
(2013) 07 MP CK 0214
In the Madhya Pradesh High Court
Case No : W.A. 242 of 2013

Vijay Kumar Upadhyaya

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

Citation : (2013) 07 MP CK 0214

Hon'ble Judges : S.K. Gangele, J;M.K. Mudgal, J

Bench : Division Bench

Advocate : Prashant Sharma, for the Appellant; Raghvendra Dixit, Government Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

1. The appellant has filed this writ appeal against the order dated 14/5/2013 passed by the learned Single Judge of this Court in Writ Petition No. 8727/2012. Because the matter is in regard to consideration of the case of the appellant for compassionate appointment, hence, with the consent of the Government Advocate, this appeal is disposed of finally.

2. Father of the appellant was working as Rural Agriculture Extension Officer. He died on 22/6/1999. The appellant submitted an application for compassionate appointment on 17/2/2009, copy of which has been filed as Annexure P/2 with the writ petition, when he was aged about 19 years. The appellant was not given compassionate appointment. Then he filed a writ petition before this Court. He pleaded before the Writ Court that he was eligible to be considered for compassionate appointment in accordance with the Policy of the Government. The respondents resisted the claim of the appellant and they pleaded that father of the appellant was died on 22/6/1999 and the application of the appellant for compassionate appointment came up for consideration before the Authority on 11/11/2009, after a period of near about ten years, hence, the appellant was not eligible to be considered for compassionate appointment.

3. The learned Writ Court rejected the claim of the appellant for compassionate appointment on the ground that compassionate appointment could not be granted after considerable delay because the Authority has to give the deceased employee some relief to tide over sudden crisis. On arriving at the aforesaid finding, the learned Writ Court relied upon the judgment of Hon''ble the Apex Court in Sanjay Kumar Vs. The State of Bihar and Others, and two Division Bench decisions of this Court in Beni Lal Bamney Vs. Union of India and others, and Riazuddin Khan Vs. State of M.P. and others,

4. During the pendency of this appeal, counsel for the appellant has filed copy of a circular dated 13/1/2011 issued by the General Administration Department, State of MP. By the aforesaid circular, the GAD has communicated the decision of the State Government relaxing the period of seven years in regard to consideration of compassionate appointment of the cases of dependants where the employees were died after 13/12/2001. It is submitted by the learned counsel for the appellant that the date fixed by the aforesaid circular, i.e. 13/12/2001 is not proper the appellant was also eligible for consideration on the date when the order was in force. Leaned counsel submits that in accordance with the Full Bench judgment of this Court, at the time of consideration of the case of the appellant, the circular was in force, hence, the appellant is eligible to receive benefit of the circular.

5. Contrary to this, learned Government Advocate appearing on behalf of the respondents/State submits that in the circular, specific date has been fixed and since father of the appellant died prior to that date, the appellant is not eligible to the benefit of the circular.

6. Circular dated 13/1/2011 issued by the GAD was not placed before the learned Writ Court. However, looking to the fact that the matter is for compassionate appointment and claim of the appellant has been resisted by the respondents in their return on the ground of passage of time, hence, the aforesaid circular has been taken into consideration.

7. The circular dated 13/1/2011 stipulates that dependants of the employees who died after 13/12/2001 would be eligible to benefit of seven years period's relaxation and they would be given time to submit application upto 31/12/2011. The appellant submitted application in the year 2009 for compassionate appointment, hence, it was within time. In our opinion, fixing of the date of death of the Government is contrary to the Full Bench decision of this Court in Bank of Maharashtra and Another Vs. Manoj Kumar Deharia and Another, . In the aforesaid judgment, the Full Bench has held in regard to entitlement for consideration of the case for compassionate appointment in accordance with the policy as hereunder:

Compassionate appointment is not a vested right nor is it a hereditary right. Its grant is based on the policies and scheme which are framed by carving out an exception to the general rule governing public appointment. Once it is held that it

is an exception to the General Rule and is granted in accordance with the scheme or rules formulated, then considerations to be made for grant of the appointment would be governed by the provision of the rules or the scheme and in that view of the matter when the rules and the guidelines play a dominant role, considerations have to be made in accordance with the rules and scheme which are applicable at the time of grant. As the entitlement for compassionate appointment is to be evaluated in accordance with the Schemes and Rules formulated in that regard, there cannot be any shadow of doubt that consideration and evaluation are required to be made in accordance to the existing Policies and not on the basis of a Policy or Scheme, which has become extinct. In that view of the matter, consideration has to be in accordance to the Policy applicable when the matter is taken up for consideration and not on the basis of any other Scheme or Policy, which has lapsed or superseded.

8. From the aforesaid Full Bench decision, it is clear that the appellant is eligible to be considered for compassionate appointment in accordance with the policy which was prevailing at the time of consideration of the case of the appellant. As per the return filed by the respondents, case of the appellant was considered on 11/11/2009. Hence, the appellant was entitled to get the benefit of relaxation of seven years in accordance with the circular dated 13/1/2011.

Consequently, this writ appeal is allowed and it is disposed of with the following directions:

(1) That the impugned order dated 14/5/2013 passed by the learned Writ Court in WP 8727/2012 is hereby quashed.

(2) The matter is remanded back to the Authority to consider the case of the appellant for compassionate appointment after giving benefit of the circular dated 13th January, 2011 issued by the GAD.

(3) The application of the appellant for compassionate appointment be decided by the Authority within a period of three months from the date of receipt of certified copy of this order.

The appeal is disposed of finally. No order as to costs.