
(2018) 06 MP CK 0071

In the Madhya Pradesh High Court

Case No : Writ Petition No.5413 of 2017

Vikrant Verma

APPELLANT

Vs

State Of M.P. & Others

RESPONDENT

Date of Decision : 20-06-2018

Acts Referred:

Citation : (2018) 06 MP CK 0071

Hon'ble Judges : VANDANA KASREKAR, J

Bench : Single Bench

Advocate : Pradeep Singh Chauhan, J. Pandit

Final Decision : Disposed Off

Judgement

The petitioner has filed the present petition challenging the orders dated 28/08/2006 and 08/08/2016 passed by respondent No.4.

2. Brief facts of the case are that the father of the petitioner namely Kishor Kumar Verma was serving as Lab Assistant in the Irrigation Department,

Soil and Material Testing Division Jabalpur vide order dated 23/11/1996. The father of the petitioner has met with road accident on 20/05/2006 and he

along with mother of the petitioner, both died at the spot. The deceased employee left behind two sons named Vikrant Verma aged about 19 years and

Vivek Verma aged about 14 years only at the time of his said demise. No other male or female adult members were available in the family and,

therefore, the petitioner and his minor younger brother were shifted to their uncle's house, where they are still living with them. The petitioner

thereafter applied for compassionate appointment on 29/05/2006. The said application was forwarded to the Director, Irrigation Research, Narmada

Bhawan, Tulsi Nagar Bhopal vide letter dated 30/05/2006 to respondent No.3.

The respondent No.4 thereafter informed the petitioner that as per his clarification and eligibility, no post is vacant and said that his name appears in merit list prepared by them and, therefore, as and when vacancy occurs, the applicant will be considered for compassionate appointment in accordance with the merit list.

3. On the other hand, respondents have sought the consent and willingness of the petitioner for appointment as Samvida Shala Shikshak post which he refused and requested for regular post in the department as the case of the petitioner was not considered for a considerable period, therefore, he

demanding merit list for the year 2008 through Right to Information Act on 16/12/2008, whereby he came to know that his name stood at serial

No.188. However, the respondents informed that no compassionate appointment has been given after serial No.188. The petitioner was advised to

report before the District Medical Board of Victoria Hospital Jabalpur for medical examination and to submit declaration form and affidavit on the

prescribed format. Respondents have also called for police verification of antecedents of the petitioner from Superintendent of Police, Jabalpur which

was received by them on 28/06/2011. Thus, all formalities have been completed by the respondents for appointment of the petitioner. As no action has

been taken in the matter, the petitioner has submitted a representation on 19/09/2011 but the respondents have not taken any action on the

representation submitted by the petitioner. The petitioner further came to know that respondents have considered and given the compassionate

appointment in the same post of Ameen to several candidates whose father expired 4-5 years later than the date of death of father of the petitioner.

The petitioner, therefore, filed a W.P.No.3612/2012 before this Court. The said writ petition was disposed of vide order dated 14/03/2016 directing the

respondents to consider the case of the petitioner for appointment on the post of Ameen from the date of his juniors have been appointed within a

period of 60 days from the date of communication of this order. As the order passed by this Court was not complied with, therefore, the petitioner has

filed Contempt Petition No.1065/2016 before this Court.

4. The State Government against the said order has preferred a Writ Appeal No.333/2016, in which the order passed by the writ Court was modified

and the respondents were directed to consider the case of the petitioner for

compassionate appointment considering the same as a fresh appointment.

In compliance of the direction passed in Contempt Petition as well as Division Bench, respondents have passed an order dated 08/08/2016 thereby

rejecting the application submitted by the petitioner for appointment of the petitioner on compassionate ground on the ground that he has not given his

consent/willingness for appointment on the post of Samvida Shala Shikshak and that 7 years limitation as prescribed by the State is passed. Being

aggrieved by this order, the petitioner has filed this present petition before this Court.

5. Learned counsel for the petitioner argues that entire action of the respondents in rejecting the claim of the petitioner for appointment on

compassionate ground is illegal and arbitrary. He submits that representation submitted by the petitioner was rejected on two grounds. Firstly, the

petitioner has refused to appoint on the post of Samvida Shala Shikshak and secondly, the petitioner has not submitted any application/representation

for compassionate appointment within 7 years from the date of death of his father. He further submits that so far as the submission of the application

is concerned, he submits that the application has been submitted by the petitioner within time. He submits that the father of the petitioner had died on

20/05/2006 and application for compassionate appointment was filed by the petitioner on 29/05/2006 i.e. within prescribed time which is filed with the

petition as Annexure P/3, on this ground, respondents could not have reject the application of the petitioner.

6. So far as second ground is concerned, learned counsel for the petitioner submits that respondents have rejected his claim on the ground that the

petitioner has refused to accept the appointment on the post of Samvida Shala Shikshak, he submits that number of posts of Ameen were laying

vacant and respondents have appointed number of persons who were junior to the petitioner on the said post on compassionate ground, therefore, this

action of the respondents discriminatory, therefore, petition deserves to be allowed.

7. Respondents have filed their return and in the return, respondents have stated that in pursuant to the direction given by the Division Bench, passed

an order on 08/08/2016 whereby the claim of the petitioner has been rejected on the ground that on earlier occasion on 28/08/2008 and letter dated

06/01/2011, a consent was sought from the petitioner for accepting appointment on the post of Contract Teacher but said consent has not been

granted, therefore, after lapse of 7 years, petitioner cannot be considered for appointment. Relying on Policy dated 18/08/2008, learned Government

Advocate submits that Clause 10.1 provides for the post in the department is not available then appointment on the post of Contract Teacher can be

given for the consent of the applicant had to be taken. The case of the petitioner then considered for appointment but there was no post lying vacant in

the department, therefore, a letter dated 28/08/2006 given to the petitioner seeking his consent as to whether he is willing to work on the post of

Contract Teacher or not but petitioner has refused to accept the said appointment and informed the department that he was only willing to work on a

regular post, therefore, his claim for compassionate appointment has been rejected.

8. The petitioner has filed rejoinder in the present writ petition. In the said rejoinder, petitioner has stated that the name of the petitioner continuously

existed in the merit list, prepared by the respondents and the petitioner was assured that on falling vacancy in the department, his name shall be

considered for compassionate appointment as per his seniority. However, the petitioner was given option to Samvida Shala Shikshak in case he was

willing. It is further submitted that for lapse of 7 years, the petitioner cannot be blamed, since he submitted the application for compassionate

appointment, immediately within 10 days from the date of death of his father and mother. It is further stated that the respondents have initiated the

process of appointment of the petitioner and obtain police verification stating to appoint the petitioner in the post of Ameen on 09/06/2011 and got

medically examined from Government Victoria Hospital, Jabalpur. After obtaining police verification from SP Jabalpur and medical examination of the

petitioner from Government Victoria Hospital Jabalpur in order to issue compassionate appointment on the post of Ameen to the petitioner, during the

year 2011, have deliberately not taken any further action, whereas they have extended the benefits of compassionate appointment on the same post to

such candidates, whose father expired 4-5 years later than the date of death of the petitioner's father.

9. Respondents have also filed additional return. In the said return, they denied that the compassionate appointment has been given to any other

candidate during the period when the case of the petitioner was under consideration.

10. Heard learned counsel for the parties and perused the record. From perusal of the record, it appears that the father of the petitioner namely Kishor

Kumar Verma was serving as Lab Assistant in the respondents's department vide order dated 23/11/1996. Thereafter, father of the petitioner met

with road accident on 20/05/2006 and he along with mother of the petitioner, both died at the spot. The deceased employee left behind two sons

named Vikrant Verma aged about 19 years and Vivek Verma aged about 14 years. The petitioner thereafter submitted an application for appointment

on compassionate ground on 29/05/2006. The application submitted by the petitioner was duly forwarded and was considered by the respondents.

However, as no vacancy exists, therefore, the petitioner was asked to give his option for appointment as Samvida Shala Shikshak. The name of the

petitioner appears in the merit list, therefore he was asked. The petitioner, therefore, refused to give his consent for appointment as Samvida Shala

Shikshak. As the case of the petitioner was not considered for a considerable period, therefore, he demanded merit list for the year 2008 through Right

To Information Act on 16/12/2008 whereby he came to know that his name stood at serial No.188. However, the respondents have informed the

petitioner that no compassionate appointment has been given after serial No.188. The petitioner was advised to appear before the District Medical

Board of Victoria Hospital Jabalpur for medical examination. In the said medical examination, he was found fit for appointment, thereafter,

respondents also called for police verification of antecedents of the petitioner from SP Jabalpur which was received by them on 28/06/2011. Thus,

entire procedure for appointment of the petitioner on the post of Ameen has been completed by the respondents, but no appointment order was issued,

therefore, the petitioner has submitted a representation. As more than 5 years have been passed and no action has been taken in the representation,

the petitioner therefore filed a W.P.No.3612/2012 which was disposed of vide order dated 14/03/2016 thereby directing the respondents to consider

the case of the petitioner for grant of compassionate appointment on the post of Ameen from the date when his juniors were appointed within a period

of 60 days. However, this order has not been complied with, therefore, Contempt Petition was filed. Respondents State has also filed

W.A.No.333/2016 which was disposed of vide order dated 14/03/2016 by modifying the order passed in writ petition. In compliance of the order

passed by Division Bench of this Court as well as writ Court, respondents have passed an order dated 08/08/2016 thereby rejecting the claim of the

petitioner for appointment on compassionate grounds. Firstly that the petitioner has refused to give his willingness for appointment on the post of

Samvida Shala Shikshak, secondly, 7 years limitation as prescribed in the circular has expired. So far as first ground is concerned, the petitioner

submits that respondents while asking the petitioner to give his option for appointment on compassionate ground, stated that his case will be considered

as and when post is laying vacant. He submits that in the present case, after refusal of the case of the petitioner, respondents have granted the

appointments to number of persons on the post of Ameen although their names appeared below in the merit list from the petitioner and also their

father has expired after death of the father of the petitioner. Thus, refusal of the case of the petitioner on the ground that period of 7 years has been

expired cannot be accepted. It is also to be seen that petitioner has submitted an application for appointment on compassionate ground on 29/05/2006

i.e. within time. However, respondents have not considered the case of the petitioner for appointment on compassionate ground for these years,

therefore, delay cannot be attributed to the petitioner. After rejection of the case of the petitioner, the respondents have given appointment to number

of persons. A copy of the said appointment order is already on record.

11. Accordingly, the writ petition is allowed. The impugned order dated 08/08/2016 is hereby quashed and the respondents are directed to consider the

case of the petitioner for appointment on compassionate ground within a period of three months from the date of receipt of certified copy of the order

passed today. While considering the case of the petitioner, respondents shall not taken into consideration that the petitioner has not given his option for

appointment on the post of Samvida Shala Shikshak.

12. With the aforesaid observation, the petition stands allowed and disposed of, with no order as to costs.

Certified copy as per rules.