated 11.4.2002 within a month. On consideration of his application vide letter dated 31.5.2003 Assistant Excise Commissioner requested the Collector, Ratlam that Assistant Grade-II post is not vacant in the Excise Department, therefore, claim of the petitioner be considered for appointment in other department. Thereafter petitioner was offered appointment to the post of Samvida Shala Shikshak Grade-III in Panchayat Department. That vide letter dated 5.1.2009 Excise Department requested Chief Executive Officer, Janpad Panchayat, Ratlam to appoint the petitioner on the post of Samvida Shala Shikshak Grade-III. It appears that petitioner did not give consent for the said

post. His case was considered by the Excise Department and vide letter dated 3.11.2009 petitioner was informed that he cannot be appointed on compassionate ground that 7 years from the date of death has passed and as per clause 3.2 of the policy dated 22.01.2007 now claim cannot be considered, hence the present petition has been filed.

3. Shri Gajankush, learned counsel for the petitioner submits that the delay of 7 years did not cause due to the petitioner. In fact, within a month of the death of his father he submitted the application for compassionate appointment and 7 years have passed due to correspondences between the Excise Department to other Departments. The post offered to the petitioner was not acceptable to him, therefore, he is liable to be considered for appointment in the Excise Department.

4. Shri Rohit Mangal, learned Govt. Advocate submitted that now more than 7 years have been passed and the policy of the State Government regarding compassionate appointment has drastically changed, therefore, in the changed circumstances he is not entitled for appointment on compassionate ground.

5. That it is not disputed that petitioner submitted application immediately after the death of his father vide Annexure P/2 on 11.4.2002. Thereafter vide letter dated 31.2.2003 Assistant Excise Commissioner requested the Collector to appoint the petitioner in some other Department. Vide letter dated 28.5.2004 written by the Additional Excise Commissioner to the Deputy Commissioner that the case of the petitioner be processed for appointment to the post of Constable and for the said purpose three member committee be appointed. It appears that no action has been taken on the basis of the letter, thereafter all of a sudden in the year 2008 petitioner was offered the post of Samvida Shala Shikshak Grade-III which was not acceptable to the petitioner. That 7 years have passed because of the exchange of communication between the departments of Govt. of M.P for which petitioner cannot be held to be responsible for the delay.

6. That in case of Canara Bank and another v. M. Mahesh Kumar reported in (2015) 7 SCC 412 Hon"ble Apex Court has held as under:

17. Applying these principles to the case in hand, as discussed earlier, the respondent's father died on 10-10-1998 while he was serving as a clerk in the appellant Bank and the respondent applied timely for compassionate appointment as per the scheme "Dying in Harness Scheme" dated 8-5-1993 which was in force at that time. The appellant Bank rejected the respondent's claim on 30-6-1999 recording that there are no indigent circumstances for providing employment to the respondent. Again on 7-11-2001, the appellant Bank sought for particulars in connection with the issue of the respondent's employment. In the light of the principles laid down in the above decisions, the cause of action to be considered for compassionate appointment arose when Circular No.154 of 1993 dated 8-5-1993 was in force. Thus, as per the judgment referred in Jaspal Kaur case, the claim cannot be decided as per 2005 Scheme providing for ex gratia payment. The Circular dated 14-2-2005 being an

administrative or executive order cannot have retrospective effect so as to take away the right accrued to the respondent as per Circular of 1993.

18. It is also pertinent to note that 2005 Scheme providing only for ex gratia payment in lieu of compassionate appointment stands superseded by the 2014 Scheme which has revived the scheme providing for compassionate appointment. As on date, now the scheme in force is to provide compassionate appointment. Under these circumstances, the appellant Bank is not justified in contending that the application for compassionate appointment of the respondent cannot be considered in view of passing of time.

That contention of the learned Govt. Advocate is liable to be rejected that now the case of petitioner cannot be considered in view of passage of time.

7. In my considered opinion claim of the petitioner is liable to be considered afresh and the delay should not come in the way of the petitioner as the petitioner has already submitted a representation which is pending before the Commissioner, Excise Gwalior and the same shall be considered in the light of the above observations and needful be done.

8. With the aforesaid observations, petition stands disposed of.